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National Human Rights
Institutions –
An Efficient Tool to Implement
Human Rights and thereby Pre-
venting Conflicts?

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Summary

The thesis integrates three different areas namely conflict prevention, human rights and NHRIs. The underlying assumption, that it is possible to prevent conflicts by implementing human rights, will be challenged. Furthermore, the human rights protection and the existing human rights machinery will be explored. The purpose is to examine and analyze if NHRIs are an efficient tool to implement human rights and thereby preventing conflicts.

The positive change which was expected when the Cold War ended has partly not occurred. The world today is neither a safer nor a better place to live in. International law and human rights have hardly been strengthened but rather neglected in a number of cases. The UN and the world have not been able to prevent new conflicts from arising. The conflicts are changing in character and new threats have emerged. The world is only partly adjusting and a common method for conflict prevention seems to be lacking in terms of adjusting to the new challenges. The thesis explores how these new conflicts should be prevented and how new threats should be reduced.

The thesis focuses on the prevention of conflicts at a very early stage. A new culture of conflict prevention is developing where the root causes such as economic despair, social injustice and political oppression are addressed. Failure to protect human rights is often a root cause of a conflict and thus effective promotion and protection of human rights can be seen as a vital element of conflict prevention. The problem is that human rights are not being implemented. NHRIs are crucial in the work of implementing human rights. NHRIs are seen as a bridge between the local, the regional and the international levels. The thesis explores the institution and its role as well as different elements of importance for the efficiency of NHRIs.

A new type of organized violence is emerging and can be described as a mixture of war, organized crime and massive human rights violations. The actors are both global and local, public and private. An informal criminalized economy is built into the functioning. Political leaders and international institutions have been helpless regarding the new conflicts emerging since they have not been able to come to terms with their logic. The new conflicts have been treated either as old wars or as anarchy. It is important to trace the shortcomings of inherited ways of perceiving the war and to set out the need for a new type of analysis in relation to political and military assumptions about why and how wars are fought.

A new culture of conflict prevention is developing. It is crucial to know the causes of conflicts to be able to prevent disputes from arising and to prevent existing disputes from escalating. It is fundamental to address the deepest causes of conflicts such as economic despair, social injustice and political oppression. Negative peace is a necessary, but not a sufficient condition for peace. Positive peace includes social justice and puts focus on the human

being instead of the state. Positive peace is based on the abolition of structural violence.

The human rights instruments give a good human rights protection if they are implemented. The role of Governments in the implementation of human rights is of great importance. Without the implementation at the national level, the international system for protection of human rights is of little use, except for highlighting states that misbehave. Each state must be responsible for the protection and promotion of human rights. It is crucial for a state, committed to human rights, to establish a national infrastructure, including institutions, that can promote and protect human rights. The problem of effective implementation at the national level has generated interest as well as action. All over the world NHRIs have been established, all with the same purpose, even though their task varies. The purpose, to promote and protect human rights. The NHRI extends over the traditional distinction between the state and the civil society combining a form of state approval with independence. NHRIs focus on promotional activities and on creating conditions for implementing human rights at the national level. This is very different from NGOs which traditionally focus on monitoring human rights violations.

There are many questions to be asked regarding NHRIs. First of all, what is a NHRI actually and what is really the status of this institution? What institutions should in fact be allowed to call themselves NHRI and what does this imply?

Most causes of conflicts or threats can be related to human rights in one way or another. Moving towards a culture of prevention, by establishing a culture of human rights implemented at the national level, is probably the most efficient way to prevent the conflicts of today and tomorrow. NHRIs must be seen as an essential tool in the implementation of human rights. Whether they are an efficient tool or not, in promoting and protecting human rights, is depending on its ability to be legitimate, accountable and accessible and whether the institution is truly independent or not. The independency is related to the institutions being qualified and diverse in their membership, adequately staffed and resourced as well as accessible to the public. Most of all the legitimacy, accountability and independence of the institution depend on establishing a strong loyalty to the civil society and the people as well as, meanwhile, maintaining effective access to government and judicial bodies. To be even more efficient in the future it is important to establish their genuine role and thereby give them a position as a strong actor in the human rights machinery.

Abbreviations

CAT	The Committee Against Torture
CEDAW	The Committee on the Elimination of Discrimination Against Women
CERD	The Committee on the Elimination of Racial Discrimination
CESCR	The Committee on Economic, Social and Cultural Rights
CMW	The Committee on Migrant Workers
CRC	The Committee on the Rights of the Child
HRC	The Human Rights Committee
ICC	International Coordination Committee of National Institutions
NHRI	National Human Rights Institution for the Promotion and Protection of Human Rights
OHCHR	The office of the United Nations High Commissioner for Human Rights
UDHR	The Universal Declaration on Human Rights
UN	United Nations

1 Introduction

1.1 The Framework of the Study

The positive change which was expected when the Cold War ended has partly not occurred. The world today is neither a safer nor a better place to live in. International law and human rights have hardly been strengthened. International law and the United Nations (UN) have been neglected in a number of cases. The UN and the world have not been able to prevent new conflicts from arising, evolving into enormous human disasters. The conflicts of today are changing in character. Borders have been erased and new threats have emerged and the world is different in many respects. It is no longer the threat from other countries which is most dangerous. The world is only partly adjusting and a common method for conflict prevention seems to be lacking in terms of adjusting to the new challenges. It seems as if the countries are not ready, or not willing, and the methods for conflict prevention seem to be relatively undeveloped. The thesis will explore how these new conflicts should be prevented and how new threats should be reduced. What are the causes of a conflict today? What are the new threats of today and tomorrow and how can these be handled?

Today, the debate is focused mainly on how war criminals should be put to justice, what the effects of the new International Criminal Court will be, how the world can intervene in conflicts within the states and how terrorists are being treated in relation to human rights. These are all very important matters that need to be discussed and solved. It is crucial that international law and human rights are being upheld at all times. However, the problem seems to be that the focus is on the symptoms and the effects rather than on the genuine cause of the problem. The essence is to explore, analyze and understand the conflict and the causes of a conflict. It is crucial to explore threats and possible conflicts of tomorrow and to find different ways to handle these problems. There will be no more war criminals nor will more terrorists be born as a result of conflicts if conflicts can be avoided. This should be obvious but the rhetoric of world politics show that it's not. Problem-solving rather than symptom relief is to be preferred.

The conflict and its causes are changing wherefore the ways of preventing conflicts need to be adjusted. The thesis is focused on the prevention of conflicts at a very early stage. A new culture of conflict prevention is developing where the root causes such as economic despair, social injustice and political oppression is addressed. Failure to protect human rights is often a root cause of a conflict and thus the effective promotion and protection of human rights can be seen as a vital element of conflict prevention. During my work I came to suspect that the human rights system seems to be rather sufficient regarding human rights protection addressed in various declarations, covenants, conventions and treaties. The problem is rather that these human rights are not being implemented. Something seems to be missing in

the human rights machinery regarding the implementation. National Human Rights Institutions for the promotion and protection of human rights (NHRI) are actors that are crucial in the work to implement human rights. NHRIs are seen as a bridge between the local, the regional and the international levels. The thesis will, in chapter three, first of all explore what a NHRI is and thereafter explore the role of the institution. The thesis will look into the development of NHRIs and the work of implementing human rights at the national level. Potential stumbling blocks will be addressed such as how these institutions balance between politics and their legitimate advisory and monitoring functions. Furthermore, their role in terms of bridging the gap between the local community and international treaty bodies will be discussed to illustrate the significance of, a partly new, comprehensive human rights machinery. Furthermore, elements for the efficiency of NHRIs will be addressed. The thesis will explore whether or not NHRIs are an efficient tool in implementing human rights and thereby preventing conflicts.

1.2 Purpose

The thesis will attempt to integrate three different areas namely conflict prevention, human rights and NHRIs. The underlying assumption, that it is possible to prevent conflicts by implementing human rights, will be challenged. The purpose is to examine and analyze if NHRIs are an efficient tool to implement human rights and thereby preventing conflicts. To be able to accomplish this, the thesis will be divided into two different parts, exploring different areas namely conflicts of today, conflict prevention, promotion and protection of human rights as well as NHRIs and their role. Questions to be answered:

Are NHRIs an efficient tool to implement human rights and thereby preventing conflicts?

- Promoting and protecting human rights as well as preventing conflicts: *What are the characteristic features of the conflicts of today? What are the causes of conflicts and the threats of today and tomorrow? How can conflicts be prevented? What rights should be promoted and protected and why in relation to conflict prevention? Is the existing human rights protection and human rights machinery sufficient?*
- NHRIs: *What is a NHRI and what is the role of this institution? How does a NHRI promote and protect human rights? Are NHRIs an efficient tool to implement human rights?*

1.3 Method, Theory and Material

The thesis is a combined descriptive and analytic study where traditional judicial method is used and an extensive literature review is carried out.

The thesis is based on various material issued by the UN as well as by independent experts. The thesis covers three different areas and thus it has been an extensive search for material. Even if there is a great interest for the chosen topic in world politics there is a lack of literature. Partly different disciplines are concerned in this matter which might explain the lack of literature. A lot of the literature concerning conflicts, conflict prevention as well as human rights is too old to use because of the changing character of conflicts as well as the world. However, there is a rather large selection of material issued by the UN available on the Internet.

Chapter four, dealing with NHRIs, is mainly based on the shaping in *Human Rights Institutions – A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, hereafter referred to as the UN Handbook, since it is, according to the research for this thesis, the ledger in this field. Many of the articles used in the thesis are also based on the UN Handbook.

1.4 Definitions and Limitations

One of the principal purposes of the UN is to maintain international peace and security as well as promoting and protecting human rights. The UN has provided the world with international covenants and conventions to establish standards, monitor implementation, promote compliance and investigate violations of human rights. This great task cannot be realized by the UN itself. The international system relies on the support of for example regional human rights systems, governments and Non-governmental organizations (NGOs) as well as on a range of other international institutions. All of these groups have a special role to play in implementing human rights and preventing conflicts. However, the scope of the thesis is mainly limited to the work within the UN system as well as to the work at the national level within the NHRI.

There is no uniform definition of conflict prevention. However, the thesis presupposes that conflict prevention can be taken in each and every stage of the conflict. Even when violence has stopped since an incorrectly settled peace today might result in yet another conflict. Different measures are needed for prevention at different phases in the conflict. Structural prevention is dealing with the root causes of the conflict whereas operational pre-

vention is direct measures to stop conflicts from turning violent or to reoccur.¹ This will be addressed further on in the thesis.

The immediate cause of a conflict might not be the same as the root cause. For example, the immediate cause of a conflict might be brutal behavior of people competing over different resources. However, the root cause might be environmental degradation forcing people to leave their homes. The scope of the thesis is mainly focused on structural prevention which is part of the new culture of conflict prevention emerging. The thesis will address potential threats to peace. Threats are potential and will not always result in a conflict, but they might, which makes them interesting from a conflict preventive perspective. Poverty might be addressed as a threat to peace. Poverty can be seen as a lack of security, ability and possibilities. This extended view in combination with the extended view of security clarifies the relation between the work of combating poverty and preventing conflicts.² All of this will be further developed in the thesis.

The thesis does not provide an exhaustive list of causes of conflicts, an exhaustive list of preventive measures nor an exhaustive description of the full range of existing NHRIs and their differences. This would be impossible due to the timeline of the thesis. The thesis is more of a general description and discussion concerning the difficulties in preventing conflicts, implementing human rights and finding an institution which can be effective. The thesis is an attempt to give an assessment of what criteria a well-functioning institution ought to have.

The existing NHRIs around the world can be categorized in five different groups namely consultative commission, commissions with judicial competence, commissions with judicial and ombudsman competence, national human rights centers and human rights ombudsmen. This categorization is made by Morten Kjaerum, from the Danish Institute for Human Rights, who is the chairman of the International Coordination Committee of National Institutions (ICC). The UN Handbook has a different categorization namely human rights commissions, specialized institutions and the ombudsman.³ The thesis will address the categorization made by Morten Kjaerum in chapter 3.2.3 since his categorization seems more specific than the UN Handbook.

¹ Mellbourn (2004) p. 41.

² Att förebygga väpnade konflikter – ett svenskt handlingsprogram (1999) p. 38.

³ Kjaerum (2003) p. 8, Internet source: <http://www.nhri.net/default.asp?PID=86&DID=0> accessed 2005-05-15 12.00, The UN-Handbook (1995) p. 6-8.

1.5 Outline

The thesis is divided into four parts. The first part is this part namely the introduction. The second part explores the promotion and protection of human rights as well as conflict prevention. The changing character of conflicts and conflict prevention will be described. First of all the characteristic features, causes of conflict as well as the threats of today and tomorrow will be addressed. Examples of conflicts will be addressed. What are the causes of the conflicts and the threats of today and tomorrow? How can these conflicts be prevented? Is it possible to prevent conflicts by implementing human rights? This is followed by a presentation of the promotion and protection of human rights. Is the existing human rights protection and human rights machinery sufficient? The UN system for the promotion and protection of human rights will be addressed as well as the regional and national systems. The third part will hereafter explore the development of NHRIs and what a NHRI is. Thereafter the role of NHRIs will be addressed. Are NHRIs an efficient tool to implement human rights? The fourth part contains the analysis and conclusions. Part two and three will begin with a short introduction and end with a small analysis and conclusion.

2 Promoting and Protecting Human Rights as well as Preventing Conflicts

2.1 Introduction

The conflicts of today create great sufferance to many people. The conflicts are cruel with gross human rights violations. People suffer and starve, families are being scattered, people lose their homes as well as their relatives. The world has been unable to act on several occasions and different efforts to mediate have failed. The question is why the world is unable to act and why it is a matter of crisis management rather than of conflict prevention. This chapter will try to identify characteristic features of the conflicts of today, causes of conflicts and threats of today and tomorrow as well as preventive measures which could be taken to prevent conflicts.

Preventive strategies are not easy to implement since the costs need to be paid in the present whereas the benefits are in the future. Conflict prevention as well as the promotion and protection of human rights are primary obligations for the UN and its member states. A new culture of conflict prevention is emerging. The Security-Council has put emphasis on the importance of responding to the root causes of the conflict as well as the need to pursue long-term effective preventive strategies. Coherent peace-building strategy, encompassing political, developmental, humanitarian and human rights programmes, can play a key role in conflict prevention.⁴ The thesis is taking a general approach in trying to clarify how conflicts can be prevented, if conflicts can be prevented by the implementation of human rights and, if so, how human rights can be implemented. The existing human rights protection within the UN as well as human rights protection at the regional and national levels will be addressed. The implementation of human rights is a problem not at least at the national level. NHRIs have been established around the world in order to promote and protect human rights. The institutions will be addressed in this chapter but will be further developed in chapter three.

