

**NATIONAL STRATEGIES —  
HUMAN RIGHTS COMMISSIONS, OMBUDSMEN, AND NATIONAL ACTION PLANS**

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**The Role of National Human Rights Institutions in State Strategies**

*I will give you a talisman: Whenever you are in doubt, or when the self becomes too much with you, apply the following test: Recall the face of the poorest and weakest man whom you have seen, and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him a control over his own life and destiny? In other words, will it lead to Swaraj [independence] for the hungry and spiritually starving millions? Then, you will find your doubts and your self-melting away.*

Mahatma Gandhi<sup>2</sup>

Human Development Report 2000 will focus on the theme of human rights and human development. Its message will be that human development and human rights are mutually reinforcing approaches to development, each bringing valuable strengths and tools to the task.

In a broad and complex perspective, State human rights strategies are crucial for the protection and promotion of human rights. As States work to become responsible members of the international community, the formation and implementation of these strategies are essential for the fulfillment of the obligation they assume to defend the human rights of those individuals residing within their borders. One main instrument utilized in the definition of these State strategies is the establishment of Human Rights Institutions on the national level.

Part one of this study deals with the conceptual and historical aspects of National Human Rights Institutions. Definitions of the various contemporary National Human Rights Institutions, based on criteria established by the United Nations, are presented. The study then offers an analysis of the key characteristics of these Institutions with a specific focus on mechanisms such as purpose, structure and function.

The second section presents a discussion on the role played by the United Nations and its machinery in the molding of National Human Rights Institutions, the origins of its commitment, the key points of this development and the turning point of the Vienna Conference with new avenues for technical cooperation and National Human Rights Plans of Action.

The third part of this study draws together examples of the diverse ways in which human rights are being promoted at the national level through the use of National Human Rights Institutions and National Human Rights Action Plans, especially in developing nations. Case studies are drawn from a wide variety of continental and national contexts so as to maximize the richness of the discussion.

The fourth and final part offers some elements for a critical analysis of the contemporary experience, focussing on the effectiveness with which these various institutions function. This section focuses on the disparity between internationally established norms and the actual practices administered on the national level. Specific themes explored will be those of State interference, the autonomy of the Institution and its funding and resources. The conclusion will be that the most effective national strategies are those which are developed in the framework provided by the Paris Principles<sup>3</sup>, outlined in the study. The ideal practice being a fully operational "National Human Rights Network" in which a variety of geographically and thematically specialized Human Rights Institutions and Action Plans are implemented to work in conjunction and form a flexible and

articulated national structure for the promotion and protection of human rights.

## **Part 1. National Human Rights Institutions: Concept and Definition**

A National Human Rights Institution is established on the premise that the existence of laws alone is not enough to assure the rights of the individual within the societal framework. The institution is in turn created to act as a support within that framework and is generally defined as a body whose function it is to promote and protect human rights. The Institution is most commonly of an administrative nature, granted neither judicial or law making powers. However, it is not uncommon to find institutions that combine administrative and quasi-judicial elements. In some cases, the Constitution provides the basis for the establishment of such Institutions though, in most cases, laws or decrees create them. These bodies may be attached, though not subordinate, to the executive or legislative branch of government.

Though some countries have extensive experience protecting human rights, the National Human Rights Institution began to take on an increasingly important role over the past two decades in a wide variety of national contexts. The structural and functional diversity of the Institutions which have since evolved is relatively great due to the fact that they reflect the particularities of the political regimes and regional differences of the countries in which they have been formed. In spite of this, these institutions may be grouped into three broad categories: "Human Rights Commissions", "Ombudsmen" and other "Parliamentary Human Rights Bodies" and "Specialized Human Rights Agencies". Though in many cases the title of these bodies is not a definitive guide to their functions, the definitions that follow present a set of guidelines to aid in the understanding of the role played by these institutions in the national human rights apparatus.

### **1.1 The Human Rights Commission**

The main objective of the Human Rights Commission is to ensure that the laws and regulations concerning the promotion and protection of human rights are effectively applied. Most Commissions function independently of the government though they are often required by law to submit reports to the legislature. Though the focus of these Commissions was initially centered on the defense of civil and political rights, they have responded to the increased trend of State ratification of the International Covenant by including economic, social and cultural rights in their agendas.

The Commission realizes its objective in a number of ways. One of its most important roles is to receive and investigate complaints of human rights abuses. The Commission's role in the investigation and resolution of complaints is, in some cases, primarily one of conciliation or arbitration. Although they are rarely granted authority to impose legally binding outcomes to parties to a complaint, there exist the possibilities of forming special tribunals or transferring the case to civilian courts as a means of offering a more definite resolution.

Another essential function of the Commission is to review the government's human rights policy as well as the implementation of ratified human rights treaties. The goal of the Commission in this case is to draw attention to the deficiencies in specific areas and suggest means for improvement.

Finally, the Commission is often entrusted with the important responsibility of improving community awareness of human rights issues. This is achieved by informing the community of the Commission's purpose and function, organizing seminars, holding counseling services and meetings and producing and disseminating human rights publications<sup>4</sup>.

### **1.2 The Ombudsman**

At first glance, many Ombudsman institutions and Human Rights Commissions may appear indistinguishable. Indeed, in the area of receiving and investigating complaints their functions do overlap. They are also alike in the sense that neither is usually granted the power to make binding decisions. In spite of these similarities, upon further investigation it becomes apparent that these institutions do differ in more than mere nomenclature.

Where the Commission concerns itself with discrimination and human rights abuses perpetrated by individuals,

groups or the government, the Ombudsman has the primary objective of protecting nationals from rights abuses authored by public officials or institutions. In other words, the function of the Ombudsman is to insure fairness and legality in public administration

Although the specific mandates of Ombudsmen vary from country to country, all follow similar procedures in the performance of their duties. The Ombudsman receives complaints from members of the public and, if a violation of rights can be identified, initiates an investigation. In order to effectively carry out this task, the Ombudsman is generally granted access to the documents of all relevant public authorities. The Ombudsman is given full independence from the government and declared politically impartial to ensure that the investigation is not compromised.

Individuals may lodge complaints directly with the Ombudsman or, as is the case in some countries, may be required to submit their complaints to an intermediary such as a Member of Parliament. It is important to note that the Ombudsman can also investigate a possible violation of human rights when no specific complaint has been lodged. This is common when the Ombudsman identifies a violation of an entire group's rights<sup>5</sup>.

### 1.2.1 Parliamentary Human Rights Bodies

Where the Office of the Ombudsman is an independent rapporteur to the Parliament to promote and protect human rights, there also exist Bodies established within the Parliament to facilitate and reinforce this process. Parliamentary human rights bodies are one of the main mechanisms enabling Parliament to set up standards to guarantee human rights, in particular those specially mandated to monitor human rights. They can work in close co-operation with other parliamentary body committees, such as those dealing with justice, foreign affairs, and social affairs.<sup>6</sup> As Mary Robinson, the United Nations High Commissioner for Human Rights, writes; "(T)he parliamentary form is perhaps the most symbolic of democratic governance- itself a prerequisite for authentic human rights promotion and protection." <sup>7</sup>

Parliaments are becoming increasingly aware of their responsibility to act as human rights guardians. Indeed, of the 120 national parliaments, which exist today, 40.8% of them have formal bodies dealing specifically with human rights<sup>8</sup>. The variety of mandates assigned to these Bodies reflects the particularities of the national context in which they are established. However, they do have the common goal of ensuring that the standards set out in the Universal Declaration of Human Rights and the two International Human Rights Covenants as well as other human rights instruments, are translated into law and become realities in practice. We will just highlight a few examples of those bodies and some of their main characteristics. In the UK a joint House of Lords and House of Commons Parliamentary Human Rights Group (All Party) was created in 1976. The group receives verbal and written reports of violations of human rights throughout the world and has an active role in the denunciation of gross human rights violations in many continents; establishes contact with inter-governmental agencies and other parliamentary groups in order to widen the debate on human rights and publishes briefing papers on the situation of human rights in other countries. In Slovenia ( 1997) the "Committee for Petitions" monitors the implementation of international instruments, co-operates closely with the Human Rights Ombudsman that deals with violations of the rights of individual citizens and reports to the National Assembly. In cases where certain rights and freedoms in the country are repeatedly violated, the Committee initiates a wide ranging campaign to draw the public's attention to the matter. In Brazil the committee receives, evaluates and investigates complaints regarding threats or violations of human rights; establishes and supervises government programs; cooperates with international organizations. Since 1996 the Committee has successfully organized a National Conference on Human Rights each year with the participation on average of more than 400 representatives of Civil Society Organizations, CSOs; the Committee played a very active role in the preparation of the Brazilian Human Rights National Program and in the monitoring and evaluation of the implementation of the Program. In Bolivia the Human Rights Committee of the Chamber of the Deputies, established in 1979, is very active and frequently criticizes the government publicly.<sup>9</sup>

In Nicaragua, the Committee for Human Rights and Peace was established in 1981 with the mandate to seek information and documentation from State authorities and request officials to expound on matters relating to the performance of their functions; it states its positions with respect to bills designed to promote and protect

human rights. The Committee works in coordination with three NGOs: the Nicaraguan Human Rights Center (CENIDH), the Human Rights Standing Commission (CPDH) and the Nicaraguan Association for Human Rights (ANPDH). In South Africa the Constitution has established two bodies: the Joint Committee on Human Rights Commission and the Joint Committee of the Public Protector. The first is responsible for relations with the Human Rights Commission, an independent State institution set up by the Constitution; the Joint Committee on the Public Protector is responsible for relations with the Public Protector, another independent body also set up by the Constitution.

### 1.3 Specialized Human Rights Agencies

The Specialized Human Rights Agency is an institution, which is established to ensure the protection of the rights of a specific group of citizens. Members of the community who are most commonly entitled to this protection are persons belonging to ethnic, linguistic and religious minorities, indigenous populations, aliens, migrants, immigrants, refugees, children, women, the poor and the disabled.