First of all, the changing character of conflicts will be described and characteristic features, causes of conflict and the threats of today and tomorrow will be addressed. Since the threats and challenges have been changed, the concept of peace, security and conflict prevention has been extended which will be addressed. This will be followed by a chapter where conflict prevention and human rights are being explored, by trying to identify different hu-

⁴ A/55/985-S/2001/574 (2001) p. 7.

man rights which probably will prevent conflict if they were to be implemented. Hereafter, the existing protection of human rights will be addressed, both within the UN as well as at the regional and national levels.

2.2 The Changing Character of Conflicts and Conflict Prevention

2.2.1 Characteristic Features, Causes of Conflicts, Threats of Today and Tomorrow

Around two-thirds of the population was displaced from their homes and 260 000 people died in the war in Bosnia. Gross human rights violations took place such as forced detention, torture, rape and destruction of many historical monuments. Characteristic features were scaremongering propaganda with the purpose to create panic. Rumors, concerning terror in neighboring villages, were spread and the violence was directed against civilians. The war mobilized a huge international effort trying to handle the conflict but the efforts failed. The conflict was in the focus of the world media and many international actors were present. Still, there were great shortcomings in how the international arena treated, understood and handled the conflict.⁵ This is unfortunately not the only failure to protect people from the disaster of violent conflicts. There are several other examples such as Rwanda, Sudan, Somalia and Chechnya. The question is what these conflicts in fact are, how they come across, what the causes are and if they could have been prevented.

Identity politics is being used to describe movements which mobilize around ethnic, racial or religious identity for the purpose of claiming state power. *Identity* is used as a form of labeling and this label is being used as a base for political claims. This is the case whether it is a tribal conflict in Africa, a religious conflict in the Middle East or a nationalist conflict in Europe. Such conflicts are usually described as ethnic conflicts. These labels tend to be treated as something you are born with which cannot be changed, and thus, such conflicts can be termed as ethnic conflicts. Identity politics can be voluntarily or forcibly imposed. This is the case in some sects of militant Islam where the aim is to create pure Islamic states through the conversion of non-Muslims. *Politics* refers to claiming state power.⁶ Identity politics tends to be backward looking, exclusive and tends to fragmentize. Furthermore, they acquire meaning through insecurity, through reawakening fear of historic enemies, or through a sense of being threatened by those with different labels. Identity politics can result in everything from discrimination to population expulsion and to genocide. Identity politics arises out of the collapse or erosion of modern state structures, especially centralized, authoritarian

⁵ Kaldor (2002) p. 41-43.

⁶ Kaldor (2002) p. 89.

states. The collapse of communist states, the loss of legitimacy of post-colonial states in Africa or South Asia, or even the decline of welfare states in more advanced industrial countries provide the environment where new forms of identity politics are nurtured. These backward-looking political projects arise in the vacuum created by the absence of forward-looking projects.⁷

A new type of organized violence has developed, especially in Africa and Eastern Europe, which can be referred to as *new wars*. These new wars are a mixture of war, organized crime and violence as well as large-scale violations of human rights. Furthermore the new wars can be distinguished from the old ones, since there are several actors, both local and global as well as public and private. The tactic which is being used is terror and destabilization and the basis is a criminalized economy. Another characteristic of the new wars is the changed methods through which the new wars are fought. The new wars capture territory through political control of the population rather than through military advance. Fear and hatred is created. The goal is to control the population by getting rid of everyone with a different identity. The strategic goals of these wars is population expulsion through various means such as mass killing, forcible resettlement, as well as a range of political, psychological and economic techniques of intimidation. The violence is directed against civilians, leading to an increase of refugees and displaced persons. There are no longer organized military units but rather different groups.⁸

Yet another characteristic is the new internationalized war economy which is decentralized. The participation in the war is low and unemployment is extremely high and the economy is dependent on external resources. Domestic production is reduced and normal trade is usually destroyed by physical destruction. The fighting units finance themselves through plunder, trade at the black market with illegal weapons, drugs, oil and diamonds. This can only be continued if the violence continues. A common aim of these groups is to spread fear and hatred.⁹ Some internal conflicts, such as in Somalia and Liberia, have resulted in a breakdown for the state since the governments have lost economic as well as political legitimacy. This might be the case in different countries in Africa where there is a lack of national identity and where supply problem is increasing which is making the situation even worse. Instead of a break down of the state a conflict may arise in the state-building process. However, there might be a higher risk for conflict when a society is transforming into a democratic society.¹⁰ If the change is too sudden some groups might feel marginalized which might result in a conflict. The risk of this varies from country to country depending on

⁷ Scherrer (2002) p. 17, Kaldor (2002) p. 14 and 90.

⁸ Att förebygga väpnade konflikter - ett svenskt handlingsprogram p 37, Kaldor (2002) p. 9 and 15.

⁹ Kaldor (2002) p. 17.

¹⁰ Konfliktförebyggande verksamhet en studie (1997) p. 15-18, Scherrer (2002) p. 17.

knowledge and level of education of the people as well as of the ability of the institutions to function.¹¹

There are normally several causes of conflicts and the causes are not easy to identify. The dynamics of conflicts consist of different factors which are added during the conflict and which become bearing for the continuation. In this process some factors are being created. This is also the case in former Yugoslavia. The political goal of Bosnian Serbs and Bosnian Croats, backed up by Serbia and Croatia, were ethnic cleansing. They wanted to establish ethnically homogenous territories which would eventually become part of Serbia and Croatia. Ethnicity, or rather identity politics, had a very central role in the conflict. The parties constructed the ethnicity to be a cause of the conflict and this was accepted by the world. The ethnicity became a measure for the nationalist project which was the goal of the leaders. The dynamic of the conflict was constituted when the thinking of ethnicity once again was brought up and hatred and contempt were spread. The hatred became deeper and the ethnical differences became real. A contributing cause to the extreme hatred was the methods of warfare. Ethnical cleansing and rape deepened the hate even more and faster. The ethnicity has been used as a measure to deepen the hate and making the conflict automatic.¹² Internal conflicts do not only destroy lives and property but also trust, which is the basis of all political life.¹³

Furthermore, environmental degradation is often a precursor of violence. This is for example demonstrated in Darfur. The immediate cause of the tragedy in Sudan is the brutal behavior of government forces and militias toward unarmed civilians. Behind the disaster is the desertification of northern Darfur during the past two decades. Extended drought and poor land management have pushed the desert southward year after year. This has forced Arab nomads from the north deeper into southern farmlands which have resulted in resentment and conflict.¹⁴

Better lives in the developed world have been accomplished by means of environmental impacts that in some respects threaten the very life-supporting capabilities of the ecosystems of the planet. What environmental space is there left for a majority of the population of the world to achieve lives of a comparable level to the ones enjoyed by people in the developed part of the world. Scarcities of water lead to competition which is a common cause of conflicts and must be seen as a potential threat. Many people will have to leave their homes during the next few years in search of livelihoods denied to them as a result of water scarcity.¹⁵

¹¹ Att förebygga väpnade konflikter – ett svenskt handlingsprogram (1999) p. 39.

¹² Kaldor (2002) p. 43.

¹³ Mellbourn (2004) p. 47.

¹⁴ Sandalow (2004).

¹⁵ Att förebygga väpnade konflikter – ett svenskt handlingsprogram (1999) p. 19, Internet source: <http://www.edcnews.se/Archive/swe06.pdf> accessed 2005-05-26 15.40.

HIV/AIDS is a huge disaster and a threat to human development and security. It is more than a public health crisis. HIV/AIDS is undermining economic and social stability, ravaging health, education, agriculture and social welfare systems. It weakens economic growth, governance and security structures posing a further threat.¹⁶

There are more or less six different threats today of which the world should be concerned namely:

- Inter-State conflict
- Internal conflict including civil war, genocide and other large-scale atrocities
- Transnational organized crime
- Economic and social threats including poverty, infectious diseases and environmental degradation
- Nuclear, radiological, chemical and biological weapons
- Terrorism¹⁷

Terrorism is a threat to respect for human rights, rule of law as well as protection of civilians. The threat of terrorism is linked to the threat of organized crime which is growing, affecting the security of the countries. Organized crime is contributing to State weakness, lower economic growth, fuel internal conflicts as well as undermining peacebuilding efforts taken by the UN. Furthermore, these groups are sometimes involved in illegal smuggling of migrants as well as trafficking in firearms.¹⁸

Threats and conflicts of today are diffuse and non-state actors have an increased significance. Violence is put into private hands instead of under state control. Internal armed conflicts constitute a market for many actors which at many times have an economic interest in the continuation of the conflict. Another distinctive feature is leaders who use the political or economic instability to create power for themselves. They often use and exploits latent ethnical disagreements. The threats of today include international war and conflict as well as internal conflicts, terrorism and organized crime. Furthermore there are threats such as poverty, environmental degradation as well as health related issues with infectious diseases. All of these threats can undermine the State and in worst case lead to large scale conflicts. The treats and challenges today require a great deal of cooperation.¹⁹

¹⁶ A/59/2005 (2005) p. 15.

¹⁷ A/59/565 (2004) p. 12.

¹⁸ A/59/2005 (2005) p. 25-27.

¹⁹ A/59/2005 (2005) p. 24-25, Att förebygga väpnade konflikter – ett svenskt handlingsprogram (1999) p. 26.

2.2.2 The Expanded Concept of Peace, Security and Conflict Handling

The Roman Empire legislated from their perspective of peace which was *if you want peace, arm for war*. This way of thinking has had a great influence on the Western society. The definition of peace has traditionally been negative as an absence of war and thus it can be referred to as *negative peace*. This was during the period when the nation state had a central role which is changing today since the economy internationalizes, the civil society emerges and international cooperation progresses. This results in the modification of the military definition of peace in favor of economic and political factors, both internationally and within the countries. The evolution has gone from focusing on citizens to focusing on human beings.²⁰

The security policies are partly defensive and the aim is to secure the interests of the nation-state which usually are short-term interests, focused on keeping the war away. The peace policies are offensive and focused on the long-term interests which concern the international community.²¹ Collective security has been pursued through reactive rather than preventive means and has been defined in military terms. Since the end of the Cold War a new understanding of the concept of peace and security has emerged. The traditional concept of collective security is supplemented by a broader focus on the nature of sustainable peace and its building blocks such as social and economic development, good governance and democratization, the rule of law as well as respect for human rights. This extended version of security and insecurity was addressed by the Secretary-General in 1992.²²

Positive peace includes social justice and puts the human being in the center instead of the state and is wider than the traditional peace definition. Positive peace is based on the abolition of structural violence such as imperialism, colonialism, racial oppression as well as oppression of women which deprives the individual values which are vital and fundamental. The effects of direct or structural violence are primarily the same but the effects of structural violence are shown later. It will be seen when the structural violence turns into direct violence which is usually the case when somebody rises in rebellion against the situation and is confronted with direct violence from the oppressor. Since positive peace is based on the abolition of for example racial oppression and oppression of women the foundation of positive peace is and must be human rights.²³ Different basic human rights treaties such as the Universal Declaration of Human Rights can be used as guidance of how a peaceful society should be and how the citizens should be treated. There are different elements that could be included. First of all, the basic human needs such as the right to be free from hunger, the right to health as well as the right to education need to be fulfilled. Furthermore, individuals

²⁰ Karlsson (1997) p 18-21, Calleja (1999) p. 30.

²¹ Karlsson (1997) p. 274.

²² A/55/985-S/2001/574 (2001) p. 9, A/47/277-S24111 (1992) p. 4.

²³ Scherrer (2002) p. 76, Karlsson (1997) p. 16-25 and 33, Calleja (1999) p. 29-30.

need to be protected from genocide, torture and arbitrary imprisonment. There should also be a possibility for people to participate in processes which have an impact on their lives such as voting, working as well as participating in cultural events. Furthermore people need to be able to feel safe in being physically well and able to survive.²⁴ This is not an exhaustive list but guidance in different aspects of life which need to be fulfilled in order to build a country of positive peace.

A Culture of Peace was defined in 1999 in the Declaration and Programme of Action on a Culture of Peace. To build a culture of peace, different efforts are needed in areas such as sustainable economic and social development, human rights, equality between women and men, democratic participation, tolerance and solidarity as well as free flow of information. Education, particular on human rights, was seen as one of the principle means in building a culture of peace.²⁵

The handling/solving of a conflict contains peacekeeping, peacemaking and peacebuilding. Negative peace includes peacekeeping and positive peace includes peacebuilding. Peacemaking can be seen as a bridge between negative and positive peace. The handling of conflicts is extensive and it includes everything from judicial decisions, reducing the intensiveness of the conflict to the solving of conflicts.²⁶

Traditionally, conflicts have been handled in three different ways, namely use of force, negotiations and by third part intervention. The conflict handling can result in peace keeping troops by a third part. The aim is to transform violence into non-violence. A consequence of conflicts is usually that the parties in the conflict are very aware of their differences.²⁷ This traditional way of handling conflicts is what the Secretary would refer to as a culture of reaction which will be addressed later.

The course of a conflict can be divided into different phases from early warning, acute face, potential peace and from reconciliation to rebuilding. Depending on the actual phase different measures need to be taken. The thesis is focused on conflict prevention and preventive measures can be taken in each phase.²⁸ Conflict prevention is intended to prevent human suffering, serving as an alternative to operations trying to resolve the conflict when the conflict already has broken out. Conflict prevention is one of the primary obligations of member states set forth in the UN Charter.²⁹ There are different measures to be taken to prevent conflicts. Preventive measures

²⁴ International Covenant on Economic, Social and Cultural Rights article 6 and 11-15 in Brownlie (2002), International Covenant on Civil and Political Rights article 7 and 25 in Brownlie (2002), Karlsson (1997) p. 34.

²⁵ Symonides (2003) p. 112, Declaration and Programme of Action on a Culture of Peace article 4.

²⁶ Karlsson (1997) p. 112.

²⁷ Karlsson (1997) p. 112 and 125.

²⁸ Konfliktförebyggande verksamhet en studie (1997) p. 36.

²⁹ Charter of the United Nations article 1 in Brownlie (2002), Internet source: http://www.un.org/Depts/dpa/prev_dip/fst_prev_dip.htm accessed 2005-04-25 22.30.

are for instance preventive diplomacy, preventive deployment and preventive disarmament. There are several forms of actions that can have a preventive effect such as a wide range of action in the fields of good governance, human rights and economic as well as social development. These measures, dealing with the root causes of conflicts, are usually referred to as structural prevention meanwhile direct measures to stop conflicts from turning violent is referred to as operational prevention.³⁰ This will be addressed below.