These specialized agencies are established to promote government and social policy as well as to ensure that domestic government practices fulfill international human rights obligations. They perform very similar functions to the more broadly mandated Human Rights Commission and Ombudsman mentioned above. They are generally entitled to initiate investigations into alleged violations of the rights of individuals or the entire group defined in their mandate but, like other National Human Rights Institutions, they generally have no power to make binding decisions in the resolution of the problem they identify. It is not uncommon for them to be created within branches of the State apparatus and they often act as consultants or advisors to parliament or the executive branch of the government<sup>10</sup>. We just indicate the existence of these institutions and we do not have the ability, in the limits of the present study, to consider these agencies. They are located inside the structure of the diverse ministries in each government and a proper study of them would require specific in depth country cases.

## Part 2. The UN and National Human Rights Institutions: Origins and Development

The establishment of National Human Rights Institutions has been a theme of discussion among the various bodies of the United Nations since June 1946, when the Economic and Social Council invited the Member States to consider the establishment of such Institutions<sup>11</sup>. The question of these National Institutions was discussed only sporadically until July 1960 when the Council began to encourage the establishment of such bodies at the national level<sup>12</sup>.

In July 1962, the Council asked the Secretary-General to prepare a report on the subject of National Institutions<sup>13</sup>. The report was submitted exactly one year later and then transmitted to all Member States as a point of reference for the establishment of such institutions. The General Assembly followed suit in December 1963 by inviting Member States to intensify their domestic efforts in the field of Human Rights<sup>14</sup>.

In December 1966<sup>15</sup>, the Assembly asked the Commission on Human Rights to examine the advisability of the establishment of National Commissions on Human Rights. In March of 1978, the Commission formally recognized the importance of such bodies within the national context, and repeated the invitation by the Economic and Social Council and the General Assembly for Member States to set up such institutions<sup>16</sup>.

In September 1978, a seminar was held in Geneva to establish a series of guidelines for the structure and functioning of National Human Rights Institutions. The guidelines were approved by the General Assembly in December of the same year and by the Commission on Human Rights Institutions in March 1979<sup>17</sup>.

Between 1981 and 1983 the Secretary-General presented further substantive reports followed by a consolidated report in 1987. This consolidated report was intended for eventual publication and distribution to Member States as a handbook on National Human Rights Institutions.

In December 1987, the General Assembly welcomed the report and requested the Secretary-General to bring it up to date<sup>18</sup>. The Secretary-General submitted the updated report to the General Assembly in 1989, and in

1990, a workshop was convened to evaluate the cooperation between international governmental organizations, such as the United Nations, and National Human Rights Institutions<sup>19</sup>.

In 1991, the Secretary-General submitted a report containing conceptual models of National Institutions for the promotion and protection of human rights. In March, the Commission welcomed the decision of the Secretary-General to convene another workshop in 1991<sup>20</sup>.

At its 51st plenary meeting, on 1 December 1998, the Committee on Economic, Social and Cultural Rights adopted General Comment no. 10, recognizing the important role of National Human Rights Institutions in the protection of economic, social and cultural rights at the national level and emphasizing the importance of ensuring that the mandates of national human rights institutions include appropriate attention to economic, social and cultural rights. States are requested to include information on both the mandates and the main activities of such institutions in their reports to the Committee.

## **2.2 The Paris Principles: A Decisive Turning Point**

The United Nations organized a workshop on National Institutions for the promotion and protection of human rights in Paris from 7 to 9 October 1991. Participants included representatives of National Institutions, including Ombudsmen and mediators, representatives of Member States, specialized UN agencies and non-governmental organizations. These participants worked to produce a series of principles on the role, composition, status, and functions of National Human Rights Institutions. The result of this effort were the "Paris Principles" adopted by the Commission on Human Rights in 1992.

Essentially, these principles prescribed that the mandate of these Institutions should be clearly defined in the State Constitutional or legislative texts and that it should provide guidelines for composition and methodology, establish criteria for pluralism and independence and assure adequate funding. Finally, this set of principles specified that the capacity of the Institution should be as a quasi-judicial, conciliatory, informative and recommendatory body.

## **2.3 The 1993 Vienna Declaration and Program of Action: the launching of Human Rights Plans of Action**

In the Vienna Declaration and Programme of Action, adopted in June 1993, the World Conference on Human Rights expressed the need to create a UN program of technical and financial cooperation to help States in the task of creating and strengthening adequate national structures to reinforce the general observance of the rule of law. It was recommended to States to consider the desirability of drawing up a national action plan identifying steps whereby they would improve the promotion and protection of human rights.<sup>21</sup>

Following that recommendation, several states elaborated and launched National Plans of Action for the Promotion and Protection of Human Rights: in 1995, Australia, Latvia and Malawi; in 1996, Philippines, Brazil; in 1998, Ecuador, Indonesia, Mexico; South Africa and in 1999, Bolivia.<sup>22</sup> During this year Cape Verde is also preparing a Plan of Action, with the support of the office of the High Commissioner for Human Rights.

The Action Plans are established with the goal of consolidating national human rights policies and highlighting the best means for fulfillment of international human rights obligations within the national context. Some existing Action Plans have been implemented with the participation of civil society organizations, and deal with all three "generations" of rights. Recently, the model of the National Action Plan has been replicated at the state and municipal levels (the state of São Paulo and the city of São Paulo in Brazil have prepared and recently launched Plans of Action together with CSOs) with the hope of offering specialized attention in areas with specific concerns.

Human Rights Action Plans are particularly relevant to the functioning of National Human Rights Institutions due to the fact that the Institutions are often ascribed important roles in the monitoring of the provisions of these Plans, and in some cases (Australia, Philippines, South Africa) have participated actively in formulating the plans.

## 2.4 The office the High Commissioner for Human Rights and the National Institutions Global Programme

The establishment and strengthening of national institutions has become one of the key strategic aims of OHCHR and a major component of its program of advisory services and technical assistance in the field of human rights. The activities of the Office of the High Commissioner in support of national institutions are carried out together with the support of the Special Advisor on National Institutions<sup>23</sup> and cover the provision of practical advice and assistance to those involved in the establishment of new national institutions. This includes advice to Governments on suitable models, with a comparative perspective, for establishing an appropriate constitutional or legislative framework for any new national institution and on the nature, functions, powers and responsibilities of such institutions.

During the last two years the Office of the High Commissioner provided information, advice or assistance, at their request, to the following Governments in the process of establishing or contemplating the establishment of national human rights institutions: Armenia, Bangladesh, Burundi, Ecuador, Ethiopia, Fiji, Germany, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Liberia, Malaysia, Mauritius, Mongolia, Nepal, Palestine, Papua New Guinea, Rwanda, Sierra Leone, the Republic of Korea, Thailand, Uzbekistan, and, most recently, Ireland and the United Kingdom of Great Britain and Northern Ireland.

The Office has also provided information, advice or material support to a number of recently established national human rights institutions, including: the Public Defender of Georgia, the Latvian Human Rights Office, the Human Rights Commission of Indonesia, the Human Rights Commission of Malawi, the Moldovan Human Rights Center, the Nigerian Human Rights Commission, the Human Rights Commission of Rwanda, the South African Human Rights Commission, the Human Rights Commission of Sri Lanka the Ugandan Human Rights Commission and the Zambian Human Rights Commission.

The Office of the High Commissioner has an ongoing project for technical cooperation with the Government of South Africa and the South African Human Rights Commission as a co-partner.

Since its establishment in 1997, the field office of OHCHR in Colombia has been working closely with the Office of the People's Advocate of Colombia. In October 1998, the High Commissioner for Human Rights signed a Memorandum of understanding with the Andean Commission of Jurists to facilitate assistance to Member States of the sub-region. In this Memorandum, aid in the area of National Human Rights Institutions was specified.<sup>24</sup>

## 2.5 National institution's participation in human rights fora

The growing interest in the creation and reinforcement of independent, pluralistic national institutions for the promotion and protection of human rights has become increasingly apparent since the Vienna Declaration. This trend was officially recognized and endorsed by the Commission on Human Rights in its resolution 1999/72. Indicators of this international trend include various conferences and workshops which have been organized to act as mediums of exchange and instruction for National Institutions. The strengthening of regional cooperation among National Human Rights Institutions is demonstrated by the large number of meetings held during the late 1990s

The Public Protector of South Africa, in cooperation with the International Ombudsman Institute, hosted a workshop from 26 to 29 August 1996 with the theme "Strengthening the Ombudsman Office in Africa". Representatives included African Nations considering the creation of the Office as well as Ombudsmen from various European countries, Canada and Argentina<sup>25</sup>.

The National Commission on Human Rights of Mexico organized The Fourth International Workshop of National Institutions, held in Merida, Mexico from 17 to 29 November 1997. National institutions reaffirmed their wish to participate in United Nations meetings on their own right, to enhance the sharing of information and experiences with other members of the international community and to further strengthen their activities for the promotion and protection of human rights. The "Merida Declaration", adopted by the participants, recognized

that underdevelopment constituted a barrier to the full and effective enjoyment of human rights<sup>26</sup>.

The second Regional Conference of African National Human Rights Institutions was held in Durban, South Africa, from 30 June to 3 July 1998. The conference, convened by the Office of the High Commissioner and the Coordinating Committee of African National Institutions, was attended by the High Commissioner and was hosted by the South African Human Rights Commission. The Declaration adopted in Durban by National Institutions recognized the importance of creating and developing national human rights institutions in African countries in conformity with the Paris Principles- in order to ensure their credibility, integrity, independence and effectiveness.

The first meeting of Mediterranean National Institutions for the Promotion and Protection of Human Rights, held in Marrakech, Morocco, in April 1998.<sup>27</sup>

National human rights institutions in the Asia Pacific region have been meeting, with the support of the Office of the High Commissioner, on an annual basis. The first regional workshop of Asia Pacific national institutions was held in Darwin, Australia, in 1996. The forum held its second workshop in New Delhi in 1997 and its third in Jakarta in September 1998. The fourth Asia Pacific workshop of national institutions was held in Manila, in September 1999, and the fifth will convene in New Zealand in August, 2000.