2.2.3 Human Rights – A Possibility to Prevent Conflicts?

2.2.3.1 Towards a New Culture of Conflict Prevention

Conflict prevention is partly at the agenda of world politics since there have been lots of conflicts turning into disasters when the world has been unable to prevent them. There are mainly two different types of conflict prevention namely *operational prevention* which is immediate and carried out in the last minute in order to avoid war breaking out. The other one is *structural prevention* which is more long-term, seeking to eradicate or deal with the root causes of conflict.³¹

The Secretary-General emphasizes prevention that goes beyond traditional diplomatic activities which addresses the visible and immediate triggers to armed conflict. These traditional measures are part of the operational prevention.³² There are several forms of actions that can have useful preventive effect such as preventive diplomacy, preventive deployment of military and civil police contingents, preventive disarmament and development projects in the context of a prevention strategy and humanitarian action. Preventive action refers to measures taken in order to prevent disputes from arising, to resolve them before they escalate into conflicts or to limit the spread of conflicts when they occur. Preventive diplomacy can take the form of mediation, conciliation or negotiation. Early warning is an essential component of prevention. The UN monitors political and other developments around the world to detect threats to international peace and security and thereby enabling the Security Council and the Secretary-General to carry out preventive action.³³ Some measures are taken in the later stage of prevention but they are still preventive. Preventive deployment implies to forestall a probable conflict by peacekeepers intended to provide a thin line between the parties. It is intended to help contain conflicts by building trust where there is tension. Preventive disarmament seeks to reduce the number of small arms in

³⁰ Wallensteen (1994) p. 4-5, Internet source: http://www.un.org/Depts/dpa/prev.dip/fst_prev.dip.htm accessed 2005-04-25 22.30, A/55/985-S/2001/574 (2001) p.2, Mellbourn (2004) p. 41.

³¹ Mellbourn (2004) p. 26 and 43.

³² A/55/985-S/2001/574 (2001) p. 7 and 36-37.

³³ Internet source: http://www.un.org/Depts/dpa/prev_dip/fst_prev_dip.htm accessed 2005-05-25 21.00, Ackermann (1999) p 113, A/55/985-S/2001/574 (2001) p. 8, Att förebygga väpnade konflikter – ett svenskt handlingsprogram (1999) p. 22.

regions where a conflict has taken place. Destroying the weapons of yesterday prevents their being used in the conflicts of tomorrow.³⁴ As mentioned, there are several forms of action that can be taken from a preventive perspective. However, the thesis is focusing on structural prevention, seeking to eradicate or deal with the root causes of conflict.

Prevention of armed conflicts has become a key goal for the UN but conflict prevention is not a new idea. The opening words to the charter of the UN is about conflict prevention namely to save succeeding generations from the scourge of war. Article 99 of the Charter creates a specific mandate for the Secretary-General to take action to prevent conflicts. The Secretary-General may bring, to the attention of the Security Council, any matter which in his opinion may threaten the maintenance of international peace and security.³⁵ The Charter provides the UN with a strong mandate to prevent armed conflicts. Conflict prevention should be made the cornerstone of the collective security system of the UN according to the Secretary-General. Collective security should imply an obligation for all to strive to address tensions, grievances, inequality, injustice, intolerance and hostilities at the earliest stage possible, before peace and security are endangered. This is a culture of prevention instead of as in the past, a culture of reaction.³⁶ The role of the UN is primary to assist governments and their counterparts in finding solutions to their problems by offering support for the development of national and regional capacities of early warning, conflict prevention and long-term peace-building. This is based on the principle of consent of the affected states. International cooperation in this field is often by invitation of the state or states concerned. The development and humanitarian agencies of the UN system can play a vital role in creating a peaceful environment, and addressing the root causes of conflicts at an early stage.³⁷

The Security-Council has put emphasis on the importance of responding to the root causes of the conflict as well as to the need of pursuing long-term effective preventive strategies. Coherent peace-building strategy, encompassing political, developmental, humanitarian and human rights programmes, can play a key role in conflict prevention. An investment in long-term structural prevention is an investment in sustainable development.³⁸

The Secretary-General has emphasized the importance of moving towards a culture of prevention instead of a culture of reaction whereas there is a need for structural prevention.³⁹ As experience demonstrates, poverty, socio-economic inequalities, widespread underdevelopment, weak or non-existent institutions, the absence of good governance and gross human rights violations can provide conditions that lead to conflict. Measures which are taken

³⁴ Internet source: http://www.un.org/Depts/dpa/prev_dip/fst_prev_dip.htm, Ackermann (1999) p 113, A/55/985-S/2001/574 (2001) p. 8.

³⁵ Charter of the United Nations article 99 in Brownlie (2002).

³⁶ Charter of the United Nations article 2 in Brownlie (2002), A/55/985/S/2001/574 (2001) p. 9.

³⁷ A/55/985-S/2001/574 (2001) p. 7.

³⁸ A/55/985-S/2001/574 (2001) p. 7.

³⁹ A/55/985-S/2001/547 (2001) p. 7 and 36-37.

to address the broad range of long-term political, institutional and development activities, belong to structural prevention and support national efforts in addressing the root causes of potential conflict situations.⁴⁰

Primary responsibility for conflict prevention rests with national governments. Without national interest conflict prevention is unlikely to succeed. Preventing armed conflicts requires early action by national actors and, where appropriate, by the international community.⁴¹ To strengthen local capacity to prevent and manage conflicts, the UN has recently focused on strengthening the rule of law, respect for human rights and the ability of public institutions to analyze and identify the potential for conflicts. The challenge for the UN in the years to come is to agree on practical measures to integrate conflict prevention further into its activities. To build a link between political and socio-economic strategies that allows a more comprehensive approach to the prevention of armed conflicts.⁴²

The threats today are economic and social threats, internal conflicts, transnational organized crime, inter-state conflict, terrorism as well as nuclear, radiological, chemical and biological weapons. The primary challenge is to ensure that those threats that are distant do not become immediate and those that are immediate do not actually become destructive. This requires preventive action addressing all these threats. It will require leadership, at the domestic and international levels, to act early, decisively and collectively against all these threats.⁴³ Methods for conflict prevention need to be adjusted to the new internal armed conflicts and the threats of today. All resources of the civil society should be explored in the realization of preventing crises and conflicts where the NGOs can play a vital role. The regional cooperation has developed and the preventive measures can thereby be taken from common interests, norms and identities. A system built on the same values and norms can constitute an arena for successful negotiations and durable solutions.⁴⁴

The Secretary-General has emphasized that different threats seem as the most pressing depending on wealth, geography as well as power. However, collective security is depending on acceptance of that the threats, which each region perceives as the most urgent, are in fact equally so for all. The threats of today are interconnected. For example, a terrorist attack against Europe would have effects all over the world as well as the appearance of a new dangerous pandemic disease in a poor country without an effective health-care system.⁴⁵

⁴⁰ Internet source: http://www.un.org/Depts/dpa/prev_dip/fst_prev_dip.htm accessed 2005-05-10 21.00, Ackermann (1999) p. 113, A/55/985-S/2001/574 (2001) p. 8.

⁴¹ A/55/985-S/2001/574 (2001) p. 7.

⁴² Mellbourn (2004) p. 29-32.

⁴³ A/59/565 (2004) p. 12.

⁴⁴ Konfliktförebyggande verksamhet en studie (1997) p. 15-20.

⁴⁵ A/59/2005 (2005) p. 25.

2.2.3.2 Human Rights and Conflict Prevention

The World Conference on Human Rights in Vienna in 1993 emphasized that the efforts of the UN system towards the universal respect for, and observance of, human rights and fundamental freedoms for all contribute to the stability and well-being necessary for peaceful and friendly relations among nations.⁴⁶ States proclaim, in the preamble to the Universal Declaration on Human Rights (UDHR), that they will ensure respect for the rights and freedoms in the declaration by progressive measures, national and international, to secure their universal and effective recognition and observance. The promotion and protection of human rights is a legitimate concern of the international community which was also recalled at the World Conference.⁴⁷ To give substance to these declarations, organs and specialized agencies have been developed since 1948 both on the regional and international levels with the sole purpose of monitoring and advising states in relation to their human rights obligations.⁴⁸ Some of these will be addressed further on in the thesis.

The solutions of international economic, social and health related problems, as well as international, cultural and educational cooperation and universal respect for human rights and fundamental freedoms for all are essential for the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations. The Charter of the United Nations provides the foundation for a comprehensive and long-term approach to conflict prevention based on an expanded concept of peace and security.⁴⁹

The Secretary-General has, as mentioned, put emphasis on moving from a culture of reaction to a culture of prevention. It is important to act early since lives as well as money can be saved. However, it is a difficult task to prevent since the cost is today and if the preventive measures are successful this will never be shown. Media or political attention rarely focuses on good news. Furthermore, the art of conflict prevention is usually difficult since existing problems usually take precedence over potential ones.⁵⁰ The threats of today are more diffuse which is a contributing cause to the inconvenience in making the choices regarding what preventive measure should be prioritized.⁵¹ The UN is aiming at developing comprehensive strategies to determine the optimal way to address the root causes of conflict. An Interdepartmental Framework for Co-ordination aims to outline prevention strategies with a long term perspective. Improving early warning capacity and analyses of risk are important in building an effective prevention strategy. It is

⁴⁶ Alfredsson (1999) p. 620.

⁴⁷ Kjaerum (2003) p. 16, Vienna Declaration and Programme of Action part 1 paragraph 4 in Symonides (2003).

⁴⁸ Kjaerum (2003) p. 16.

⁴⁹ Charter of the United Nations article 55 in Brownlie (2002), A/55/985/S/2001/574 (2001) p. 9.

⁵⁰ Mellbourn (2004) p. 43, A/55/985-S/2001/574 (2001) p. 8.

⁵¹ Konfliktförebyggande verksamhet en studie (1997) p. 14.

however also important with a proper mixture of immediate preventive diplomacy and more long-term preventive actions.⁵²

Failure to protect human rights is often a root cause of a conflict, and thus, the effective promotion and protection of human rights must be seen as a vital element of conflict prevention.⁵³ A focus on strengthening the respect for human rights and addressing core issues of human rights violations, wherever these occur, must be included for a sustainable and long-term prevention of armed conflicts. Efforts to prevent conflicts should promote a broad range of human rights including civil- and political rights, economic-, social- and cultural rights including the right to development.⁵⁴

An investment in long-term structural prevention is also an investment in sustainable development. Sustainable development cannot take place in the middle of an actual or potential conflict. Conflict prevention and sustainable development are mutually reinforcing.⁵⁵ The efforts of the UN towards the universal respect for, and observance of, human rights and fundamental freedoms for all contribute to the stability and well-being necessary for peaceful and friendly relations. It also contributes to improved conditions for peace and security as well as social and economic development in conformity with the Charter of the UN. This was all pointed out at the World Conference in Vienna 1993. The implication is that internal peace can be safeguarded only as a result of domestic evolution where human rights are being implemented for everyone.⁵⁶

Most conflicts in a society begin with peaceful demonstrations. These can usually be handled by early mediation before the beginning of violence and while the communication and common institutions still works. Interference by a third part later on is usually not of any help if the violence and killing have begun. Countries open to preventive measures stand a better chance to build sustainable peace than those accustomed to resolving differences by force. Massive violence and expulsion of one group by another result in intense feelings of victimization, psychologically rooted trauma and the need for revenge which makes future violent conflicts much more likely.⁵⁷

2.2.3.3 Different Human Rights of Importance to Conflict Prevention

Serious violations of human rights, especially minority rights, often result in a rather large-scale conflict. Information about human rights violations has shown to be relevant in prediction of the emergence of violent conflicts. In

⁵² Mellbourn (2004) p. 28.

⁵³ Internet source: http://www.un.org/Depts/dpa/prev_dip/fst_prev_dip.htm accessed 2005-05-23 22.30.

⁵⁴ A/55/985-S/2001/574 (2001) p. 23.

⁵⁵ A/55/985-S/2001/574 (2001) p. 7.

⁵⁶ Alfredsson (1999) p. 620.

⁵⁷ Konfliktförebyggande verksamhet en studie (1997) p. 18, Ackermann (1999) p. 5.

the work of trying to prevent conflicts it is important to strengthen the observance of the existing norms and also to strengthen the capacity, at the country level, to monitor the observance of human rights.⁵⁸

Ethno-nationalism can result in gross human rights violations such as in Rwanda or former Yugoslavia. Different means can be used to try to eliminate the sources of ethno-nationalism such as for example full respect of various cultural, national, ethnic, religious and linguistic minorities including acceptance of multi-culturalism and cultural autonomy, education, internal self-determination as well as procedures and criteria guaranteed to evaluate claims to external self-determination, to secession and independence.⁵⁹ Neither the protection of minorities nor the rights of persons belonging to a minority were mentioned in the Charter of the United Nations. There is not a specific provision in UDHR but there is an article in the International Covenant on Civil and Political Rights. In those States where ethnic, religious or linguistic minorities exist people belonging to such minorities shall not be denied the right to enjoy their own culture, to profess and practice their religion or to use their own language. They should be able to enjoy this in community with the other members of their group.⁶⁰ The World Conference on Human Rights reaffirmed the obligation of States to ensure that persons belonging to minorities may exercise all human rights and fundamental freedoms without any discrimination in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Declaration is built on the conviction that promotion and protection of people belonging to such minorities contribute to the political and social stability of the States in which they live.⁶¹

Developmental assistance cannot, by itself, prevent or end conflicts. However, it can help the creation of opportunities and the political, economic and social spaces where indigenous actors can identify, develop and use the resources necessary to build a peaceful, equitable and just society. The Secretary-General underlines that developmental assistance need to focus on decreasing the key structural risk factors that fuel violent conflict such as inequity, inequality, justice and insecurity. Inequity shall be decreased by addressing inequalities among identity groups. Inequality can be decreased by addressing policies and practices that institutionalize discrimination. Justice achieved by promoting the rule of law, effective and fair law enforcement and administration of justice as well as appropriate and fair representation in the institutions concerned. Insecurity should be decreased by strengthening accountable and transparent governance and human security.⁶²

⁵⁸ Konfliktförebyggande verksamhet en studie (1997) p. 18-19 and 79.

⁵⁹ Symonides (2003) p. 158.

⁶⁰ Symonides (2003) p. 310-311, International Covenant on Civil and Political Rights article 27 in Brownlie (2002).

⁶¹ Vienna Declaration and Programme of Action part 1 paragraph 19 in Symonides (2003), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities the Preamble.

⁶² A/55/985-S/2001/574 (2001) p. 24.