An International Coordinating Committee (ICC), created by national institutions, held a meeting in Paris in December 1998, in association with celebrations marking the fiftieth anniversary of the Universal Declaration of Human Rights. The next international meeting is scheduled to take place in Morocco, in March 2000. The present provisional members of the ICC are: Africa - Conseil Consultatif des Droits de l'Homme, Morocco; Commission Nationale des Droits de l'Homme, Togo; National Commission on Human Rights and Freedoms, Cameroon; Americas - Canadian Human Rights Commission; National Commission of Human Rights, Mexico (vice- chair); Defensoria de los Habitantes, Costa Rica; Defensor del Pueblo de la Nación, Argentina; Asia/Pacific- National Human Rights Commission, India (chair) ; Commission on Human Rights , Philippines; Human Rights and Equal Opportunity Commission, Australia; Human Rights Commission, New Zealand; Europe- The Danish Center for Human Rights; Latvia National Human Rights Office; Commission Nationale Consultative des Droits de l'Homme, France; Swedish Ombudsman against Ethnic Discrimination.<sup>28</sup>

The Ibero-American Federation of Organizations, which groups national institutions from the region has recently organized two meetings: the second congress of the Federation, held in Toledo, Spain, in 1997, and the third congress held in Lima from 6 to 9 September 1998.

The importance of appropriate participation by national institutions in relevant United Nations meetings dealing with human rights has been recognized and they are playing an increasing role - particularly in the meetings of the Commission on Human Rights. Thanks to this experience those institutions are in a better position to implement in their countries the promotion and protection of internationally recognized human rights. A number of national institutions have, for some time, taken a constructive part in UN meetings as part of the delegations of Member States: some have addressed the Commission on Human Rights (as separate entities, but generally speaking from the seats of their official government delegations). At the fifty-second session of the Commission on Human Rights, in 1996, the Chairman of the Commission decided to allocate separate speaking time for national institutions during consideration of the sub-item of the agenda on national institutions. A similar arrangement was adopted at subsequent meetings<sup>29</sup> and in 1999 Commissions were granted a separate position from which to speak.

### **Part 3. The Contemporary Experience of National Human Rights Institutions**

National Institutions, primarily Ombudsmen and other Parliamentary Bodies, have existed in Europe for decades as a means of reinforcing the rule of law. The roots of such institutions can be traced back for over a century to Sweden. These first Ombudsmen established to monitor administrative affairs and oversee military actions, provided the basis for the guidelines later prescribed in the Paris Principles<sup>30</sup>.

The key characteristics of these Ombudsmen, basic to their effective functioning, have remained unchanged

over the last fifty years. They are established constitutionally as independent bodies with the mandate to monitor government actions. Sweden, Finland and Denmark all maintain the tradition of a yearly report to Parliament, whereas the Norwegian Ombudsman established the tradition of the special report, in depth accounts of specific actions taken by the Ombudsman, which compliments the annual record of the office's activities. The structure of this office varies from country to country, but a trend of specialized Ombudsmen has existed for many years. The Swedish structure has a four-Ombudsperson office, in which one presides and acts as the director of the other three. There also exists an Ombudsman of the Consumer and of the Press<sup>31</sup>.

One example of this trend towards specialization can be found today in Austria, where there exists a three-Ombudsperson "People's Ombudsoffice", an Ombudsperson for Gender Equality and a multitude of human rights coordinators, the offices of which were established in 1998. These human rights coordinators provide a network of Ombudsmen, which are mandated to monitor the work of a wide variety of state and federal ministries and governments. There are Ombudsperson offices in 13 different Federal Ministries, observing administrative activities in everything from Agriculture and Forestry to Defense, from Justice to Education and Cultural Affairs. In addition to these offices established at the federal level, there also exist more localized Ombudsmen, which oversee state government affairs. Specialized Ombudsmen, such as the Child and Youth Ombudsoffices, which monitor the implementation of the Convention of the Rights of the Child, are also found. This wide variety of Ombudsoffices in Austria creates a complete interconnected network of National Human Rights Institutions and demonstrates that the promotion and protection of human rights through National Institutions is most effective when it is extensive<sup>32</sup>.

It is important to note that even those Institutions, which carry the name of "Ombudsman", are not identical. As Héctor Fix-Zamundo demonstrates in his comparative study of Ombudsmen, it is possible to group the Ombudsmen who have been formed over the years into two large categories; those established in the tradition of 1) the Swedish model, discussed above, and those, which follow 2) the British model<sup>33</sup>. One notable difference between these two models is the term of their office. Where those offices established in the tradition of the Swedish model are filled with Ombudsmen elected to four or five-year terms, and subject to reelection, appointment in the United Kingdom is for the entirety of ones career, until 65 years of age, the Ombudsman's removal being possible only through the decision of a trial held before both Parliamentary Chambers. There also exists a distinction between these two models in how the complaints of abuses are received and processed. Those Ombudsoffices established in the Swedish tradition receive complaints directly and can initiate investigations into these complaints or into cases in which they determine a need for clarification exists. Those Ombudsmen who follow the British model receive complaints indirectly, from a Member of Parliament, only after the intermediary has established the case is suitable for review by the Ombudsman<sup>34</sup>.

The British model inspired the establishment of the French Médiateur, or Ombudsman. The Médiateur is unique in many senses. The term of this body is six years without the possibility for reappointment. Like the British Ombudsman, it only receives a complaint if a designated parliamentary official deems it necessary. The complaints covered by the mandate of the Médiateur are those against government branches associated with public service and may only arrive in the office after all conventional administrative steps have been taken by the body against which the complaint has been made. The Médiateur is further restricted in that it cannot report on judicial decisions or interfere in administrative processes. Once the complaint is determined to fit the criteria of the Médiateur, it stages its investigation submitting its findings and recommendations to the President of the republic or Parliament and to the administrative branch against which the complaint has been lodged<sup>35</sup>.

### 3.1 Reinforcing a Strong Tradition of Civil Society

It is interesting to note that these European predecessors were quickly adapted to Anglo-American traditions. In New Zealand, Australia and Canada, Ombudsmen and other parliamentary bodies were created and then acted as models for the establishment of similar institutions such as National Human Rights Commissions and Specialized Agencies. This process is most important to our discussion due to the fact that these countries have managed to put themselves forward as models for other countries which do not enjoy the same strong traditions of civil society, but share similar geographic coordinates.

Australia and New Zealand have emerged in recent years as leaders and organizers of the national human

rights effort in the Pacific and East Asia region. The Australian Human Rights and Equal Opportunity Commission (AHREOC) is a permanent independent statutory body with responsibility for the provisions of the Human Rights and Equal Opportunity Act, 1986, the Racial Discrimination Act, 1984, the Sex Discrimination Act, 1984, the Disability Discrimination Act, 1992 and assists the Privacy Commissioner in implementing the Privacy Act., 1992. The Australian government decided to address the historical problem of guaranteeing the rights of the Aboriginal population by creating an office to deal specifically with that issue, the Aboriginal and Torres Strait Island Social Justice Commissioner, as well as a multitude of other Specialized Agencies to deal specifically with important human rights issues<sup>36</sup>.

Australia, which supported the proposition of plans of action in the Vienna Conference launched a National Plan of Action (which was updated in 1996 and 1997) considering all the three generations of human rights. The Plan defines targets in the areas of economic, social and cultural rights and, what is more important, indicate progress towards their achievement. The Plan indicates legislation or administrative acts, which could advance human rights observance. Most important were the steps proposed to strengthen the institutionalization of the mechanism for the protection of human rights.

The Human Rights Commission of New Zealand engages in a wide variety of work in human rights education, supporting the implementation of a human rights curriculum in grade schools as a demonstration of their "commit(ment) to the view that in order to create and maintain a human rights culture, human rights education needs to be born new again for each generation"<sup>37</sup>. The Commission has created an Education team based throughout the country, which devises strategies for the establishment of this human rights culture. The Commission works together with AHREOC and other members of the Asian Pacific Forum to establish National Plans of Action and National Human Rights Education Programs and promote the strengthening of National Institutions in the region in the region established in conformity with the Paris Principles<sup>38</sup>.

In view of the fact that Canada maintains its ties to United Kingdom, it should come as no surprise that the national strategy for the promotion and protection of human rights greatly resembles the British model. However, due to the federal structure of the Canadian State, one can also detect a more disaggregated tradition. To date, nine of the ten Canadian provinces have established parliamentary human rights organs, some with the actual title of Ombudsman. The governments of each respective state fill these independent offices after proposals by the legislature. The bodies are granted the power to receive complaints without interference from the Parliament and are expected to deliver yearly reports on their activities as well as special reports when they deem it necessary<sup>39</sup>. Canada has also been very active in the international trend to promote the establishment of National Human Rights Commissions. The Canadian Commission has collaborated with the Mexican Human Rights Commission on a number of issues, such as the rights of disabled people, after signing a bilateral agreement for cooperation in 1996<sup>40</sup>.

One of the first National Institutions established was the French Commission Consultative des droits de l'Homme, under the inspiration of René Cassin. That Commission had an important role in the preparation of the Universal Declaration of 1948 and in the creation of the UN Commission on Human Rights. The Commission survived until 1976, when Cassin died but it was reactivated in 1984, now with a mission to advise the French Foreign Affairs Ministers on questions concerning the human rights in the world. In 1989 the Commission was attached to the Prime-Minister and it has the competence to explore any matter concerning the protection and promotion of human rights. The Commission plays a variety of roles including monitoring violations and proposing laws, policies and programs. The Commission has 70 members chosen among government officials, civil society representatives and experts. <sup>41</sup>

Being a member (even in a special category) of the Western Group in the United Nations, it is relevant to indicate here the important role of the initiative of the Holy See (or Vatican State) creating in 1967 an institutional mechanism that would "apply the human rights commitment of Vatican [Council] II to the post-Vietnam world, the Pontifical Commission for International Justice and Peace. That Commission provided the theoretical and organizational framework for human rights advocacy in nations throughout the world and stimulated the establishment of the Justice and Peace Commissions (the first ones were in Paraguay, 1970 and in Brazil- Recife, 1970 and São Paulo, 1971) That initiative had extraordinary impact in Latin America, occurring just as human rights were becoming an extremely important issue.<sup>42</sup>

### 3.2 Establishing Respect for Human Rights

Over the past two decades, countries in Latin America, Africa, Central and Eastern Europe, Asia and the Near East, have shown an increased interest in defending the human rights of their inhabitants. Many of these nations have visibly become part of what Samuel Huntington has called the "Third Wave of Democratization"<sup>43</sup> in the 1980s, a trend in which countries around the world have democratized their governments and state institutions.