The right to development is defined in the Declaration on the Right to Development, which is non-binding. The right to development is an inalienable human right by virtue of which every person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. The right to development also implies the full realization of the right of people to self-determination which includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. States have the primary responsibility for the creation of national and international conditions which are good for the realization of the right to development. States have also the duty to co-operate with each other.⁶³

Limited access to water is weakening the development of many countries and conflicts over water use and distribution are a common cause of disputes. Environmental management can therefore not be treated separately from other development concerns.⁶⁴ The right to healthy environment is recognized in different human rights instruments. In 1990 the General Assembly adopted a resolution on the need to ensure healthy environment for the well-being of individuals. The UN Conference on Environment and Development, held in Brazil 1992, adopted the Rio Declaration on Environment and Development. According to this, human beings are entitled to a healthy and productive life in harmony with nature. This declaration as well as agenda 21, which was also adopted at the Conference, influenced all subsequent conferences which have examined the relationship between human rights and the need for environmentally sustainable development. There is a lack of coherence in environmental protection efforts at the global level. Regional and global multilateral treaties on the environment are undermined by inadequate implementation and enforcement by the Member States.⁶⁵

The HIV/AIDS epidemic is spreading at an alarming rate and people are experiencing for example unequal access to treatment and discrimination at work. There are several human rights closely linked to HIV/AIDS such as the right to life, the right to non-discrimination and equality before the law, the right to health care and social security as well as the right to education. Interrelation between human rights and HIV/AIDS are numerous. If there is an environment where human rights are fully respected this would enable people to live a life in dignity. Vulnerability to HIV/AIDS is higher where people are denied human rights and the key factor to improve prevention of HIV/AIDS and the care of those infected is to improve respect for human rights.⁶⁶ Furthermore, everyone has the right to a standard of living adequate for the health and well-being of themselves and their families including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond ones

⁶³ Symonides (2003) p. 393, Declaration on the Right to Development Article 1 and 3, Alfredsson (1999) p.618, Steiner (1996) p. 1124.

⁶⁴ Human Development Report 2003 (2003) p.123-132

⁶⁵ A/59/565 (2004) p. 27-28, Symonides (2003) p. 381-382.

⁶⁶ Symonides (2003) p. 223-226.

control.⁶⁷ HIV/AIDS is a threat to human development and security and is more than a public health crisis. HIV/AIDS is undermining economic and social stability. It weakens economic growth, governance and security structures posing a further threat.⁶⁸

The World Conference on Human Rights also underlined the importance of human rights education, training and public information for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding and peace.⁶⁹ According to article 26 UDHR and article 13 International Covenant on Economic, Cultural and Social Rights, education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. Education shall promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the UN for the maintenance of peace. Everyone has the right to education and it shall be free at least at the elementary and fundamental levels.⁷⁰

For early prevention to be effective it is essential to identify and address the multidimensional root causes of conflict. The immediate cause of a conflict may be an outbreak of public disorder or a protest over a particular incident. However, the root cause might be socio-economic inequities and inequalities, ethnic discrimination, denial of human rights as well as disputes over land or other recourses. These different circumstances might lead to violence from different groups in some countries. However, in other societies it might not be the same reaction since there are other channels such as appropriate and effective coping mechanisms including well functioning governance and rule of law institutions.⁷¹ Different human rights, if implemented, can create channels, such as the above mentioned, which thereby might prevent conflicts. Political rights refer to rights and freedoms which allow people to participate in public affairs of the society to which they belong. Political rights include the right to freedom of thought, conscience, religion or belief, opinion and expression and information, the right to peaceful assembly and to freedom of association, the right to take part in the conduct of public affairs directly or through freely chosen representatives, and the right to vote and to be elected and to have equal access to public service.⁷²

Though the right to democracy is not explicitly codified in human rights instruments, many fundamental principles of democracy are embodied in

⁶⁷ Universal Declaration of Human Rights article 25 and International Covenant on Economic, Social and Cultural Rights article 11 both in Brownlie (2002), Symonides (2003) p. 199.

⁶⁸ A/59/2005 (2005) p. 15.

⁶⁹ Vienna Declaration and Programme of Action part 2 paragraph 78-82 in Symonides (2003).

⁷⁰ Symonides (2003) p. 229-230 and 394-396, Universal Declaration on Human Rights article 26 and the International Covenant on Economic, Cultural and Social Rights article 13 both in Brownlie (2002).

⁷¹ A/55/985-S/2001/574 (2001) p. 7.

⁷² Symonides (2003) p. 345.

international human rights law. Article 21 UDHR stipulates that the will of the people shall be the basis of the authority of government. This will should be expressed in periodic and genuine elections which shall be universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. Furthermore, the article proclaims the right to take part in government of his country, directly or through freely chosen representatives, as well as the right to equal access to public service. International human rights instruments guarantee a number of freedoms and rights which are crucial for the functioning of democracy such as freedom of thought, conscience and religion, freedom of opinion and expression, freedom to seek, receive and impart information, freedom of association, freedom to peaceful assembly, freedom from arbitrary arrest, freedom from arbitrary interference with privacy, right to a fair and public hearing, right to a fair trial, right to be presumed innocent, the right to vote and to be elected and the right to take part in government.⁷³ Everyone is entitled to a social and international order in which the rights and freedoms set forth in the UDHR can be fully realized.⁷⁴

The promotion of democracy has become an established goal of the UN. The support for new and restored democracies has increased in Eastern Europe, Africa, Latin America as well as in Asia. Many of these countries are emerging from civil war and conflicts. The assistance to these countries from the UN is complex and includes for example state and institutional reform with emphasis on free and fair elections and respect for international law and human rights, the development of a civil society as well as a political culture that encourages public debate and participation. Many activities focus on providing legal, technical and financial assistance and advice as well as monitoring elections and civic education and training.⁷⁵

Article 28 UDHR states that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized. This would require adjustments both within the states and between states and would be impossible without a corresponding modification of cultural traditions so that these give priority to the values of the human rights system as a whole. Such change can not come over night and some say it is unrealistic. However, it can be seen as a vision to be pursued.⁷⁶ To move towards a social and international order where the rights in UDHR are realized to everyone means to advance sustainable development in an increasingly peaceful and co-operative world. This requires a connection between the purposes of the UN set forth in article 1 of the Charter namely maintenance and advancement of peace, international co-operation in the solution of economic, social humanitarian and cultural problems as

⁷³ Symonides (2003) p. 202-204 and 392, Universal Declaration of Human Rights article 18-19 and 21 and International Covenant on Civil and Political Rights article 18 and 19 both in Brownlie (2002).

⁷⁴ Universal Declaration of Human Rights article 28 in Brownlie (2002)

⁷⁵ Internet source: http://www.un.org/Depts/dpa/prev_dip/fst_prev_dip.htm accessed 2005-05-10 12:40.

⁷⁶ Alfredsson (1999) p. 597.

well as the promotion and protection for all. Current trends are moving towards closer links between activities related to development, environmental protection and human rights.⁷⁷

The most effective form of conflict prevention, when it comes to internal conflicts, in the long run is well-governed countries. A well developed democracy is probably effective in canalizing changes in society. Provisions to take care of the concerns of minorities, the open society, free media and the rule of law as well as respect for human rights are the soundest conflict prevention policies. The question is if this really is conflict prevention. As always, when it comes to prevention, we do not know anything about the future. However, the evidence of history suggests that this is indeed an effective preventive strategy.⁷⁸

There are several other human rights in various international covenants and conventions that are important to promote and protect in order to build a safer world. The UN has provided the world with several human rights, many of these to be found in the core international human rights treaties. In order to monitor the implementation of these treaties the human rights treaty bodies have been established. This will be addressed below.

2.3 Human Rights Protection and the Existing Human Rights Machinery

2.3.1 Human Rights Protection and the United Nations

One of the principal purposes of the UN is to promote and protect human rights. One of the purposes is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction to race, sex language or religion.⁷⁹ The UN has provided the world with international covenants and conventions to establish standards, monitor implementation, promote compliance and investigate violations of human rights.⁸⁰ This is a great task and challenge which cannot be realized by the UN itself. One organization can never keep an eye on every situation and every violation of human rights. Therefore the international system relies on the support of for example regional human rights systems, Governments as well as NGOs. All of these groups have a special role to play in the development of a universal culture of human rights.⁸¹

⁷⁷ Alfredsson (1999) p. 614.

⁷⁸ Mellbourn (2004) p. 52, Att förebygga väpnade konflikter – ett svenskt handlingsprogram (1999) p. 31.

⁷⁹ Charter of the United Nations article 1 in Brownlie (2002).

⁸⁰ The UN Handbook (1995) p. 3.

⁸¹ Fact Sheet No. 19.

The General Assembly is the main deliberative of the UN and reviews and takes action on human rights matters which have been referred to it by its Third Committee and by the Economic and Social Council. Recommendations on human rights matters is taken by the Economic and Social Council which also reviews reports and resolutions of the Commission on Human Rights which is transmitted to the General Assembly after amendments. The Commission on Human Rights was established to assist the Economic and Social Council in its work as well as the Commission on the Status of Women and the Commission on Crime Prevention and Criminal Justice were established. There are many different agencies of the UN system which has a special interest in human rights matters wherefore the work is closely linked to these agencies.⁸²

The Commission on Human Rights is the main policy-making body dealing with human rights issues for example preparing studies, making recommendations and drafting international human rights conventions and declarations as well as investigating allegations of human rights violations and handles communications relating to them. The Commission has established a number of subsidiary bodies such as the Sub-Commission on Prevention of Discrimination and Protection of Minorities.⁸³ The Commission on the Status of Women prepares recommendations and reports on the promotion of women's rights in political, economic, social and educational fields to the Economic and Social Council. Furthermore it makes recommendations on problems which require attention in the fields of women's rights. The Commission on Crime Prevention and Criminal Justice is the main UN policy-making body on criminal justice developing and monitoring the UN programme on crime prevention.⁸⁴

To improve respect for human rights, and to further progress towards realization, the UN has adopted a three-pronged approach. First of all to establish international standards, second the protection of human rights and third to give UN technical assistance. In order to monitor compliance with the various international human rights instruments and to investigate alleged human rights abuses different mechanisms have been set up such as conventional mechanisms (treaty bodies) and extra-conventional mechanisms (UN special rapporteurs, representatives, experts and working groups). To monitor the implementation of treaty obligations at the national level the treaty bodies examine reports of States parties. This will be addressed further in the thesis. The third step to give UN technical assistance had developed through the years. Technical assistance is usually offered in the following areas; reforming national laws, supporting democratization and advising on electoral procedures as well as setting up NHRIs, assisting in the drafting of national laws and preparation of national reports, strengthening national and regional institutions as well as training criminal justice personnel.⁸⁵

⁸² Internet source: <http://www.un.org/rights/dpi1774e.htm> accessed 2005-05-10 18.00.

⁸³ Symonides (2003) p. 36-37, Internet source: <http://www.un.org/rights/dpi1774e.htm> accessed 2005-05-10 18.00.

⁸⁴ Internet source: <http://www.un.org/rights/dpi1774e.htm> accessed 2005-05-10 18.00.

⁸⁵ Internet source: <http://www.un.org/rights/dpi1774e.htm> accessed 2005-05-10 18:00.

Human rights concerns can be raised confidentially with Member States by the Secretary-General and his good-offices. The High Commissioner for Human Rights also carries out good-offices in the field of human rights on behalf of the Secretary General. The High Commissioner is responsible for promoting and protecting human rights for all and has a continuing dialogue with Member States. The functions of the High Commissioner are for example crisis management, prevention and early warning, assistance to States in period of transition as well as coordination and rationalization of the Human Rights Programmes. The Center for Human Rights is implementing policies proposed by the High Commissioner.⁸⁶

In order to monitor the implementation of the core international human rights treaties the human rights treaty bodies have been established. In order to clarify the content and scope of specific provisions of the instruments concerned the human rights treaty bodies can adopt General Comments or General Recommendations, which are not legally binding. They elaborate on the meaning and implications of a certain provision and outline how States should interpret and implement the provision. Furthermore treaty bodies draft General Comments and General Recommendations on the basis of issues emerging from their examination of State Parties Reports over a number of years. They serve to assist the States Parties in further implementing the instruments and fulfilling their reporting obligations.⁸⁷

Reports, made by States periodically, concerning the implementation of an agreements provision are means of evaluation and control. This is necessary in order to find out whether subjects of international law comply with the duties they assumed. It is legitimated by article 2 in the Charter of the United Nations that stipulates that States should fulfill in good faith the obligations assumed by them.⁸⁸

At the Millennium Summit there was a broad consensus that the most promising approach, to prevent conflicts, is to develop long-term and integrated strategies, combining a wide range of political, economic, social and other measures aimed at reducing or eradicating causes of conflict.⁸⁹ World leaders agreed on to a set of time-bound and measurable goals and targets for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women at the United Nations Millennium Summit in 2000. These goals provide a framework for the entire UN system in working coherently. There are eight Development Goals to be achieved by 2015 namely to reduce extreme poverty by half, achieve universal primary education, empower women and promote equality between women and men, reduce children under-five mortality by three quarters, reverse the spread of diseases especially HIV/AIDS and malaria, ensure environmental sustainability, create a global partnership for development with targets for

⁸⁶ Internet source: <http://www.un.org/rights/dpi1774e.htm> accessed 2005-05-10 18:00.

⁸⁷ Symonides (2003) p. 207

⁸⁸ Symonides (2003) p. 371.

⁸⁹ A/55/985/S/2001/574 (2001) p. 10.

aid, trade and debt relief. The goals are monitored by the submission of country reports.⁹⁰

The UN is striving for a world with peace and justice with universal respect for human rights. A mission reaffirmed in the Millennium Declaration. The Secretary-General indicates that important change is emerging since the Millennium Declaration. The UN human rights machinery has expanded its protection work, technical assistance and support for NHRIs, so that national human rights standards are now better implemented in many countries. However the Secretary-General stresses the importance of field presence in times of crises to provide information to the UN as well as to draw urgent attention to situations requiring action.⁹¹

2.3.1.1 Charter Bodies

The Commission on Human Rights was established in 1946 and is the primary human rights forum of the world. The Commission is setting standards to govern the conduct of States and is also a forum where countries as well as NGOs can address their concerns. The Commission can also identify areas where existing standards need to be further developed. One of the most important tasks of the Commission on Human Rights has been the elaboration of human rights standards such as UDHR. All States that accept these different human rights standards are obliged to implement the rights and to report regularly to international bodies set up to monitor the compliance. Human rights standards are of little use if not implemented wherefore the Commission devotes much time to examine issues of implementation. If problems are identified the Commission can take action to address them. Normally the Commission requests the Office of the High Commissioner for Human Rights to provide assistance to the Government in question. This is usually done by expert advice, human rights seminars, training courses as well as other activities to strengthen the national protection and promotion of human rights.⁹²

Some procedures and mechanisms are referred to as the Special Procedures and enable the Commission on Human Rights to address either specific country situations or thematic issues. These procedures include examinations, monitoring and publication of reports. Normally, these procedures are a special rapporteur or a working group. In carrying out their mandate country visits are undertaken and reported back to the Commission on Human Rights. All special procedures are required to report back their activities to the Commission on Human Rights every year at the annual session.⁹³

⁹⁰ Symonides (2003) p. 310.

⁹¹ A/59/2005 (2005) p. 37.

⁹² Internet source: <http://www.ohchr.org/english/bodies/chr/background.htm> accessed 2005-04-19 13.00.

⁹³ Internet source: <http://www.ohchr.org/english/bodies/chr/background.htm> accessed 2005-04-19 13.00, <http://www.ohchr.org/english/bodies/chr/special/index.htm> accessed 2005-04-19 13.00.

The 1503 procedure before the Commission on Human Rights is the oldest human rights complaint mechanism in the UN system. Under this procedure the Commission, which is a political body composed of State representatives, usually deals with situations in various countries rather than individual complaints. The Commission has the mandate, under the 1503-procedure, to examine a consistent pattern of gross and reliable attested violations of human rights and fundamental freedoms occurring in any country of the world. Complaints may be submitted by any individual or group claiming to be a victim or by any other person or group with direct and reliable knowledge of such human rights violations. If a NGO submits a complaint it must be acting in good faith as well as in accordance with recognized human rights principles. With the 1503 procedure it is possible that the complaint might reach the highest level of the United Nations human rights machinery namely the Commission on Human Rights. The complaint might result in that the State in question is being pressured to change laws, policies or practices.⁹⁴

2.3.1.2 Treaty Bodies

The human rights treaty bodies are committees of independent experts that monitor the implementation of the core international human rights treaties. The treaty bodies perform a number of functions aimed at monitoring how the treaties are being implemented at the national level. These committees are created in accordance with the provisions of the treaty that they are monitoring. There are seven human rights treaty bodies namely:

- The Human Rights Committee (HRC) which monitors the implementation of the International Covenant on Civil and Political Rights from 1966 as well as the optional protocols
- The Committee on Economic, Social and Cultural Rights (CESCR) which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights from 1966
- The Committee on the Elimination of Racial Discrimination (CERD) which monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination from 1965
- The Committee on the Elimination of Discrimination Against Women (CEDAW) which monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women from 1979

⁹⁴ Symonides (2003) p. 48, Steiner (1996) p. 376, Internet source: <http://www.ohchr.org/english/bodies/petitions/1503.htm#1503> accessed 2005-04-19 14.00.

- The Committee Against Torture (CAT) which monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
- The Committee on the Rights of the Child (CRC) which monitors the implementation of the Convention on the Rights of the Child from 1989 as well as its optional protocols
- The Committee on Migrant Workers (CMW) which monitors the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families from 1990⁹⁵

The treaty bodies perform a number of functions in accordance with the provisions of the treaty they are monitoring. This includes for example consideration of State Parties reports, considerations of individual complaints or communications as well as publishing general comments to the treaties and organizing discussions on related themes.⁹⁶

Countries that have ratified one of these treaties are obliged to submit regular reports to the monitoring committee concerning how the rights are being implemented. State parties are encouraged to see the reporting process as an important tool for the State in assessing what has been achieved and what more that needs to be done in order to promote and protect human rights. In addition to these reports, the treaty bodies may receive information on the human rights situation of a country from other sources such as NGOs, UN agencies, other intergovernmental organizations, academic institutions as well as through media. In the light of all the available information the Committee examines the report together with government representatives. The Committee publishes their *concluding observations* which are their concerns and recommendations based on the dialogue mentioned above. The recommendations should be as concrete and practical as possible. States are further asked to publicize the concluding observations within the country to inform the public on how to move forward with the implementation of human rights. The treaty bodies have no means of enforcing their recommendations.⁹⁷

Some of the treaty bodies might perform additional monitoring functions in addition to the reporting procedure. This is done through three other mechanisms namely the inquire procedure, the examination of inter-state complaints and the examination of individual complaints. Some of the committees, namely HRC, CERD, CAT and CEDAW, can under certain circumstances, receive petitions from individuals who claim that their rights under

⁹⁵ Symonides (2003) p. 232-234, Fact Sheet No. 30 p. 23-24, Internet source: <http://www.ohchr.org/english/bodies/treaty/index.htm> accessed 2005-03-31 18.00.

⁹⁶ Fact Sheet No. 30 p. 24-25, Internet source: <http://www.ohchr.org/english/bodies/treaty/index.htm> accessed 2005-03-31 18.00.

⁹⁷ Alfredsson (1999) p. 611, Fact Sheet No. 30 p. 27 and 31, Internet source: <http://www.ohchr.org/english/bodies/treaty/index.htm> accessed 2005-03-31 18.00.

the relevant treaty have been violated. Any individual claiming that her or his rights has been violated, by a State party to that treaty, may bring a communication before the relevant committee if the State has recognized the competence of the committee to receive such complaints. Complaints may also be brought by third parties on behalf of individuals if they have given their written consent or if they are incapable of giving such consent. States are also allowed, by several of the human rights treaties, to complain to the relevant body about allocated violations of the treaty by another State party. However, this opportunity has so far never been used. Two of the treaty bodies, namely CAT and CEDAW, may on their own initiative, initiate inquiries if they have received reliable information containing well-founded indications of serious, grave or systematic violations of the conventions in a State party. The procedure is confidential and the cooperation of the State party must be sought throughout the proceedings.⁹⁸

The system has been confronted with challenges as it has grown such as delays in submission and/or consideration of reports, non-reporting as well as duplication of reporting requirements among treaty bodies. It is important to improve the effectiveness of the human rights treaty system.⁹⁹ The UN Secretary-General has identified further modernization of the treaty system as a key element in the goal of promoting and protecting human rights. Measures, such as having a more coordinated approach to their activities, standardizing their varied reporting requirements as well as allowing each State to produce a single report summarizing its adherence to the full range of international human rights treaties to which it is a party, need to be taken.¹⁰⁰ Later on the general-secretary requested that harmonized guidelines on reporting to all treaty bodies should be finalized and implemented so that these bodies can function as a unified system.¹⁰¹

2.3.2 Human Rights Protection at the Regional and National Level

Regional human rights systems have played an important complementary role in reinforcing international standards and machinery by providing means by which human rights concerns can be addressed within the particular social, historical and political context of the region concerned. The Asia-Pacific region is unique since it does not have an established, government to government, regional mechanism for the promotion and protection of human rights.¹⁰²

⁹⁸ Fact Sheet No. 30 p. 33-36, Internet source:

<http://www.ohchr.org/english/bodies/treaty/index.htm> accessed 2005-04-18 12.00 and <http://www.ohchr.org/english/bodies/petitions/index.htm> accessed 2005-04-18 12.00.

⁹⁹ Internet source: <http://www.ohchr.org/english/bodies/treaty/reform.htm> accessed 2005-04-18 12.30.

¹⁰⁰ A/57/387 (2002) p. 12-13.

¹⁰¹ A/59/2005 (2005) p. 38.

¹⁰² Lindsnaes (2001) p. 141, The UN Handbook (1995) p. 3.

NGOs may be of an international, regional, national, local or grassroots character. Several of them deal with human rights issues and contribute considerably to the promotion and protection of human rights as well as to the daily struggle against violations of human rights. They play an outstanding role in sensitizing civil society and the general public on threats and challenges to human rights. The NGOs play an important role in the development of a universal culture of human rights since they can perform tasks which Governments and intergovernmental organizations are unable or unwilling to perform.¹⁰³

The role of Governments in the implementation and realization of human rights is of great importance. Each state must be responsible for the protection and promotion of human rights. At the national level, human rights can be protected in different ways such as adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment and strengthening of democratic institutions. It is however not enough with domestic laws which protect certain rights if these laws do not also provide for all of the legal powers and institutions necessary to ensure their effective realization. The problem of effective implementation at the national level has generated an international interest and action. It has become increasingly apparent that the effective enjoyment of human rights calls for the establishment of national infrastructures for their protection and promotion. Many countries have set up official human rights institutions. All these institutions are referred to collectively as NHRIs since their purpose is the same even though their task varies. The task of the institutions varies from country to country but the purpose is the same, to promote and protect human rights.¹⁰⁴ This will be addressed and explored further in chapter three.

By ratifying human rights treaties, States subscribe to the standards and commit themselves to implementing the rights at the national level. The treaty bodies encourage and support the State in their effort. The process of reporting to the treaty bodies is a part of the development of a national human rights protection system.¹⁰⁵

2.4 Obstacles and Challenges in the Implementation of Human Rights

International law was created to safeguard international security as well as international peace. Normally the critical factor about international law is the lack of or fragmentary nature of mechanisms and procedures for enforcing legal instruments such as declarations, conventions, covenants as well as

¹⁰³ Symonides (2003) p. 317, The UN Handbook (1995) p. 3.

¹⁰⁴ Fact Sheet No. 19, The UN Handbook (1995) p. 3-4.

¹⁰⁵ Fact Sheet No. 30 p. 44.

treaties. The problem is not that the legal instruments are not fulfilling but rather that international law is not being implemented and enforced. International law can mainly be enforced in three different ways namely by comprehensive review processes and checks-and-balance, by institution building and by refining an arsenal of sanctions which shall harm the non-complying regimes and not the people.¹⁰⁶

The Secretary-General stresses that there is a greater awareness in the Security-Council of the need to take human rights into account in resolutions on peace and security and the High Commissioner on Human Rights is more frequent invited to the Security-Council. Mainstreaming human rights in the whole organization is important for the work of the realization of human rights.¹⁰⁷

Furthermore the Secretary-General put emphasis on the effectiveness of the human rights treaty bodies. They need to be more effective and more responsive to violations of the rights they are mandated to uphold. The problem is that the treaty body system is almost unknown. Many States do not report on time, if at all, and the duplication of reporting requirements as well as the system is weakened by poor implementation of recommendations. The Secretary-General stresses the importance of harmonized guidelines on reporting to all treaty bodies which should be finalized and implemented so that these bodies can function as a unified system.¹⁰⁸

A system-wide effort is in progress to strengthen national protection systems for human rights. To implement the Secretary-General Report on Strengthening the United Nations: an agenda for further change from 2002 the Office of the High Commissioner for Human Rights has developed an action plan to ensure that human rights are incorporated into country level analysis, planning and programme implementation. This has been done in cooperation with the United Nations Development Group and the Executive Committee for Humanitarian Affairs. This human rights based approach to development will probably improve the capacity of the UN to build strong human rights institutions at the national level which will ensure the protection and promotion of human rights and thereby contributing to conflict prevention.¹⁰⁹

The UN High Commissioner for Human Rights has made NHRIs a policy priority and the institutions are seen as a contribution to human rights protection.¹¹⁰

Implementation and realization of human rights cannot be achieved only through development of protective law and the establishment of mecha-

¹⁰⁶ Scherrer (2002) p. 105.

¹⁰⁷ A/59/2005 (2005) p.37.

¹⁰⁸ A/59/2005 (2005) p. 38.

¹⁰⁹ Mellbourn (2004) p. 30.

¹¹⁰ *Protectors or Pretenders? Government Human Rights Commissions in Africa* (2001) p. 1.

nisms to implement that law. It is also crucial to promote and educate about human rights. Information about human rights is necessary but it cannot be sufficient to ensure the development of values and attitudes which are necessary for the full enjoyment of human rights. Promoting human rights implies working towards a culture of respect for and observance of human rights at the national level.¹¹¹

2.5 Discussion and Conclusion

A new type of organized violence, new wars, are emerging which could be described as a mixture of war, organized crime and massive human rights violations. The actors are both global and local, public and private. The wars are fought for political goals using tactics of terror and destabilization. An informal criminalized economy is built into the functioning of the new wars. Political leaders and international institutions have been helpless regarding the new wars since they have not been able to come to terms with their logic. The new wars have been treated either as old wars or as anarchy. There were great shortcomings in how the international arena treated, understood and handled the conflict in Bosnia-Herzegovina. It is important to trace the shortcomings of inherited ways of perceiving the war and to set out the need for a new type of analysis in relation to political and military assumptions about why and how wars are fought. The mediation probably failed in Bosnia-Herzegovina since it was built on an inability to see the art and dynamic of the conflict. A lesson is that new ideas are necessary to be able to handle these new types of conflicts. It is crucial to know the character of the conflicts as well as the causes.

A new culture of conflict prevention is developing which includes for example security policy, development assistance policy, migration policy and environmental policy. It is crucial to know the causes of conflict to be able to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur. It is fundamental to address the deepest causes of conflict such as economic despair, social injustice and political oppression. Negative peace is a necessary, but not a sufficient condition for peace. Positive peace includes social justice and puts the human being in the center instead of the state. Positive peace is based on the abolition of structural violence. Conflict seems to be avoided by structural prevention which refers to activities before a conflict erupts. Positive peace should be the foundation when the preventive measures are initiated. A positive peace built on human rights.

The human rights instruments give a sufficient human rights protection if they are implemented. The role of Governments in the implementation and realization of human rights is of great importance. Without the implementation at the national level the international system for monitoring and imple-

¹¹¹ Lindsnaes (2001) p. 24-25, The UN Handbook p. 18.

mentation is of little use except for pointing out states that misbehave. Each state must be responsible for the protection and promotion of human rights. When States ratify a human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations. The fact that a law exists to protect certain rights is often not enough. The laws also have to provide for measures necessary to ensure their effective realization such as for example institutions. It is crucial for a state committed to human rights to establish a national infrastructure including institutions that can promote and protect human rights.

The problem of effective implementation at the national level has generated interest as well as action. The effective enjoyment of human rights calls for the establishment of national infrastructures for their protection and promotion. All over the world, institutions have been established referred to as NHRIs, which all have the same purpose even though their task varies. The purpose, to promote and protect human rights. This will be further developed in the next chapter.

3 NHRIs

3.1 Introduction

New opportunities to strengthen human rights were provided as a number of former communist countries and other totalitarian states began a democratization process. Human rights were recognized as an important building block in the new democracies. A need for a new type of organization, mandated to monitor and raise awareness and understanding of human rights and to play a catalytic role in creating a culture of human rights, grew. Human rights involve relationships among individuals and between individuals and the state. The practical task of protecting human rights is primarily a national one for which each state must be responsible. A NHRI is an actor which is emphasized in the work to implement human rights and is seen as a bridge between the local, the regional and the international levels. This chapter will describe what a NHRI is, different types of NHRIs as well as the status of NHRIs.

The normative framework for NHRIs, namely the Paris Principles, defines criteria for functions, composition, financing and other criteria to ensure independent and effective functioning of the institution. The mandate of the institution, to promote and protect human rights at the national level, is outlined in regard to the following functions namely promoting awareness and educating about human rights, advising governments on protection of human rights, reviewing potential human rights legislation, assisting governments in the preparation of reports and receiving and investigating complaints from the public or other bodies of alleged human rights violations. The mandate of the institution will be addressed in this chapter as well as the power of the institution which is crucial in carrying out the mandate through different functions.

Without an efficient and well functioning organization the institution will not be able to carry out its mandate. In order to investigate the efficiency of NHRIs the following features will be addressed; independence, defined jurisdiction and adequate powers, accessibility, cooperation, operational efficiency as well as accountability.