What has become clear is that establishing a democracy, democratic institutions, the rule of law and a tradition of civil society are not easy tasks in national contexts where tendencies towards religious persecution, political oppression and racial discrimination have existed as social practices for decades. During these complex political junctures, Commissions, Ombudsmen, Specialized Agencies and Plans of Action can act as valuable tools to those members of civil society dedicated to these social and political transitions.

In response to the great effort of the United Nations to establish models for the promotion and protection of human rights on the national level and stress the importance of their implementation, an increasing number of these States have created Human Rights Institutions and Plans of Action over the past decade.

#### *Latin America*

In Argentina, it is widely believed that, despite the trial of junta generals after the punto final legislation, remnants of the former authoritarian government still exist within the State structure. In spite of this, members of Argentine civil society, which struggled against State terrorism, have succeeded in promoting the establishment of a wide variety of National Human Rights Institutions. Argentina has established, among other Institutions, the Ombudsman, the National Commission on Human Rights Guarantees, the National Commission on the Disappearance of Persons, the National Committee on the Right to Identity and the National Institute to Combat Discrimination, Xenophobia and Racism<sup>44</sup>. The wide range of Institutions to promote and protect human rights should act as an example of how a country with a known history of human rights abuse can create and reinforce a tradition of democracy.

In Colombia, a diverse human rights apparatus has been developed. The Colombian National Government has conferred the Vice President of the Republic as its High Counselor on Human Rights. His office is the governmental advisory agency for policies on Human Rights and international humanitarian law. It has the mission leading institutional coordination and promoting the actions of the various state entities concerned with promoting and protecting human rights in Colombia. The Colombian Human Rights Observatory is a support mechanism for policy definition and information and communication strategies. A broad process of institutional coordination is currently underway to allow the preparation of a State Policy on Human Rights and International Humanitarian Law.

The government has also established a National Human Rights Network, a communication channel for information exchange among different entities responsible for human rights in Colombia. It was created in 1994 with the support of the Government of the Netherlands for the purpose of strengthening the institutional response regarding the struggle against impunity in cases of human rights violations. The communications network, which is administered by the office of the High Counselor on Human Rights, has network points in the following user entities: the Prosecutor General's Office, the Attorney General's office, the Public Defender's Office, the Ministry of Defense, the Forensic Medicine Institute, Administrative Department of Security, the National Army and the Ministry of Foreign Affairs. This network makes international programs possible, such as the identification of individuals who have disappeared and unidentified cadavers.<sup>45</sup>

The most outspoken of the existing Institutions is the office of the National Human Rights Ombudsman, which has submitted various reports critical of government actions. The Ombudsman's office received 20,101 complaints of human rights abuses during 1997 and managed to conclude the investigations of 11,047. It also provided 29,406 free legal consultations through a body of close to 1,000 public defenders<sup>46</sup>. In 1998, the number of complaints rose to 65,686 and the Ombudsman presented 114 recommendations to the government<sup>47</sup>.

In 1996, the Ecuadorian Ministry of Foreign Affairs together with civil society began work on the promulgation of a National Human Rights Program to design and execute actions proposed in this area. The program articulates a committee to monitor respect for economic, social, and cultural rights. This committee will be composed of an equal number of members from the government and civil society and by a representative from the National University Council (CONUEP). This committee will also constitute a space for dialogue among these sectors. The Program indicates that the State commits itself to respect the autonomy of the committee as well as providing material, technical and economic resources for the effective performance of the Ombudsman.

In Bolivia, with the revision of the Constitution in 1994, important institutions for the protection and defense of human rights were recently established, including a constitutional court, a judicatory council and an Ombudsman. Parliament has stated the intention to consider bills on the organization of these new institutions, which are expected to bring far-reaching changes in the State structures designed to promote, defend and protect human rights. The Government of Bolivia plays a direct part in protecting and promoting human rights through the Ministry of Justice. As a pilot project, the Ministry recently set up a human rights office and a public defender office in Chimoré, in the Chapare region of the department of Cochabamba, a key area for the eradication of coca plantations and attempts to combat drug trafficking.

The Ministry's human rights and public defender offices are supposed to be instruments for the observance and protection of human rights in general and for the administration of justice in particular. In accordance with the provisions of the Plan of Action for the Promotion and Protection of Human Rights, elaborated in 1999, there should be significant developments in terms of both these initiatives in the medium and long term. One of the main targets of the Plan is to strengthen existing national institutions for the protection, defense and promotion of human rights such as the Ministry of Justice and the Office of the undersecretary for Human Rights and to establish the new institutions provided for in the revised Constitution of 1994 including the Ombudsman which are expected to form an "institutional core" for the defense and protection of human rights in Bolivia. The Plan intends to ensure coordination at the institutional level in the area of human rights, within the Executive, among the three branches of the public power and with the CSOs.

The principal human rights monitoring institution in El Salvador is the Ombudsman for the Defense of Human Rights (PDDH); the office has a four-year term and was officially established by a constitutional amendment during the countries Peace Accords<sup>48</sup>. In an attempt to offer a more complete and broader base of service to those who have suffered human rights abuses, the Ombudsman has established 13 regional offices besides its headquarters in San Salvador; all of them located in the principal cities throughout the country<sup>49</sup>.

The Mexican Government established the National Commission on Human Rights (CNDH) in 1990 to address human rights abuses. Between May 1997 and May 1998, the Commission received 8,716 new cases, a slight increase since the previous year. During this same period, the CNDH made 136 recommendations to the government, which responded by fully complying with 27 and partially complying with 90. As a result of the efforts of the Commission, 22 federal judicial police were incarcerated along with 12 state judicial police and 6 members of the armed forces. In addition to these cases, 287 public officials were sanctioned. Concrete results such as these are undeniable evidence of the benefit of establishing National Human Rights Institutions. Though there is no doubt that many authorities enjoyed impunity during the same period, the work of the CNDH has brought up instances of abuse that would have otherwise gone unpunished, or even unrecognized<sup>50</sup>.

A National Program to Promote and Strengthen Human Rights was launched in Mexico 1998. The Program will be periodically evaluated to determine its degree of progress and fulfillment. For that purpose, a Technical follow-up Committee will be established that will update the program with any contributions made by other government agencies, public organizations that defend human rights, CSOs and, if they deem it advisable, the legislative branch, the judicial branch and political parties. This Committee will be formed by representatives of the agencies, entities and institutions of the federal public administration that participate in the Program, as well as any representatives of the legislative and judicial branches who wish to sit on the Committee. For purposes of coordination, the CNDH will also form part of the Technical Committee. The Inter-Secretarial Commission on Fulfilling Mexico's International Commitments in the Field of Human Rights will boost measures and programs to fulfill the obligations stemming from International Treaties. It will also follow up on the recommendations

issued by international organizations and will evaluate the degree of fulfillment.

In 1964, Brazil established one of the first National Human Rights Commissions in the continent: National Council for the Protection of the Rights of the Person, CDDPH [Conselho de Defesa dos Direitos da Pessoa Humana], through legislation approved by the National Congress under the government of President João Goulart - thrown out of office by the military coup of 1964. The CDDPH is presided by the Minister of Justice and has a mixed composition of representatives from the Senate and the House of Representatives, from the Ministry of Foreign Affairs, the General Federal Attorney [Procurador Geral da República], two university professors and representatives of several traditional civil society organizations like the Brazilian Bar Association, OAB [Ordem dos Advogados do Brasil], the Brazilian Press Association, ABI [Associação Brasileira de Imprensa] and Brazilian Association of Education, ABE [Associação Brasileira de Educação]. Three years after the installation of the CDDPH, the military coup established an authoritarian regime that survived until 1985. During that military dictatorship several independent members of the CDDPH criticized human rights violations committed by state agents and tried unsuccessfully to open investigations. After the return to democratic governance in 1985, the CDDPH gained a new momentum becoming a forum for the denunciation and investigation of gross human rights violations, death squads, torture, arbitrary detentions, homicides in rural conflicts, urban and rural massacres, always working closely with the office of the General Public Attorney.

The CDDPH, particularly during the Fernando Henrique Cardoso administration established as an unwritten rule to include ad hoc appointed representatives of civil society organizations in their meetings. Since the launching of the National Human Rights Program in 1996, the CDDPH has exerted an effective role in making institutions and authorities of federal agencies accountable for violations of human rights in the states of the Federation. The meetings of this council have been attended by state governors, secretaries and police commanders who are invited to relay information about exemplary cases of serious violations of human rights in their states. The CDDPH regularly sends investigation committees made up of its members to look into allegations of gross human rights violations.

Another important development since the return to democratic rule was the creation of Human Rights Commissions in some states of the Brazilian federation (São Paulo and Paraíba), established by their respective governments, and composed of both government and civil society representatives. In São Paulo, that Commission - Conselho de Defesa dos Direitos da Pessoa Humana, CONDEPE - civil society representatives have a majority in the membership.

State governments in Brazil have also contributed important innovations to the Ombudsman model. In São Paulo, Rio de Janeiro, Ceará and Minas Gerais police are now subject to the control of an Ombudsman [Ouvidoria]. The Ombudsman has a precise mandate. Independent and respected officials who receive and process complaints of police violence fill the office. In 1998, the Ombudsman of São Paulo was able to show that police violence had been underreported by roughly 30% throughout the decade.<sup>51</sup> As a result of this observation, the Governor of São Paulo determined that police killings be regularly published in the official government newspaper [Diário Oficial]

## ***Africa***

South Africa has established itself as a leader in the African human rights movement with a vigorous effort to establish social, economic and political equality for its citizens since the end of Apartheid in April, 1994. Central to this effort has been a wide base of independent National Human Rights Institutions. These are the Office of the Public Protector (Ombudsman), the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor General, the Electoral Commission and the Independent Authority to Regulate Broadcasting<sup>52</sup>.