3.2 What is a NHRI?

3.2.1 The Development of NHRIs

The original concern and interest of the UN in national institutions was established in 1946 when the issue was addressed by the Economic and Social Council. In the 1960s and 1970s standard setting, in the field of human rights, gained momentum. The discussion regarding national institutions became more and more focused on the ways in which such bodies could assist in the effective implementation of these international standards. The Commission on Human Rights organized a seminar on national and local institutions to draft guidelines for the structure and functioning of such institutions in 1978 in Geneva. The seminar was held and approved a set of guidelines, endorsed by the commission on Human Rights and the General Assembly. The General Assembly invited states to take appropriate steps for the establishment of such institutions.¹¹²

During the 1980s the UN continued to take an active interest in national institutions and many national institutions were established during this time.¹¹³ The Commission on Human Rights called for a workshop to be convened in 1990, with the participation of regional and national institutions involved in the promotion and protection of human rights. The aim was to review patterns of cooperation between these institutions and international institutions such as the UN and its agencies and also to explore ways of increasing the effectiveness. The first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris in October 1991. The conclusions from the workshop were endorsed by the Commission on Human Rights in resolution 1992/54 as the Principles relating to the status of national institutions, known as the *Paris Principles*. These principles were later on also endorsed by the General Assembly in its resolution 48/134 of December 1993.¹¹⁴

The Paris Principles focus on three different areas. First of all the competence and responsibilities of NHRIs concerning their legislative foundation as well as their primary task. Second, the composition of NHRIs and the guarantees of independence and pluralism. Third, the methods of operation of NHRIs including the mandate to take up matters as well as cooperation with civil society.¹¹⁵

The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the UN. The World Conference on Human Rights reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights particularly in their advisory capacity to the competent authorities,

¹¹² Lindsnaes (2001) p. 5, The UN Handbook (1995) p. 4, Fact Sheet No. 19.

¹¹³ The UN Handbook (1995) p. 4, Symonides (2003) p. 340.

¹¹⁴ The UN Handbook (1995) p. 5, Symonides (2003) p. 340.

¹¹⁵ Lindsnaes (2001) p. 10.

their role in remedying human rights violations as well as in distribution of human rights information and education in human rights. The World Conference on Human Rights also encouraged the establishment and strengthening of national institutions in accordance with the Paris Principles. It also recognized the right of each state to choose the framework which is best suited to its particular needs at the national level. Cooperation between national institutions, particularly through exchanges of information and experience, was also encouraged.¹¹⁶

3.2.2 NHRIs According to the Paris Principles

There is not yet an ultimate definition of what constitutes a NHRI. However, if the NHRI is established according to the Paris Principles, the NHRI must be a body established in the constitution or by law designated to perform particular functions in the field of human rights.¹¹⁷ In the beginning, the formulation was very broad and institutions such as the judiciary, the legislature and social welfare structures were included. This broad definition has been pared down by subsequent work of the UN. A more narrow group of institutions has emerged, on the basis of particular common functions including educational and promotional activities, the provisions of advice to government on human rights matters, and the investigation and resolution of complaints of violations committed by public, and occasionally private, entities.¹¹⁸

The normative framework for NHRIs is the Paris Principles which define criteria for functions, composition, financing and other criteria to ensure independent and effective functioning of NHRIs. The norms constitute a broad and constructive platform where each society can make necessary adaptations. No single model of NHRIs can or should be recommended for all countries as an appropriate mechanism to fulfill their international human rights obligations. Each country is unique regarding local culture, legal traditions and existing political organization wherefore the NHRI should be set up taking into account all of these differences in each country. The role of the NHRI is complementary. They are not set up to replace the human rights organs of the UN or the NGOs in this area.¹¹⁹

The Paris Principles are divided into four parts. The first sets out the competence and responsibilities of NHRIs. The second states what the composition of the NHRI should be and how its independence and pluralism should be guaranteed. The third part provides the methods of operation of the NHRI.

¹¹⁶ The UN Handbook (1995) p. 5-6, The Vienna Declaration and Programme of Action part 1 paragraph 36 in Symonides (2003).

¹¹⁷ The UN Handbook (1995) p. 6.

¹¹⁸ The UN Handbook (1995) p. 6.

¹¹⁹ Fact Sheet No. 19.

The fourth sets down additional principles concerning the status of NHRIs which have a quasi-judicial competence.¹²⁰

The Paris Principles establish the competence and the responsibilities of NHRIs as well as their composition and guarantees of independence and pluralism. A NHRI shall be vested with competence to promote and protect human rights and shall be given as broad a mandate as possible. This shall be clearly set forth in a constitutional or legislative text specifying its composition and its sphere of competence. A NHRI can deal with human rights relating to international issues as well as with foreign policy. However, there need to be a domestic dimension, otherwise, it is not a NHRI.¹²¹

NHRIs have different responsibilities according to the Paris Principles. A NHRI should for example have the following responsibilities:

- To submit recommendations, proposals and reports on any matter relating to human rights (including legislative and administrative provisions and any situation of violation of human rights) to the Government, parliament and any other competent body
- To promote conformity of national laws and practices with international human rights instruments, to which the state is a party, and their effective implementation
- To encourage ratification and implementation of international standards
- To contribute to the reporting procedure under international instruments and, where necessary, to express an opinion on the subject with due respect to their independence
- To cooperate with the UN, regional institutions and national institutions of other countries that are competent in the areas of the promotion and protection of human rights
- To assist in formulating and executing human rights teaching and research programmes and to increase public awareness of human rights through information and education
- 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 organs¹²²

¹²⁰ Paris Principles.

¹²¹ Kjaerum (2003) p. 6.

¹²² The UN Handbook (1995) p. 5, Paris Principles *Competence and responsibilities* paragraph 1-3.

The Paris Principles include guidelines on the composition of NHRIs and the appointment of members, on guarantees of independence and pluralism and on methods of operation. The key elements of a NHRI are independence and pluralism. In order to ensure a stable mandate for the members of the NHRI, the appointment of commissioners or other kinds of key personnel, shall be given effect by an Official Act, establishing the specific duration of the mandate, which may be renewable according to the Paris Principles. Without a stable mandate for the members there can be no real independence.¹²³

The composition of the NHRI and the appointment of its members shall ensure pluralist representation of the social forces involved in the promotion and protection of human rights according to the Paris Principles. The principles specially mention representatives from:

- NGOs responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations for example association of lawyers, doctors, journalists and eminent scientists
- Trends in philosophical or religious thoughts
- Universities and qualified experts
- Parliament
- Government departments (If these government departments are included their representatives should participate in the deliberations only in an advisory capacity)¹²⁴

As mentioned earlier, NHRIs vary from country to country, and so does the ways of ensuring interdependence. This often follows the local legal tradition for that kind of administrative bodies or courts.¹²⁵

The NHRI 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 the institution to have its own staff and premises. This, in order to be independent of the Government and not be subjected to financial control. In order to ensure a stable mandate for the members 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 is ensured.¹²⁶

¹²³ Paris Principles *Composition and guarantees of independence and pluralism* paragraph 3, Symonides (2003) p. 340, The UN Handbook (1995) p. 5.

¹²⁴ Kjaerum (2003) p. 8, Paris Principles *Composition and guarantees of independence and pluralism* paragraph 1.

¹²⁵ Kjaerum (2003) p. 7.

¹²⁶ Paris Principles *Composition and guarantees of independence and pluralism* paragraph 2-3.

This is the only guidance that the Paris Principles give regarding independence. A principle of continuation is developing in practice which stipulates that there shall be a continuation of the individuals running the institution. This is to prevent a government from being able to silence an institution by changing the law and then managing the institution via individuals with strong pro-government views.¹²⁷

Within the framework of its operation the NHRI shall:

- Freely consider any question falling within its competence
- Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence
- Address public opinion directly or through any press organ
- Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened
- Establish working groups and set up local or regional sections to assist it in discharging its functions
- Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights
- Develop relations with the NGOs devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups or to specialized areas¹²⁸

The Paris Principles also recognize that a number of NHRIs have been given competence to receive and act on individual complaints of human rights violations. Cases may be brought before it by individuals, their representatives, third parties, NGOs, associations of trade unions or any other representative organization. The Paris Principles stipulates that the functions of NHRIs, in this respect, may be based on the following principles:

- Seeking a good-natured settlement of the matter through conciliation or, within the limits prescribed by law, through binding decision or, where necessary, on the basis of confidentiality
- Informing the complainant of his or her rights and of the remedies available to him and promoting access to them

¹²⁷ Kjaerum (2003) p. 6.

¹²⁸ Paris Principles *Methods of operation* paragraph a-g.

- Hearing complaints or referring them to a competent authority within the limits prescribed by law
- Making recommendations to the complement authorities, including proposals for amendment or reforms of laws, regulations or administrative practices which obstruct the free exercise of rights¹²⁹

3.2.3 Different Types of NHRIs

NHRIs come in all shapes and sizes. The variety of institutions is due to the political circumstances in which they were formed. It makes a difference if the institution was created at a moment of transition to protect against returning to human rights abuses of the past, when an institution is established by the government under pressure in order to be seen as if they are addressing the problem, or if the institution is created in a democracy in order to deepen its human rights commitment and strengthening existing mechanisms. NHRIs are often developed in accordance with the political and institutional traditions of the country.¹³⁰

No single model of NHRIs can or should be recommended for all countries. Each country is unique regarding local culture and legal traditions as well as existing political organization. The Paris Principles constitute a broad platform where each society can make necessary adaptations. NHRIs should be set up taking into account all of these differences in the respective countries.¹³¹

The existing NHRIs around the world can be categorized in five different groups namely consultative commission, commissions with judicial competence, commissions with judicial and ombudsman competence, national human rights centers and human rights ombudsmen.¹³²

An example of a *consultative commission* is the French Human Rights Commission which also is the oldest one, established in 1948. This is a broad-based commission with a membership consisting of for example key NGOs, the academia and representatives from different religious communities. The members take an active part in decisions. The Commission does not deal with individual complaints. This type of institution is also found in Greece and in a number of francophone African countries including Morocco.¹³³

¹²⁹ The UN Handbook (1995) p. 5, Paris Principles *Additional principles concerning the status of commissions with quasi-judicial competence* paragraph a-d.

¹³⁰ Lindsnaes (2001) p. 49-50.

¹³¹ Fact Sheet No. 19.

¹³² Kjaerum (2003) p. 8, Internet source: <http://www.nhri.net/default.asp?PID=86&DID=0> accessed 2005-05-15 12.00.

¹³³ Kjaerum (2003) p. 8.

A number of common law countries such as South Africa, India and Ireland have *commissions with judicial competence*. This model has also been used as inspiration in Latvia and Nepal. These institutions have a number of commissioners appointed according to different criteria. An important functioning is the handling of individual complaints about human rights violations. Some countries have expanded the mandate of such an institution to also cover the mandate of a traditional ombudsman and thereby it becomes a *commission with judicial and ombudsman competence*. This is the case in Ghana, Mexico, Mongolia and Tanzania.¹³⁴

National human rights centers have developed in for example Denmark, Germany and Norway. The Danish Center for Human Rights is the oldest one and was established in 1987. This type of institution is similar to the consultative commission with a broad membership base. However, the work of the institution is research-based and the members play a less active role in the specific work of the institution. They mainly serve to give policy directions to the management. These institutions do not generally deal with individual complaints.¹³⁵

A number of *human rights ombudsmen* have obtained formal status as national institutions. This is the case in Sweden where specialized ombudsmen have been recognized collectively. Ombudsmen in Latin America and in some Eastern and central European countries often have such a strong human rights mandate that they have been recognized as NHRIs, even if they fall short of the formal institutional input from the civil society. The ombudsman may be an individual or a group of persons. The appointment procedures shall ensure pluralist representation of the social forces involved in the promotion and protection of human rights according to the Paris Principles. A NHRI has a pluralist representation in the governing structures compared to the traditional ombudsman institutions. However many of the institutions do have a dynamic interaction with civil society groups.¹³⁶ The ombudsman is generally appointed by the parliament acting on constitutional authority or through special legislation. The primary function is to protect the rights of victims claiming to be victim of unjust acts on the part of public administration. The ombudsman will often act as an impartial mediator between the individual and the government.¹³⁷ Access to the ombudsman varies from country to country. In some countries, individuals may submit a complaint through an intermediary such as a member of parliament. In other countries, individuals may lodge a complaint directly to the ombudsman's office. The complaints are normally confidential. In some countries the ombudsman is able to carry out self initiated investigations. These often relate to issues of a broad public concern.¹³⁸

¹³⁴ Kjaerum (2003) p. 8.

¹³⁵ Kjaerum (2003) p. 8.

¹³⁶ Kjaerum (2003) p. 8-9, Paris Principles *Composition and guarantees of independence and pluralism* paragraph 1.

¹³⁷ Fact Sheet No. 19.

¹³⁸ Fact Sheet No. 19.

According to the Paris Principles, a NHRI shall be vested with competence to promote and protect human rights and shall be given as broad a mandate as possible. This implies that institutions with a singular human rights mandate will not normally be categorized as a NHRI but rather as a specialized institution such as ombudsman against ethnic discrimination, institutions dealing with human rights issues related to disabled persons, children or other groups. ICC has however recognized that a group of specialized institutions can be recognized collectively as a NHRI since they jointly cover a broad range of key human rights issues.¹³⁹

Every NHRI is unique. However, many of the NHRIs share a number of important similarities. They are normally administrative in nature and are not judicial or law-making bodies. They have an ongoing advisory authority regarding the implementation of human rights at the national and international level. Many NHRIs are attached to the executive branch of government. The actual level of their independence depends on a number of factors including membership and the manner in which they operate.¹⁴⁰

The majority of existing NHRIs take the form of human rights commissions or an ombudsperson. Less common are specialized national institutions which function to protect vulnerable groups such as women and children. Normally NHRIs are not able to take binding decisions in resolving a complaint. NHRIs exist in more than a hundred countries and about half of them are recognized as corresponding to criteria established by the Paris Principles.¹⁴¹

Some NHRIs are entrusted with one of the most important functions namely the investigation of alleged human rights violations. The object of an admissible complaint is, at many offices of the ombudsman, restricted to the range of possible objects to government departments, government instrumentalities and public officials. A complaint will only be considered if it concerns an action of government. Other NHRIs are empowered to investigate also other human rights violations in other spheres of public life. In these cases the entity could be an individual, a public or a private company or an organization. The type of action which can be the basis of complaint also differs between the institutions. An ombudsman institution will normally be restricted to examine allegations of unfairness or illegality in the administrative process.¹⁴² The powers of the ombudsman are quite similar to those of human rights commissions. Both may receive and investigate individual complaints and neither has the power to make binding decisions. However, their differences explain why some countries establish and maintain both types of institutions. The ombudsman is ensuring fairness and legality in the public administration while the commission is more specifically concerned

¹³⁹ Kjaerum (2003) p. 6-7, Paris Principles *Competence and responsibilities* paragraph 1 and 2.

¹⁴⁰ Symonides (2003) p 315.

¹⁴¹ Symonides (2003) p. 316.