In December, 1998, the South African Government, both as a means of commemorating the 50th Anniversary of The Universal Declaration of Human Rights and of consolidating its efforts to promote and protect human rights within its borders, announced the National Action Plan for the Promotion and Protection of Human Rights<sup>53</sup>.

The National Action Plan (NAP) was created through a rigorous collaboration between all viable South African human rights authorities. At the head of the drafting process was the Steering Committee, co-convened by the Deputy Minister of Justice and the South African Human Rights Commission, with assistance from the NAP Coordinator and Assistant Coordinator, and representatives from the National Parliament, the Department of Justice, the National Human Rights Commission, the Department of Foreign Affairs, the Commission for Gender Equality and the NGO sector<sup>54</sup>.

The actual Plan includes a full listing of all political, civil, economic, social and cultural rights and analyzes each one in the framework of; constitutional obligations, international obligations, what has been done (i.e. policy, legislation and administrative steps taken), further challenges, addressing the challenges, evaluation and monitoring and resources and budget. In this way, the National Action Plan provides not only a point of reference for human rights workers, both governmental and non-governmental, but also a means to organize efforts in approaching specific issues<sup>55</sup>.

In Malawi, a National Plan of Action in the field of Human Rights (1995-1996) was established to promote effective coordination among the various Government bodies whose work concerns the areas included under the applicable United Nations human rights treaties, appropriate officials, departments or agencies will be designated as human rights focal points having primary responsibility for the implementation of each of those treaties. The Plan proposes the creation of inter-sectorial committees and special implementation mechanisms to focus on priority human rights areas such as the equal rights of women and the protection of the rights of the child. These human rights focal points will begin the process of reporting under the various United Nations human rights treaties. Special attention will be given to establishing implementation priorities, identifying factors and difficulties adversely affecting implementation and developing a strategic plan for progress. It is stated that meetings should be held periodically between human rights focal points and representatives of concerned non-governmental organizations (NGOs) with the goal of encouraging a constructive exchange of views and, where appropriate, cooperation in the promotion and protection of human rights. To ensure on-going and active follow-up in the implementation of this National Plan of Action and build national capacity in the field of human rights, international assistance will be sought to establish a secretariat within the Government of Malawi to assist the Inter-Ministerial Committee on Human Rights and Democracy in its work.

In Ghana, the Commission on Human Rights and Administrative Justice (CHRAJ) was established by the parliament in 1993. By 1996 it had founded offices in a wide variety of regions to maximize the effectiveness of its efforts, had received a total of 12,409 petitions and acted on over 8,775. The Commission receives an average of 4-5000 petitions a year and this number is constantly growing. A Charter grants the Commission the power to investigate these alleged violations of human rights and take action on them, and of the 8,775 cases acted on by 1996, 40% had been resolved through mediation<sup>56</sup>. In order to compliment these protective actions, the Commission also promotes human rights through workshops to educate the public, traditional leaders, the police and the military<sup>57</sup>.

Uganda has also established a Human Rights Commission (UHRC) which consists of an 8-member board appointed by the President. The Commission investigates alleged incidents of human rights violations and has the power to subpoena, order the release of detainees as well as order the payment of compensation for determined abuses. The UHRC is granted the ability to act as a human rights court, which it convened for the first time in November, 1997. Of the 12 cases the court called before it, senior government leaders and military and police officials were among the defendants<sup>58</sup>.

The UHRC has become increasingly streamlined in the past years. Testament to this is the fact that it received 41 cases in the first four months of 1999, 15 of which it handled through adjunction and 20 of which it resolved through conciliation and meditation. The Commission has also been very active in the field of human rights education with the staging of what it calls sensitization seminars in which it explains the function of the Commission and the concept and practice of human rights. In 1998, the UHRC carried out sensitization seminars in 29 different districts, 21 of them at different district levels. The Commission publishes its own magazine in which human rights issues in Uganda are discussed<sup>59</sup>.

The Zambian Government established an autonomous Human Rights Commission in May, 1997. A Supreme

Court Judge chairs the Commission, which intervenes on behalf of those it concludes have had their rights denied by the Government. In order to effectively monitor human rights abuses, the Commission has established human rights committees in all provincial capitals. Although there were questions about the independence of the various committees, the Commission tirelessly sought and gained access to coup detainees and brought cases of torture to light, obtaining medical treatment for the victims<sup>60</sup>.

In Burundi, amidst the very difficult context of civil war, the Ministry for Human Rights and the National Assembly worked together to promote human rights with the participation of civil society through dialogue and actual institutional reform. In 1988, the Ministry was able to organize local leaders and peasants to monitor human rights abuses in their own communities, with the help of printed material and posters. Having witnessed these initiatives, the UN Special Rapporteur for Human Rights in Burundi, in his report presented in 1999, requested that the appropriate international assistance be provided to enable the Ministry of Human Rights to achieve the objectives set by the Office of the United Nations High Commissioner for Refugees, to reinforce the national human rights capacity to the maximum extent possible. One of the initiatives which followed was the strengthening of the Centre for the Promotion of Human Rights and Prevention of Genocide, established by the Ministry.

### **Asia**

In South Asia, India has been exemplary in its moves to establish National Institutions for the promotion and protection of human rights. The Government of India appointed a National Human Rights Commission (NHRC) in October, 1993, with powers to investigate alleged human rights violations and recommend policy changes and punishments in the cases of determined government and police abuse. The NHRC's mandate also directs it to contribute to the establishment, growth and functioning of non-governmental organizations<sup>61</sup>. The Commission relates all of its activities and concerns through annual reports submitted to Parliament as well as newsletters published every month.<sup>62</sup> State Human Rights Commissions have been set up in West Bengal, Himachal Pradesh, Assam, Madhya Pradesh, Tamil Nadu, Punjab and Jammu and Kashmir; Manipur and Uttar Pradesh have taken legal steps for the establishment of Commissions, though they have yet to do so<sup>63</sup>.

Between April 1995 and March 1996, the Commission received 10,195 complaints. During the same period the next year, this number more than doubled, an increase the NHRC attributes to the increased visibility of the Commission and its work. Of the 20,514 complaints received during the 1996-97 recording period, 16,823 cases were considered, 8,048 were dismissed, 2,272 were transferred to other government authorities, 528 were concluded and 5,975 were pending decision<sup>64</sup>. In 1998 the Commission continued this trend of increased activities receiving some 40,000 complaints. By the end of this recording period, after 5 1/2 years in existence, the Commission had received some 120,000 complaints all together. The Commission announced in April that by 31 March, 1999, all but 20,000 complaints had been considered and dealt with<sup>65</sup>.

Since 1992, there have also been a number of Specialized Agencies operating in India. One of these is the National Commission for Minorities which carries out its mandate to monitor constitutional and legislative safeguards, make recommendations for the effective implementation of safeguards and evaluate the progress of minorities and investigate specific complaints. Another is the National Commission for Scheduled Castes and Tribes, a five-member body whose Chairman carries the rank of Cabinet Minister. Finally, there is the National Commission for Women, a six member statutory body with the mandate to monitor and study all aspects of women's rights in the national context, review existing legislation and suggest amendments wherever it determines necessary and to promote the equality of women at all levels of society. Institutions similar to this are being created at the state level throughout India<sup>66</sup>.

Following the Second National Workshop on Human Rights held by the Government of Indonesia, the Indonesian National Commission on Human Rights formulated a National Plan of Action on Human Rights 1998-2003, which consist of concrete steps what will be conducted at the national level over that five year period. Systematic and comprehensive implementation of the Indonesian National Plan of Action on Human Rights, are based on the provisions of the Seventh five-year Development Plan of the People's Consultative Assembly no.11/MPR/1998 on State General Guidelines, is expected to help promote a culture of respect for human rights. A Presidential Decree on the Indonesian National Plan of Action on Human Rights and on the

National Committee on Human Rights will be issued as a legal basis for their implementation.

The field office of the Office of the High Commissioner in Indonesia is implementing a technical cooperation project aimed at providing assistance for the implementation of the national plan of action on human rights (1998-2003) in four main areas: (a) national capacity-strengthening in human rights reporting; (b) national educational program; (c) raising human rights awareness through the dissemination of human rights information; and (d) strengthening of the Indonesian national Commission on Human Rights.<sup>67</sup>

In the Philippines, a wide range of Institutions and strategies has also been created with the mandate to promote and protect human rights. There exist both an Ombudsman (Tanodbayan)<sup>68</sup> and a National Human Rights Commission, created in May 1987 by an executive order in accordance with the Constitution<sup>69</sup>.

Due to the efforts of these groups, many key Plans of Action have been endorsed by the Government and initiated in the Philippines. Among these are the Philippine Human Rights Plan (1996-2000), the Philippine Plan for Gender Responsive Development (1995-2000), the Plan of Action for Children 2000 and beyond<sup>70</sup> and a Plan of Action for the United Nations Decade for Human Rights Education (1995-2004) with the goal of achieving 100% human rights literacy for all elements of Philippine society<sup>71</sup>.

In addition to these National Plans of Action, a number of localized Plans of Action have given rise to a series of Specialized Agencies to focus on the status of human rights among Indigenous groups and religious minorities. Offices of Northern Cultural Communities, Southern Cultural Communities and Muslim Affairs have been established. There has also been an effort to promote human rights at the village level through the implementation of advocacy programs and the creation of local human rights action centers<sup>72</sup>.

### ***Near East & North Africa***

The region of the Near East and North Africa houses what is perhaps the youngest human rights movement of the globe. It is unfortunate that in these countries, where government human rights initiatives are most needed, National Institutions are scarce. These are, however, some countries, which have initiated a movement for the promotion and protection of human rights.

In Algeria, the government established the National Observatory for Human Rights (ONDH) in 1992 and the National Ombudsman in 1995<sup>73</sup>. The ONDH acts as a monitoring, early warning and consulting body for human rights<sup>74</sup> and prepares an annual report with recommendations for the government. In the 1997 report of the ONDH, it logged 706 complaints of disappearances, a particularly urgent problem in Algeria<sup>75</sup>.

Perhaps the most established traditions of National Institutions in North Africa can be found in Morocco and Tunisia. The Tunisian Constitution empowers the Supreme Council for Human Rights and Fundamental Liberties as a monitoring and recommendatory body. The Council offers its assessment of alleged human rights abuses as well as potentially flawed legislation to the government<sup>76</sup>.

In Morocco, the Royal Consultative Council on Human Rights (CCDH) was established nine years ago as an advisory body to the king on human rights issues and boasts representatives from all categories of Moroccan society- civil, political, professional and governmental. Among the many functions of the Council are the investigation into alleged disappearances, the organization of symposiums to promote the education of human rights on such topics as freedom of the press and rights of the child and assuring that Moroccan policy is in line with its international treaty obligations. The Council is also very active in the protection of the rights of detainees and has succeeded in negotiating the release of political prisoners and those imprisoned for crimes of ideology<sup>77</sup>.

In the Near East, the situation of National Institutions is much the same as that in North Africa. One exemplary case is found in Yemen, where the most organized local human rights group is the government established Yemeni Human Rights Organization (YHRO). The head of the YHRO is a prominent member of the judiciary and the group maintains its headquarters in Sana'a and branch offices in seven other cities. YHRO investigates complaints of human rights abuse and organizes events for human rights education, such as the training

seminar it sponsored in May, 1997, for judges, prosecutors and security officials<sup>78</sup>.

The Supreme National Committee for Human Rights, established in 1997 by the Deputy Prime Minister/Minister of Foreign Affairs, follows a mandate to assure Yemen respects the obligations dictated by international human rights conventions. The Committee investigates specific cases of abuse and sponsors human rights events, such as the human rights training which took place in four different cities in March, 1997<sup>79</sup>.

### *Eastern Europe*

The Croatian government has appointed an Ombudsman who has worked constructively to investigate issues brought to its attention by the NGO community. The Ombudsman presents reports to Parliament on these issues and reviews legislation with the power to make recommendations when it is determined to be detrimental to human rights interests. There have been several cases in which the Ombudsman, in this capacity as a legislative monitor, has lodged complaints with the Constitutional Court to have such detrimental legislation amended or abolished. Throughout 1998 the Ombudsman focussed on issues of workers rights such as unpaid salaries and wrongful dismissal<sup>80</sup>.

In the Czech Republic the government has established a variety of Institutions to promote and protect human rights. In each house of the Parliament there exists a petition committee for human rights and nationalities and a subcommittee for nationalities. There is also a Council for Nationalities which advises the Cabinet on minority affairs. This Council includes three representatives for Slovaks, three for Roma, two for Poles, two for Germans, one for Hungarians and one for Ukrainians. In addition to this, there exists a government commission to monitor interethnic violence which has been staffed with members of the NGO and journalistic communities<sup>81</sup>.

In December, 1998, the government created the Council for Human Rights to act as a consultative body on human rights issues. Peter Uhl, UN Human Rights Commission expert, was appointed chairman of this Council after being named the National Commissioner for Human Rights in September. According to Uhl, these actions reflect the government's belief that the protection of human rights are an "inseparable part of its efforts to establish the rule of law"<sup>82</sup>

In Russia, a human rights Ombudsman was constitutionally established in 1997. There is a two-stage election process to fill the office. To be on the ballot, the candidate must first receive two-thirds support of the Duma. Deputies can vote for multiple candidates. A simple majority, the only restriction, then elects the Ombudsman being that the selection must take place within 30 days of the laws promulgation<sup>83</sup>.

In 1996, President Yeltsin signed a decree by the name of "On Certain Measures of State Support for the Human Rights Movement in the Russian Federation", which spoke of coordination between federal structures and the human rights community. The decree specifically outlines the creation of three Institutions: an interregional human rights center for the coordination of the human rights movement, a human rights training center and a center for the publication of human rights materials. Furthermore, the states of the federation were instructed to establish Institutions similar to the President's Human Rights Commission<sup>84</sup>.

In the same year, the President established a Political Consultative Council (PCC) to oversee legislative steps taken in the process of economic and political reform. The Council is composed of 12 standing chambers, one of which is a human rights chamber headed by former Duma deputy Valeriy Borshchev. The Human Rights Chamber is a recommendatory body composed of a variety of Duma members as well as 10 representatives of the NGO community and has convened to discuss such issues as the national prison system, the situation of refugees and freedom of consciousness. The Chamber's hearings have acted to increase exposure of a number of human rights issues.

In 1995, the Latvian government drafted a National Program for the Protection and Promotion of Human Rights. This Program was defined along the lines of the recommendations of a UNDP mission, which visited Latvia in July 1994. The Program elaborates the most pressing human rights concerns in Latvia in five key

sections.

The first part of this Program focuses on the promotion of human rights and is entitled "Education, Information and Training". The concept of "Education Reform in Latvia" is outlined and is followed by a discussion of what has already been achieved as well as the future points of concentration. The stated purpose of this reform is "to create a system of education appropriate to a democratic society", recognized to be difficult due to the fact that during the fifty years of Soviet occupation the term "human rights" was used with bitter cynicism. The wide based education reform is focussed not only on judges, prosecutors and lawyers, but members of the Parliament (Saeima), the media, union officials, employer associations and labor inspectors. This section also includes a plan for special education for military and police forces, specifying means of organization to make them both effective and cost-efficient.

The second section lists the particularly vulnerable groups in Latvian society; children, religious minorities, non-citizens, prisoners, refugees and people with physical, intellectual or psychiatric disabilities. The rights of each of these groups are laid out as dictated by the various international Conventions. Furthermore, this section discusses the particular problems faced by each of these groups, the current steps being taken to remedy these problems and what issues have yet to be formally considered.

The next two sections explore the existing national and international frameworks for the promotion and protection of human rights in Latvia. In terms of the national framework, the Programme mentions the Standing Human Rights Committee within the Salem, public administration, courts, civil servants and jurists, the prosecutor's office and the police, the NGO community and the media. The Program reviews each of these cases in terms of their powers and responsibilities, mandate or purpose, limitations and difficulties and future challenges. In terms of the international framework, the Program summarizes its obligations with respect to the United Nations, the Organization on Security and Cooperation in Europe and the Council of Europe.

Finally, the Program is concluded with the expressed need for the establishment of a National Human Rights Council in Latvia. A discussion is presented on the exact needs the Council will fulfill as well as the specific characteristics it should embody. A full list of the terms of reference for the establishment of the Institution is supplied along with a list of the powers it should be granted. Furthermore, the first mission of the Council is outlined; the "National Program of Human Rights Education, Information and Training", explaining exactly what the Program will entail<sup>85</sup>. Important to mention is the fact that soon after this National Program for the Promotion and Protection of Human Rights was made public, the Council was established and is presently functioning and attaining positive results<sup>86</sup>.

#### **Part 4. Critical Analysis: The Politics of the National Human Rights Institution**

Despite the established mission of National Human Rights Institutions as promoters and protectors of human rights, the reality is that these institutions can play positive, negative and even neutral roles, depending on the political and social realities in which they exist<sup>87</sup>. The creation of National Human Rights Institutions is viewed as an important governmental step in becoming a legitimate member of the international community. Aware of this, governments may take this step without true commitment to the cause in an attempt to gain this recognition, afterwards attempting to nullify the work of the Institution. The ways in which a government can do this are numerous, one of the most common being that the government simply ignores the recommendations of the Institution. This is dangerous not only because it results in human rights abuses going unchecked, but because it can actually contribute to the impunity and non-accountability of human rights violators.

Indonesia has established a National Commission on Human Rights. Since its creation, many human rights observers have complained that the Commission lacks power and resources to be fully effective. There have been alleged inconsistencies in the cases taken up by the Commission, and the government has regularly denied the allegations which have followed. Although States are not always under formal obligations to act on the findings of National Human Rights Institutions, the Indonesian government has often treated this relationship as a loophole, using it as justification for either partially or wholly ignoring the findings of the Commission. When questioned directly, the government claimed that it did not interfere with the work of the Commission and that it had full powers to operate independently. Furthermore, it stated that any attempt to

offer an explanation on behalf of the Commission would be tampering with its work<sup>88</sup>. In consideration of these facts, it would seem that the governments move to form a branch of the National Human Rights Commission in Dili in July of 1996 was a relatively hollow gesture, the repercussions of which can be observed in the recent occurrences in East Timor.

Important to note is that these examples of uncommitted governments are not drawn exclusively from national contexts in which the rule of law is only recently being established. Even in Australia, where there exists a strong tradition of civil society, there are cases in which the government did not take important recommendations of the National Commission seriously and suffered as a consequence.

In 1998, the AHREOC reviewed the Federal Government's proposed amendments to native title legislation and voiced its concern that they were racially discriminatory and in breach of Australia's international treaty obligations. However, the government ignored this warning and passed the amendments<sup>89</sup>.

The Committee for the Elimination of Racial Discrimination reviewed the amended Act at its fifty-fourth session and found "four specific provisions that discriminate against indigenous title holders" and that it seemed to "wind back protections of indigenous title". There were questions raised of the Australian Government's compliance with Article 5(c) of the Convention on the Elimination of Racial Discrimination. These accusations angered the Australian Government, however, had it heard the warnings of its own National Commission, its reputation would have never suffered on the international stage<sup>90</sup>.

Perhaps the worst examples of uncommitted governments are those which create National Human Rights Institutions, only to take direct action, sometimes violent, in preventing them from fulfilling their mandate.

In Colombia, the Government has not responded consistently to the recommendations of the Ombudsman. As the civil war rages, the Ombudsman office has constantly tried to investigate cases of alleged abuse and monitor the fighting. In various presentations by Ombudsman Jose Fernando Castro to the UNHRC, March 20, 1998<sup>91</sup> and April 21, 1999<sup>92</sup>, he cited excessive use of force by the government forces in clashes with the guerrillas. He specified cases of harassment faced by human rights monitors, even to the point where security forces attacked a boat his office was using to monitor the fighting<sup>93</sup>.