¹⁴² The UN Handbook (1995) p.28-29.

with discrimination addressing themselves to the actions of private bodies, individuals and governments. Normally, the principal focus of the ombudsman is on individual complaints, but they are becoming more engaged in a wider range of activities for the promotion and protection of human rights.¹⁴³

NHRIs at the domestic level are working both with strictly legal issues as well as fulfilling their obligation to promote human rights in general. The key functions of a NHRI, in order to implement domestic and international human rights norms, are to monitor state practices in relation to their compliance with international human rights instruments, give advice as well as inform and educate about human rights.¹⁴⁴

NHRIs in Eastern and Western Europe are very diverse ranging from institutions which are almost exclusively dedicated to handle individual complaints to institutions which are more researched and advisory based. NHRIs in most European countries are not authorized to handle individual complaints. This might be the case because of a reluctance to extend such competence outside the judiciary or because well-established and strong complaints mechanisms already exist. The Asia-Pacific region is without a formal human rights mechanism. The development of NHRIs throughout the region has created a framework for cooperation on human rights which is focused on practical measures that achieve effective outcomes. The NHRIs vary in their structures, capacities as well as in their resources. However, the NHRIs are substantial organizations for the strengthening of human rights, democracy and civil society in each of their countries. Unlike NHRIs in other regions, NHRIs in the Asia-Pacific region, need to focus more on creating a regional cooperation. In Latin-America the institutions are mainly different types of ombudsman offices. Unlike ombudsmen in other regions the ombudsman in Latin-America has to deal with recent wounds. The mandate of the ombudsman in Latin-America includes the function of defending human rights. The creation of these offices is a respond to the need of incorporating at a state level, a credible mechanism for the protection, promotion and education of human rights, in the democratization of a region that has suffered grave violations of human rights. These violations were in most incurred or condoned by the State.¹⁴⁵

In the African context there is an unclear division between the ombudsman institution and the human rights commission. An ombudsman treats human rights issues in connection with its broader activities whereas human rights commissions deal only with human rights issues. It has been argued that there is a tendency to separate the office of the ombudsman from that of the NHRI. However, there seems to be no pattern in as to which model different countries have implemented. This can be connected to the assumption that post-independence Africa has been characterized by massive human rights violations which should be handled separately from administration and cor-

¹⁴³ Fact Sheet No. 19.

¹⁴⁴ Lindsnaes (2001) p. 115.

¹⁴⁵ Lindsnaes (2001) p. 114-117 and 141-148 and 215-216.

ruption. Inherent, in this argument, is an assumption that over-sized institutions are ineffective and that smaller and specialized institutions are more efficient.¹⁴⁶

A NHRI should establish a close contact with NGOs and community groups which are involved in the promotion and protection of human rights. The support of these bodies can be useful in enhancing the visibility of an institution by informing the general public of its existence. It is common that NGOs representatives are formally attached to the institution in an advisory or even decision-making capacity. The links to the NGOs can help to highlight the institution and secure community support for the work. Another reason to cooperate with NGOs is that, persons most vulnerable to human rights violations, are often unwilling to approach any official body. NGOs can serve as intermediaries between victims of violations and NHRIs. NGOs can provide the support and information necessary to encourage personal contact. NGOs will often be able to provide, because of their greater operational flexibility, NHRIs with detailed information on the domestic human rights situation and on structural or legislative inadequacies, as well as alert in to social and other changes. NGOs can be useful partners for individual projects in suitable areas for cooperation such as education and training.¹⁴⁷

NHRIs regional and international networks and structures can be of importance regarding the independence of the institution. These networks could probably mobilize an international reaction which could prevent a hostile governmental attack against an institution. These regional and international networks should thereby be an element in establishing the independence.¹⁴⁸

3.2.4 Cooperation between NHRIs

At the Second International Workshop in Tunis in 1993 the ICC was established. The ICC is a representative body of NHRIs which was established for the purpose of creating and strengthening NHRIs in conformity with the Paris Principles. The ICC has sixteen members, four from each of the four regions Africa, America, Asia/Pacific and Europe. The Office of the High Commissioner for Human Rights assists in the work. The ICC has three different areas of responsibility:

- Liaisons among institutions at the global level and with the UN
- Accreditation of national institutions that comply with the Paris Principles

¹⁴⁶ Lindsnaes (2001) p. 173.

¹⁴⁷ The UN Handbook (1995) p. 14.

¹⁴⁸ Kjaerum (2003) p. 7.

- Organization of the International Conference every second year¹⁴⁹

Any national institution can seek membership to the ICC by applying to the Chairperson of ICC. The national institution shall supply a copy of the legislation or other instrument by which it is established and empowered, an outline of its organizational structure including staff complement and annual budget, a copy of its most recent annual report or equivalent document, as well as a detailed statement showing that it complies with the Paris Principles or an outline of any respects in which it does not comply and any proposals to ensure compliance.¹⁵⁰ The Sub-Committee on Accreditation has the mandate to review and analyse accreditation applications which are forwarded by the Chairperson of the ICC. Furthermore, the mandate includes making recommendations to ICC members on the compliance of the applicants with the Paris Principles. A meeting of the ICC shall be held when the annual meeting of the Commission for Human Rights is held. The Sub-Committee on Accreditation will meet before and during the annual meeting of the ICC to review new applications, additional information as well as preparing recommendations.¹⁵¹

The different classifications used by the committee are:

- A: Compliance with the Paris Principles
- A(R): Accreditation with reserve – granted where preliminary analysis indicates compliance with the Paris Principles but insufficient documentation is submitted to confer A status
- B: Observer Status – Not fully in compliance with the Paris Principles or insufficient information provided to make a determination
- C: Non-compliant with the Paris Principles¹⁵²

After this, a report with recommendations and rationale will be presented to the ICC on which they base their decision. The Chairperson of the ICC will then inform the applicant institutions of the decision taken and their rationale.¹⁵³

¹⁴⁹ The International Co-ordination Committee of National Institutions for the Promotion and Protection of Human Rights Rules of Procedure in the Preamble, The UN Handbook (1995) p. 6.

¹⁵⁰ The International Co-ordination Committee of National Institutions for the Promotion and Protection of Human Rights Rules of Procedure article 3 (c).

¹⁵¹ Rules of Procedure for the ICC Sub-Committee on Accreditation article 1, The International Co-ordination Committee of National Institutions for the Promotion and Protection of Human Rights Rules of Procedure article 8, Rules of Procedure for the ICC Sub-Committee on Accreditation article 4.1.

¹⁵² Rules of Procedure for the ICC Sub-Committee on Accreditation article 5.

¹⁵³ Rules of Procedure for the ICC Sub-Committee on Accreditation article 6.

The purpose of the International Conference held by ICC is to develop and strengthen cooperation between national institutions, to discuss items on the agenda and to ensure their follow up at the national level.¹⁵⁴ All national institutions shall be invited to the Conference. However, only fully accredited national institutions shall have the right to vote. For example the UN High Commissioner on Human Rights, human rights experts, international, regional and the host country human rights associations and NGOs are also invited to the Conference.¹⁵⁵

3.2.5 NHRIs at the International and Regional Level

NHRIs should cooperate, not only with other NHRIs, but also with the UN as well as with the regional- and national institutions of other countries that are competent in the areas of promotion and protection of human rights. An effective NHRI will not function alone but will establish and strengthen cooperative relationships with a wide range of other organizations and groups.¹⁵⁶

NHRIs are creating a platform to promote human rights at the regional and international levels. A parallel development is taking place in relation to legal human rights mechanisms. NHRIs can contribute in four different areas in relation to the work of the UN and the regional treaty bodies. First of all, by providing information on the situation in the country. Secondly, by monitoring the implementation of recommendations. Thirdly, by engaging in dissemination of information and education on the work of the treaty bodies and fourthly, by assisting in submitting individual complaints to treaty bodies.

Ties are developing between the international human rights machinery and the NHRIs. Collaboration is developing in relation to the general promotion of human rights as well as in relation to human rights bodies. International and regional networks play an important role in for example the exchange of information regarding best practices and new developments. However there is an issue that needs to be discussed regarding the status of NHRIs and their representation at for example UN meetings. Should they represent their country, should they be recognized as NGOs or should they be recognized as a third category of institutions in the international arena? The status of NHRIs has varied over the years. At the World Conference on Human Rights in 1993 NHRIs were for the first time allocated time to speak in their own capacity. The same right was granted in the UN Commission on Hu-

¹⁵⁴ Rules of Procedure of International Conferences on National Institutions for the Promotion and Protection of Human Rights article 3.

¹⁵⁵ Rules of Procedure of International Conferences on National Institutions for the Promotion and Protection of Human Rights article 5-6.

¹⁵⁶ The UN Handbook (1995) p. 14.

man Rights in 1998 as a provisional practice. A majority in the Commission may decide to alter the practice.¹⁵⁷

There is yet another complicated issue to discuss regarding what items NHRIs shall be mandated to address. Should NHRIs be limited to speak only under the agenda item on NHRIs? Time is an element which is an important factor since more speakers would be added to the list. Is it enough with the views of the states and the NGOs? Do they present a wide spectrum of views as it is? These are arguments that should be weighed against the unique position of NHRIs which gives them an in-depth insight into specific human rights problems which neither states nor NGOs possess or are willing to table. NHRIs have a special status which makes their positions harder to marginalize compared to NGOs. Yet another problem is which institutions that should be allowed to speak. The UN Commission on Human Rights tends to let anyone speak who wants to enlist as a national institution. The ICC would like to limit the speakers to the institutions that are fully accredited as NHRIs according to the Paris Principles.¹⁵⁸

NHRIs have a formal representation even at the regional level. For example a formal roundtable between the Council of Europe and the European national institutions was for example established in 1997. The aim was regular meetings to exchange views and experiences on the promotion and protection of human rights.¹⁵⁹ Furthermore, NHRIs can participate, without voting rights, in deliberations on issues that are of interest for them in the African Commission on Human and Peoples' Rights. NHRIs may submit proposals that may be put to vote at the request of any member of the Commission.¹⁶⁰

NHRIs have a role to play in relation to providing information to treaty bodies which is foreseen in the Paris Principles. NHRIs have the responsibility to contribute to the reports which states are required to submit to UN bodies and committees and to regional institutions. And also, where necessary, to express an opinion on the subject with respect to their independence. One approach is that the NHRI is mandated by the government to write the entire state report or otherwise contribute to the official report. Another approach is for the NHRI to make a separate supplementary report or to collaborate with for example NGOs. However, the main issue is that the relevant information reaches the experts in the treaty body which is what the NHRI has to ensure.¹⁶¹

¹⁵⁷ Kjaerum (2003) p. 16-17.

¹⁵⁸ Kjaerum (2003) p. 17.

¹⁵⁹ Kjaerum (2003) p. 18.

¹⁶⁰ Resolution on granting observer status to national human rights institutions in Africa, Kjaerum (2003) p. 18.

¹⁶¹ Kjaerum (2003) p. 18.

3.3 The Role of NHRIs

3.3.1 NHRIs and the Promotion and Protection of Human Rights

3.3.1.1 Promoting Awareness and Educating about Human Rights

NHRIs are mandated to take part in the public debate which is an important part of rising public awareness in relation to human rights in general as well as specific human rights issues. An open debate, on human rights issues, is a precondition for creating understanding and respects for these standards.¹⁶²

Intergovernmental organizations and NGOs are carrying out many promoting activities at the international level. However, the implementation of human rights standards rests primarily at the national level which is being acknowledged by domestic human rights actors. NHRIs are normally entrusted to promote awareness of human rights. The activities are not always specified wherefore the institution itself will have to develop a plan of action to ensure the realization of the goals. Further down, some activities will be mentioned which can be pursued by NHRIs in the effort to promote human rights by informing and educating, by shaping values and attitudes and by encouraging action in defense of human rights.¹⁶³

First of all, NHRIs should provide basic information materials about for example the institution itself, international human rights instruments and standards, reports of the State to treaty bodies and the following concluding observations as well as domestic legislation relating to human rights. The institution should also have information of the work performed by the institution. Many institutions produce their own information material wherefore the material can be targeted to those sectors of society most in need of information and education. Yet another way to spread awareness of human rights is to organize promotional events such as drawing competitions with a human rights theme for children. Another way of reaching out with information is through the media, if they are free to express themselves. A NHRI cannot function properly unless the community is aware of its existence wherefore each institution should have a policy goal of high visibility.¹⁶⁴

NHRIs might be able to play an important role in educating various groups about human rights standards. Some NHRIs could even develop training courses which transform knowledge into operational skills. These courses can be targeting a number of professional groups in a society such as law-

¹⁶² Kjaerum (2003) p. 10, Paris Principles *Competence and responsibilities* paragraph 3 (g).

¹⁶³ The UN Handbook (1995) p. 18.

¹⁶⁴ The UN Handbook (1995) p. 19-20, National Human Rights Institutions Best Practice (2001) p. 23.

yers, judges, prosecutors, the police, members of parliament and the government as well as their employees, social workers, teachers, the media, the armed forces, community leaders as well as NGOs.¹⁶⁵

3.3.1.2 The Role to Monitor and to Advise

A NHRI at the domestic level are working both with strictly legal issues as well as fulfilling their obligation to promote human rights in general. A NHRI will be an obvious target since the institution often will be the messenger of the information that for example a specific law or an administrative decision is not in conformity with the international human rights obligations of the State. An element in this potential conflict, between organs of the state and a NHRI, is to define the borderline between carrying out the mandate according to the Paris Principles and politicizing.¹⁶⁶

NHRIs are given a mandate by the Paris Principles broader than just applying human rights law to a specific piece of legislation or a particular case. The mandate usually includes making recommendations and proposals. Some NHRIs have the opportunity to recommend new legislation or amendments to existing laws. This is a wider mandate than that of most traditional ombudsmen. Normally, an ombudsman will be excluded from intervening in the legislative process unless the specific intervention is related to laws directly affecting the ombudsmen institution itself. The mandate is broader for other NHRIs since they are called upon directly, to address the responsibility of the State to fulfill its human rights obligations. An important part of the implementation of human rights concerns the legislation of the country wherefore a NHRI cannot be excluded from this area.¹⁶⁷ The power of analysing legislation and making recommendations is important for the promotion and protection of human rights for two reasons. First of all, it might lead to codification of human rights principles into the domestic legislation. Secondly, it might raise awareness about international treaty obligations and human rights norms.¹⁶⁸

NHRIs are usually empowered to advise parliament, the executive and or the judiciary on human rights issues and also in assisting them to promote and protect human rights. NHRIs might for example be given a general authority to bring matters concerning human rights to the notice of the relevant ministry, department or official. NHRIs may be able to, directly to the parliament, submit opinions on proposed or on existing legislation as well as assisting in the drafting of new legislation. NHRIs are playing an important role in overseeing the implementation of international human rights standards as well as assisting in fulfilling the reporting obligations of the State

¹⁶⁵ The UN Handbook (1995) p. 21, National Human Rights Institutions Best Practice (2001) p. 23.

¹⁶⁶ Kjaerum (2003) p. 10.

¹⁶⁷ Kjaerum (2003) p. 10, Paris Principles *Competence and responsibilities* paragraph 3 (a) (i) (g).