Ideally, upon empowering an Institution as a national authority on human rights, a country should hear the recommendations of this body and heed its words. National Human Rights Institutions are rarely given real power to act on their findings. They exist as a recommendatory body so as to act as the government's conscience, monitoring it and helping it align its practices with its human rights obligations. Examples of this can be found even in troubled regions of the world.

The National Human Rights Commission of Nigeria announced the amelioration of the prison system to be one of its main areas of focus over the past years. Its representatives conducted a nationwide tour of prisons and assessed the situation so as to be able to advise the government properly. The result of this series of inspections was a Interim Report and Memorandum in which the Commission earnestly brought the deplorable prison conditions it encountered to the attention of the Head of State and the Commander in Chief of the Armed Forces<sup>94</sup>.

The Nigerian government reacted swiftly by establishing both the Committee on Prison Reforms and the Committee on Prison Decongestion. Beyond this, the government allocated N8 billion (approximately \$94 million) towards the rehabilitation of prisons and insuring the welfare of prison inmates and personnel <sup>95</sup>.

There exist many other examples of this type of positive interaction between governments and National Human Rights Institutions. It does not, however, exist as the norm. The establishment of these Institutions is the first step. Governments must demonstrate a commitment to the promotion and protection of human rights by allowing them to serve their intended purpose. This is not a passive process, rather one in which many issues must be taken into consideration. For an understanding of what is required, one need not look any further than the guidelines laid out in the Paris Principles.

#### 4.1 Independence and Pluralism

The Independence of the National Human Rights Institution is one of the characteristics, which best aids the effective functioning of the body. We find many cases, in a variety of continental contexts, in which the National Institution is created through the approved legislative procedure and then given free reign to criticize and request that action be taken against the very government that created it. Indeed, this is the ideal functioning of such a body. On the other hand, the cases abound in which the Commissions are filled with personnel loyal to the government, who have interests in bolstering the government's reputation and, as a result, refuse to criticize its actions.

In Kazakhstan, a Presidential Commission on Human Rights has been established as a consultative body. The first report of the Commission was published in December, 1997, and focused primarily on social and economic rights. The conclusion of the Commission was that the country consistently abides by all human rights principles, a statement clearly biased due to its direct connection to the executive. Furthermore, the Commission added a disclaimer stating that those who blamed the State for social problems should understand that the well being of the individual was ultimately the responsibility of the individual. The need to establish National Human Rights Institutions along the guidelines set out by the Paris Principles is clearly demonstrated in the case of Kazakhstan<sup>96</sup>.

A similar problem, directly related to the independence of the Institution, is a lack of pluralism among the staff of the Institution. As in any Institution of this nature, debate is essential. The Institution must be composed of representatives from a variety of sectors, each bringing distinct points of view on what is necessary for the promotion and protection of human rights, so as to add to the richness of the discourse.

The President's Human Rights Commission in the Russian Federation is composed primarily of government officials, as opposed the 1993-96 Commission under Segey Kovalev which included a variety of representatives from the human rights community. The Commission is believed to lack independence. Although it has been critical of the government on such issues as prison conditions, rights violations in Chechnya and human rights in the military, it more often aligns itself with government policy, making many question whether or not the recommendations made carry any weight. This shows the negative repercussions, which can result from a lack of pluralism among National Institution members. If there is limited or no debate within the Institution, it is less likely that their actions will spur debate. This, in a sense, works against the Institution's very mandate<sup>97</sup>.

A lack of institutional autonomy acts to protect the government from embarrassing situations, which could force it to alter its practices. Similarly, limited pluralism can make an Institution one-dimensional and result in a restricted field of action. Both of these aspects are essential for the work of an Institution to be as extensive, intensive and comprehensive as possible. Even in cases where the government opposes the work of the Institution, that it is independent and highly representative will act to assure the success of its work.

In October, 1996, The CHRAJ in Ghana concluded an extensive investigation into government corruption and published its findings in a report, which offered adverse information on three out of four public officials investigated. The Government responded to the report by questioning the range of the Commission's mandate, as the events being investigated predated the 1992 Constitution, and issuing a white paper denying the Commission's findings. This attack by the Government resulted in the Commission's request for an interpretation of their rights and responsibilities by the Attorney General and the Supreme Court. In August, the Court ruled in favor of the Commission granting it the ability to investigate matters before 1992, but denied it the power to access property confiscated by special courts and tribunals during the period of the Armed Forces Revolutionary Council (AFARC) rule<sup>98</sup>. These events demonstrate a difference between government interests and those of the Commission which in their very nature imply independence.

The CHRAJ continues to act independently, continuing investigations into allegations of corruption among public officials and has offered reports and recommendations on controversial prison and women's issues. However, the Commission has encountered a lack of funding and resources to be an impediment in effectively performing this positive role. Low salaries and poor working conditions have often result in trained CHRAJ officials searching for work in other government agencies that pay better<sup>99</sup>.

## 4.2 Funding and Resources

The executive can prevent institutions from effectively promoting and protecting human rights as a result of a lack of independence or direct interference, two possibilities, which have already been explored. A third way in which a government can show its discontent with the activity of the Institution is by limiting its funding and resources, thereby decreasing the scope of the Institution's ability to act. Examples of this can again be found in a number of national contexts.

In January 1998, the President of the Ukraine signed a law creating the Parliamentary Commissioner on Human Rights, a constitutionally mandated Ombudsman. The Ombudsman is elected to a five-year term and is given all official powers to effectively carry out his mandate. In spite of this, the office staff worked without salary for the first years of its existence, severely limiting its investigative and recommendatory activities. It becomes clear from this example that simply creating a position is the first in a long list of steps to demonstrate a true concern for the promotion and protection of human rights<sup>100</sup>.

The Constitution in Malawi provides for a National Compensation Tribunal (NCT) in charge of judging claims of criminal liability filed against the former government. The NCT estimated in August of 1997 that it would need 35\$ million to settle the estimated 7000 claims filed. A little more than 15% of them had been resolved by the end of 1998 due to a lack of funding<sup>101</sup>.

The Human Rights Commission in Zambia, mentioned above, continues to publicly denounce torture and investigate allegations of torture authored by public officials. Although the Government has not been permitted to take direct action against the Commission, it has used restrictions on funding and resources to demonstrate its discontentment with the work being done. After publicly condemning specific cases of torture, which occurred in December 1997, the Government withdrew its offer of a State property as the Commission's headquarters. Many human rights activists viewed this as a warning<sup>102</sup>.

Furthermore, In June 1998, the Commission announced that it had no choice but to desist in its investigation of police gunfire during an opposition rally because the government had cut its funding. The alleged gunfire, later confirmed by a Human Rights Watch report, injured activist Kenneth Kaunda and self-exiled Liberal Progressive Party Chairman Rodger Chongwe in Kabwe, in August 1997<sup>103</sup>. This is just one of many unfortunate cases of Human Rights Institutions being limited in spite of the official powers it has been granted.

## 4.4 Mandate and Structure

Also essential to the effective functioning of a National Human Rights Institution is a broad and well-defined mandate and viable structure. It is not uncommon in new democracies that the governments try to create impediments to investigations of past human rights violations. In establishing a National Institution, these governments may intentionally weaken the internal structure of the Institution while limiting its mandate to reduce the possibilities for opposition.

The Government in 1997 established the Human Rights Commission of Liberia. However, the Commission's mandate was limited to look only at future cases of human rights violations<sup>104</sup>. Furthermore, in composing the Commission, the inclusion of two of the most prominent members, Kromah Bryemah and Lurenia Ash-Thompson, were denied by Senate. This led many human rights activists to question the commitment of the government to the Commission. Mr. Bryemah left the country after his arbitrary detention and beating, actions he blamed on police director Joe Tate. The Government ordered an investigation of the incident, but refused to release the findings to the public<sup>105</sup>.

Problems with structure and mandate, however, do not exclusively problems caused by meddling governments. The example of Poland accurately demonstrates the complexity of these issues. In this case, the Ombudsman and the State Prosecutor work together for the promotion and protection of human rights; one acts as the investigator while the other offers legally binding decisions. This is a common structure for cooperations which many States rely upon for the policing and punishment of human rights abusers. However, it is important to point out that human rights observers have criticized this structure due to the relatively wide

range of responsibilities assigned to the Ombudsman in its mandate, and its resulting inability to look into specialized areas of human rights. Indeed, There has been a failure detected on the part of the office to look into such issues as women's rights.

This idea of structural integrity can refer to both personnel, as with the case of Liberia, or it can be of an external nature, referring more to the physical presence of the Institution in the national landscape. Russia lends a good example where, in spite of President Yeltsin's call for the increased establishment of Human Rights Commissions on the state level, there was actually a marked drop off in the number of State Commissions between 1997 and 1998. Governors elected in Pskov, Irkutsk and Chelyabinsk abolished the Commissions that had been working effectively in their regions. In the 89 regions of the federation, the total number of Commissions dropped from 66 to 58. Inclusive, human rights observers have reported that only 8 to 10 of those Commissions work effectively<sup>106</sup>. The movement to establish viable National Human Rights Institutions should never falter. Especially in the cases of federations of states, reversals in the construction of human rights networks can be of detriment to the entire system.

### **Conclusion: The centrality of State for the implementation of internationally organized human rights:**

At the end of the XX Century human rights norms have become fully internationalized. However, implementation and enforcement of these norms remain almost completely national. The sovereign state, precisely because of its political dominance in the contemporary world, is the central institution, the central mechanism by which contemporary international society seeks to implement internationally recognized human rights. After 1948, States have progressively accepted as an obligation to implement internationally recognized human rights<sup>107</sup> - this is the principal foundation for the establishment of Human Rights Institutions.

This doesn't mean that human rights are only achieved by states taking action to guarantee entitlements: during the last decades it became clear that the realization of human rights and the consolidation of democracy requires new forms of interaction between the autonomous spheres of civil society and the political institutions. The strengthening of CSOs occurs simultaneously so as to reinforce institutions.<sup>108</sup> When we affirm the centrality of the State in the XXI century we are considering it through the lens of a multi-actor approach which promotes peoples empowerment, corporate accountability and international assistance, among other equally important routes to achieving human rights. The National Human Rights Institutions operate within the same paradigm as human rights CSOs: especially the grammar of the international human rights law. Precisely because of this common paradigm, National Institutions are the ideal medium to create new forms of partnership with CSOs to protect and promote human rights.

The State has an ambiguous nature, which resides at the core of the State monopoly of physical violence - defensor pais. The modern State has emerged as both the principal threat to the enjoyment of human rights and the essential institution for their effective implementation and enforcement. <sup>109</sup> That is precisely the ambiguous territory where national institutions will be established: in consequence their independence or autonomy vis-à-vis State apparatuses and policies emerges as a key issue.

The State has a critical role to play if national governments want to tackle gross human rights violations, poverty and the associated problems of lawless violence, racial and gender discrimination and obstacles to access to justice. Only States - as it was clearly stated in the Vienna Declaration and Program of Action - can provide consistent national human rights programs to fight official abuse and impunity and to promote democracy, human development and conviviality. But in most regions of the globe, we must recognize, there is a severe incompleteness of the state, especially in terms of its legal dimension.<sup>110</sup> Paradoxically, this deficiency has increased, not decreased, during the recent political transitions and democratic consolidations throughout the last two decades. But despite those obstacles, civilian rule and "formal democracy", to use Agnes Heller's expression, with all its limitations in the developing world, have opened new perspectives for the creation and functioning of National Human Rights Institutions in the different settings of each continent. Indeed, in the last years, the number of national institutions has increased and in several cases their functions in promoting and protecting human rights at the national level have evolved.

What are the motivations for a State or governments to establish National Human Rights Institutions? Some may be considered more objective, a consequence of the ratification of international instruments for the protection of human rights. Governments are supposed to demonstrate that they intend to, or that they already do, effectively implement human rights in their societies. Following the political composition of each government, States may express a high or a small degree of political will to let human rights influence their public policies.

But it is not relevant to know if governments do or do not have that conviction-: what matters is the fact that they are obliged, if they have ratified those international obligation, to inform international bodies - as the UN Commission on Human Rights, the Sub-Commission for the Protection and Promotion of Human Rights and the different treaty bodies - about the situation of human rights in their respective countries. There is no doubt that the existence of national institutions creates better conditions within the country thanks to the establishment of official mechanisms to monitor, denounce and prevent gross human rights violations. National Institutions rapidly become valid interlocutors for international NGOs such as Amnesty International, Human Rights Watch and the International Federation of Human Rights.

It is obvious that the regular accomplishment of the State obligations to implement human rights and the creation of National Institutions contributes to the good "image" of the country in the international community. But those representations that the international community may have of a country don't invalidate the objective value of initiatives and policies even motivated by the pursuit of a good reputation. Every government initiative in the area of human rights opens a dynamic process which governments most frequently are unable to limit or to control and National Institutions, as the cases we have discussed here indicate, generally acquire an autonomy of their own

The evolution of Human Rights Commissions, Ombudsmen and Plans of Actions demonstrates many similarities to political transition processes: the initial guidelines elaborated by those who launch the political opening never are able to limit the scope of the transitions. Suddenly, limited agendas are enlarged for the consideration of unexpected topics. The same happens with national institutions, which tend to broaden their autonomy and to ascertain their independence. In both cases, the crucial factor is the performance of the main interlocutor both of political transitions and human rights institutions: CSOs. Those organizations never feel compelled to abide to the limits imposed by government and contribute to unexpected (and generally positive developments). Even if in several countries where we find dependent or "fake" National Human Rights Institutions, the main trend is a contradictory and dynamic process, which has in the horizon the protection of the rights of the victims, the principal reference for any human rights initiative.

While national institutions - as the Human Rights resolution 1997/40 recognized - are usually either constitutionally entrenched or established by Government, an effective national institution will be one which is capable of acting independently of Government, party politics and other external influences.<sup>111</sup> This characteristic is what differentiates an usual government branch or a national institution, making it possible for them to act for the protection of victims of human rights abuses, even those perpetrated by State agents. Its ultimate capability will be to prove if they are able to have as sole terms of reference for its action the very human rights principles, despite its organizational links with government.

Beyond just independence, the guidelines outlined in the Paris Principles are essential for the effective functioning of the National Human Rights Institution. But as important as each individual aspect mentioned is the fact that they are indivisible as a whole - a basic requirement that allows a National Institution to reach its most ideal state of productivity and competence. Only when a National Human Rights Institution is guaranteed as an independent and plural body can it be considered a true voice of national human rights concern, and only as an adequately funded organ with a well defined mandate can it be relied upon to fully explore all of the issues which come to its attention. When all of these characteristics are effective and the Institution is given free reign to exercise its powers, even the most marginalized sectors of society could be provided with one more means of accessing a usable State capable of protecting their rights.

Human Rights Institutions are an essential component in the movement to establish human rights respect in a national setting. In the words of Michelle Falardeus-Ramsay, Canadian Human Rights Commissioner, during

his address to UN Human Rights Commission: "Obviously developing a culture of human rights requires an active NGO community, a free press, a functioning judiciary and the commitment of parliamentarians, academics and others in civil society. But National Institutions bring something unique to the mix: the authority to independently review the actions of government and others and propose -in some cases require- solutions. This process will not always be comfortable for governments to the contrary. But allowing an independent assessment of their policies and actions is a true indication of a State's to the international human rights norms it supports here."<sup>112</sup>

The possibilities of the implementation of efficient and functioning National Institutions are limitless. By utilizing all of the existing national human rights tools, it is possible for a State to create a National Human Rights Network for the maximum promotion and protection of human rights within the framework of the Human Rights Plans of Action. The Ombudsman and National Human Rights Commission can operate as central bodies within this network and work in conjunction with more localized Commissions and Specialized Agencies established throughout the country. That network will create conditions for all regional particularities and specific needs of vulnerable groups equally considered. Independent and well financed Institutions with comprehensive mandates and clear avenues for cooperation and communication, creates a momentum in the struggle against human rights violations which, over time, will prove to be difficult to discourage.

The struggle for human rights is a contradictory process in which the State - whatever the government may be in a democratic framework - and civil society necessarily share responsibilities. There is no politics without contradiction, no struggle for human rights without conflicts, obstacles and resistance: to deny this fundamental element is to reject the struggle itself. And the process of realization of human rights, as politics itself, is a travel without final destination, a journey towards a moveable horizon.

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## Annex 1: The Paris Principles

### A. Competence and responsibilities

1. A national institution shall be vested with competence to protect and promote human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
    - (ii) Any situation of violation of human rights which it decides to take up;
    - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;

- b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
- e) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;
- f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

## **B. Composition and guarantees of independence and pluralism**

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

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; Trends in philosophical or religious thought; Universities and qualified experts; Parliament; Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. 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 affect this independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

## **C. Methods of operation**

Within the framework of its operation, the national institution shall:

- 1. Freely consider any questions falling within its competence, whether they are submitted by the government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
- 2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly consulted;
5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);
7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

#### **D. Additional principles concerning the status of commissions with quasi-jurisdictional competence**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Note: 1. A/36/440 (1981), A/38/416 (1983), E/CN.4/1987/37 (1987), E/CN.4/1989/47 and Add. 1(1989), E/CN.4/1991/23 and Add. 1(1991).

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#### **Footnotes**

1 Paulo Sérgio Pinheiro is a Professor of Political Science and Director of the Center for the Study of Violence at the University of São Paulo, Professor Pinheiro is also a member of the UN Sub-Commission for the Protection and Promotion of Human Rights; David Carlos Baluarte is a visiting researcher (Brown University '99) at the Center for the Study of Violence, USP; I would like to thank Ms. Marlene Alejos, OHCHR, National Institutions Team and Mr. Brian Burdekin, OHCHR, UN Human Rights Special Advisor on National Institutions, for their valuable help during the preparation of this paper.

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23 The Human Rights Special Advisor is Mr. Brian Burdekin, who has 8 years of practical experience as the former Federal Commissioner of Australia.

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- 66 "India", U.S. Department of State, op.cit 1998
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- 68 Human Rights Internet (HRI) 1998, op.cit
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- 92 Speech given by Jose Fernando Castro Caycedo, the Colombian Ombudsman, on Item 18 of the 55th session of the UN Commission on Human Rights, April 1999
- 93 US Department of State Country Report on Colombia, 1998
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- 95 ibid.
- 96 "Kazakhstan", US Department of State, op.cit.

97 "Russia", US Department of State ,op.cit.

98 "Ghana", US Department of State ,op.cit.

99 ibid.

100 "Ukraine", US Department of State, op.cit.

101 "Malawi", US Department of State,op.cit.,

102 Human Rights Watch,op.cit

103 ibid.

104 "Liberia", US Department of State,op.cit

105 Human Rights Watch ,op.cit.

106 ibid.

107 See Donnelly, Jack "The social construction of international human rights", in Dunne, Tim and Wheeler, Nicholas J, Human Rights in Global Politics. Cambridge, Cambridge University Press, 1999,p. 75-76;83;87

108 See Portantiero, Juan Carlos. "La sociedad civil en América Latina: entre autonomía y centralización" in Hengstenberg; Kohut, Karl and Maihold. Sociedad Civil en América Latina: representación de intereses y gobernabilidad.Caracas, Friedrich Ebert Stiftung/Nueva Sociada, 1999,p. 37-38

109 Donnelly,op.cit,p. 87

110 The expression "incompleteness of the state is from O'Donnell, Guillermo, "Polyarchies and the ( Un)rule of Law in Latin America: A Partial Conclusion, in M]endez, Juan; O'Donnell, Guillermo and Pinheiro, Paulo Sérgio. The (Un)Rule of Law and the Underprivileged in Latin America . Notre Dame, Notre Dame University Press, 1999, p.303-338

111 "Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission. National Institutions for the promotion and protection of human rights Report of the Secretary-General submitted in accordance with Comission on Human Rights resolution 1997/40. Commission on Human Rights, Fifty-fourth session, item 9 of the provisional agenda

112 Speech given by Michelle Falardeau-Ramsay, National Human Rights Commission of Canada, on Item 18 of the 55th session of the UN Commission on Human Rights, April 1999