¹⁶⁸ National Human Rights Institutions Best Practice (2001) p. 24.

under international treaties to which the State in question are parties.¹⁶⁹ The founding legislation of the NHRI will normally regulate whether or not the NHRI can advise or assist government on its own initiative. It is rare that a government will be legally compelled to refer any legislative or other matter to a NHRI. The capacity to advise will be of little use if the receiver has no will to consider and act on the information in the advice. Governments, which have granted a NHRI with advisory capacity, should ensure the development of appropriate mechanisms for acquiring, canalizing and utilizing the advice. This could for example be done if the government would have to table recommendations in parliament together with an indication of whether the government intends to take action and if so, how.¹⁷⁰

NHRIs can be useful in the work of improving the implementation of human rights standards in the domestic legislation as well as improving the domestic legislation itself. A NHRI which has the power to conduct in-depth investigations on human rights violations is probably well placed to comment on legislative inadequacies. Furthermore, a NHRI with the power to receive and act on individual complaints would probably be well placed to identify areas where legislation needs to be improved or if there are other changes needed.¹⁷¹

NHRIs are normally able to submit general policy advice to government bodies. This is usually very important and may lead to improvements in the day-to-day human rights situation for many individuals. The ability of a NHRI, to offer general policy advice to the government, on national human rights issues is usually related to other responsibilities that the institution is vested with. In the course of conducting its inquiries the NHRI may become aware of government policies and practices which is having a negative effect on the human rights issue in question. Since the NHRI is conducting such examinations the institution is also being able to alert the government and the general public on the existence of a problem and suggest ways in which the problem might be addressed.¹⁷²

The relationship between national and international human rights standards vary from state to state. When the government of a state ratifies or accedes to an international human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained in the instrument.¹⁷³ A NHRI can provide advice and assistance to the government in the implementation of international standards. This might for example involve consideration of whether domestic legislation is in conformity with international standards or whether additional legislation would be required. The establishment of a

¹⁶⁹ National Human Rights Institutions Amnesty International's recommendations for effective protection and promotion of human rights (2001) p. 9-10, The UN Handbook (1995) p. 23.

¹⁷⁰ The UN Handbook (1995) p. 23.

¹⁷¹ National Human Rights Institutions Amnesty International's recommendations for effective protection and promotion of human rights (2001) p. 9, The UN Handbook (1995) p. 24.

¹⁷² The UN Handbook (1995) p. 25.

¹⁷³ National Human Rights Institutions Best Practice (2001) p. 2.

legal base of human rights is essential but not sufficient. Full promotion and protection of human rights cannot be achieved solely through legislation but requires a range of measures. A NHRI might be able to advise the government as to other measures which could or should be taken in fulfillment of the international obligations of the State. This might involve measures like public education activities, modifications in financial policy and the establishment of reporting machinery within and between ministries.¹⁷⁴

The States are required to submit reports to the committees established under the international human rights treaties. NHRIs can contribute to this procedure. However, their ability to assist will depend on a number of factors such as the functions of that institution and the willingness of the government to seek its assistance. NHRIs might be able to offer information, data and statistics. Some NHRIs may review draft reports to ensure their accuracy and completeness.¹⁷⁵

NHRIs are sometimes being criticized for politicizing. The institution runs a risk of being caught in the struggle between opposing parties especially if the issue is controversial. This has been the case in many countries especially concerning ethnic minorities, indigenous groups or refugees and asylum seekers. A position on a particular case should be taken by a NHRI, based on internationally agreed norms, ratified by the state. However, human rights norms are often open to interpretation. When there is no case law, or the case law is open to interpretation, the NHRI is obliged to table all the uncertainties in relation to the specific issue.¹⁷⁶ NHRIs can still contribute to defining the scope of legal obligations when there is no case law and only a vague human rights norm. According to the Paris Principles NHRIs have a legitimate role to play in recommending ways to solve a particular problem by law or by administrative decisions. The NHRI should use general human rights values, human rights methods of interpretation and soft law as the institution tries to find a solution.¹⁷⁷

The functions and powers of a particular institution will usually be a good indication of the ultimate value of the advisory role of the institution. A NHRI with a narrow mandate and little independent authority may lack the knowledge, experience and will to advice wisely. On the other hand, a NHRI with a very broad mandate and independent status, will probably have a greater capacity to get hold of and create information and thereby develop opinions and transmit these opinions to those who are able to achieve substantial change.¹⁷⁸

¹⁷⁴ The UN Handbook (1995) p. 26.

¹⁷⁵ National Human Rights Institutions Amnesty International's recommendations for effective protection and promotion of human rights (2001) p. 9, The UN Handbook (1995) p. 27.

¹⁷⁶ Kjaerum (2003) p. 11.

¹⁷⁷ Kjaerum (2003) p. 11, Paris Principles *Competence and responsibilities* paragraph 3.

¹⁷⁸ The UN Handbook (1995) p. 23.

3.3.1.3 Investigating Allegated Human Rights Violations

The main difference between the mandates of NHRIs is whether or not they are mandated to handle individual complaints. The generally applicable Paris Principles are followed by a section with additional principles for the status of commissions with quasi-judicial (quasi-jurisdictional) competence.¹⁷⁹

The ability to protect human rights of individuals, by investigating violations and seeking remedies or redress for victims, is an important power of a NHRI.¹⁸⁰ The means available, to resolve complaints, will affect public perception and the ability to successfully foster a culture of respect for human rights. Delays, in the provision of remedies, will probably reduce public confidence in the NHRI and might scare the victims from looking to the NHRI for redress.¹⁸¹

Whether or not the NHRI is vested with the power to investigate alleged human rights violations, is a great indicator as to whether the government is committed to take international and domestic obligations seriously or not. An effective investigatory mechanism should be characterized by adequate legal capacity, organizational competence, a defined and appropriate set of priorities as well as the political will to pursue. Without the political will it is impossible to function effectively. It is necessary with some support from the government.¹⁸²

The relationship with, and delimitations of competence in relation to, domestic courts is important. The term quasi-judicial is defined as having characteristics of a judicial act but performed by an administrative agency or official. The functioning of NHRIs, with mandate to investigate complaints, often resembles the work of domestic courts. Therefore the jurisdictional limitations on the competence of both institutions must be precisely defined, and the procedural rules clearly stated. The NHRIs neither should nor could be seen as a substitute for the mechanisms in the ordinary justice system.¹⁸³ Consequently, the ability to receive and act on complaints should be seen as an additional measure of security to ensure that the rights of all citizens are fully protected. The NHRI should, by the structure and functioning of the complaints mechanism, be able to guarantee an accessible, rapid and inexpensive resolution of the matter. The NHRI should be able to offer some-

¹⁷⁹ National Human Rights Institutions Best Practice (2001) p. 21, Paris Principles *Additional principles concerning the status of commissions with quasi-judisdictional competence*.

¹⁸⁰ National Human Rights Institutions Best Practice (2001) p. 21, Paris Principles *Additional principles concerning the status of commissions with quasi-judisdictional competence*.

¹⁸¹ National Human Rights Institutions Best Practice (2001) p. 25.

¹⁸² The UN Handbook (1995) p. 28.

¹⁸³ Lindsnaes (2001) p. 93.

thing that the legal system often cannot offer such as the previous. Yet another thing is the expertise in human rights.¹⁸⁴

The complaints mechanism can be established in different ways. The procedural aspects should be clearly defined, legally well-established and strictly adhered to. What complaints should be investigated by NHRIs? It is essential to clearly establish criteria for admissibility of complaints. First of all, it should be decided what kind of complaints will be accepted for investigation. This requires a determination of both the object and the subject-matter of admissible complaints. The object of an admissible complaint is the entity or group of entities against which it can be made. Some NHRIs are only empowered to receive and investigate complaints against government meanwhile others might receive complaints of human rights violations occurring in other spheres of public life where the entity complained against could be an individual, a public or private company or an organization. The subject-matter of admissible complaints is the type of action which can be the basis of complaint. Many provisions establishing the subject-matter of admissible complaints refer to the human rights guarantees in the constitution or domestic legislation. Some refer to the human rights instruments to which the state in question is a party. Nevertheless, the subject-matter of complaints should be specified as precisely as possible, avoiding a vague mandate which could be broadly interpreted. A NHRI will almost always have to priorities regarding issues to be considered even if the mandate is strictly defined.¹⁸⁵

A lot of NHRIs impose restrictions on both the object and subject-matter of complaints. It is important that restrictions do not prevent the institution from fulfilling the purposes of the institution. Restrictions on the object of the complaint might for example concern complaints against members of the legislature or the judiciary which national institutions normally are not granted the power to deal with. The restrictions are often connected with the functions of the institutions. Furthermore, most NHRIs are not granted to consider issues which are already the subject of scrutiny by another body. However, some restrictions might be more problematic. If a NHRI for example is prevented from investigating the police or the military there is a potential risk of reducing the effectiveness of the NHRI as a protector of human rights. As mentioned earlier, it is an inappropriate restriction if the NHRI is prevented from fulfilling its purposes and the functions with which it has been entrusted. Restrictions on the subject-matter of the complaint might for example concern the specific responsibilities with which the institution has been entrusted. For example a commission against racial discrimination will not deal with other types of discrimination.¹⁸⁶

¹⁸⁴ National Human Rights Institutions Amnesty International's recommendations for effective protection and promotion of human rights (2001) p. 13, The UN Handbook (1995) p. 28.

¹⁸⁵ The UN Handbook (1995) p. 28-29.

¹⁸⁶ National Human Rights Institutions Amnesty International's recommendations for effective protection and promotion of human rights (2001) p. 12, The UN Handbook (1995) p. 29.

Most complaints mechanisms entitle any person to lodge a complaint and sometimes even non-citizens, refugees, prisoners as well as children are included. Whether an association of persons is included or not differs but it should be directly addressed in the legislation establishing the complaints procedure. Sometimes the most vulnerable to human rights violations are not in a position to invoke protective mechanisms such as a complaints procedure. The victim of a violation might for example be a child, a person with a functional disorder or a missing or dead person. It is therefore important that there are formal provisions for representatives complaints lodged by for example relatives, legal representatives or NGOs. Some NHRIs have established class action where an individual affected by a human rights violation is able to complain not only for themselves but also on behalf of others who are similarly affected. Complaints cannot be anonymous since the NHRI has no way of verifying the validity of the complaint as well as it is impossible to provide redress to an unknown victim. It is therefore crucial for the institution to develop confidentiality structures and procedures.¹⁸⁷

NHRIs are alternative dispute-resolution mechanism. There are three variants of dispute resolution namely arbitration, conciliation and mediation. NHRIs are especially involved in the two latter ones. A third party, such as a NHRI, can make binding decisions in the arbitration, non-binding recommendations in the conciliation and control the process without giving a decision in the mediation.¹⁸⁸

Once a complaint has been received the NHRI can begin the investigation. The institution needs certain resources, including trained staff as well as sufficient financial means, to be able to conduct an effective investigation. To be able to conduct an efficient investigation some powers are important and may include for example power to inform the object of the complaint in order to get a reply, freedom to conduct on-site investigations, power to call parties to a hearing, power to grant immunity from prosecution to witnesses, power to hear individuals who has knowledge concerning the alleged violation, summon witnesses and compel their appearance as well as receiving oral and written statements under oath. The granting of sufficient and appropriate powers is not enough to ensure the conduct of a proper investigation. Every NHRI should develop its own standards and guidelines. These guidelines should be made public, serving to inform complainants of the investigatory process in which they are involved. It is also possible hereby to improve the public confidence in the institution as a competent body for receiving and acting on allegations of human rights violations.¹⁸⁹

Precisely as the investigatory procedure the remedies vary a lot. Some NHRIs have been granted significant authority and might impose penalties

¹⁸⁷ National Human Rights Institutions Amnesty International's recommendations for effective protection and promotion of human rights (2001) p. 9-10, 21, The UN Handbook (1995) p. 30-31.

¹⁸⁸ The UN Handbook (1995) p. 31.

¹⁸⁹ Lindsnaes (2001) p. 26, The UN Handbook (1995) p. 32-33.

or refer a matter to a higher body. Meanwhile, other NHRIs are limited to recommendations which are transmitted to parliament or to a government agency for further action.¹⁹⁰

NHRIs will almost always be empowered of giving recommendations. The jurisdiction of the institution will decide if the recommendation is addressed to a government agency, a public official, a private individual or an organization. The recommendation may propose the adaptation of measures to prevent or reduce the effect of a human rights violation, a change in practice or procedure or advocate an apology or payment of damages. Some NHRIs have the power to refer a case to another responsible agency. This is usually being invoked as a second or subsequent step in the process of resolving the case. This might for example be the case if a settlement cannot be secured, if the terms of an agreed settlement have not been met, if the investigation reveals that the matter may be more appropriately dealt with by another body or if one or both of the parties are dissatisfied with the results of an investigation or decision taken. NHRIs may also be granted powers with the aim to provide relief to victims of human rights violations. Sometimes the situation can be restored, and if not, the methods of redress may include the ordering of a public apology or compensation. Some NHRIs are even empowered to make legally enforceable orders and binding decisions. Normally the actual enforcement procedure is entrusted to another, such as a court or a prosecutor. However, the power to make enforceable orders will strengthen the authority of the institution. The results of an investigation will normally be published which will also strengthen the institution.¹⁹¹

NHRIs might also be vested with the competence to initiate investigations without the need to receive a complaint or invitation of a government agency. This is important since the most vulnerable of human rights violations are not likely to make a complaint or have others to represent them. The most powerful tool of enforcing human rights standards is a decision of a court. A NHRI might be granted to intervene in legal proceedings dealing with human rights issues over which the NHRI has competence. The institution can hereby ensure that the court is made aware of human rights implications.¹⁹²

3.3.2 Elements for the Efficiency of NHRIs

3.3.2.1 Independence

The shape and size of different NHRIs vary a lot. NHRIs can best be defined as quasi-governmental or statutory institutions with human rights in

¹⁹⁰ The UN Handbook (1995) p. 32-33.

¹⁹¹ Lindsnaes (2001) p. 26, The UN Handbook (1995) p. 33-34.

¹⁹² National Human Rights Institutions Amnesty International's recommendations for effective protection and promotion of human rights (2001) p. 10, The UN Handbook (1995) p. 35, Lindsnaes (2001) p. 28-29.

their mandate. Autonomy and independence are fundamental to such institutions. A form of precondition for the effective functioning and credibility for a NHRI is independence from the executive branch of government.¹⁹³

In order to gain confidence and in order to be efficient in carrying out the functions a NHRI need to be, as mentioned, independent and not manipulated by the government, political parties or by any other entity that is able to influence the work of the institution. Several factors can determine the degree of independence such as the establishment, appointment, funding as well as independence through composition.

The founding law of a NHRI will decide the legal independence of the institution especially the independence from the government. The institution should at least be able to perform its functions without interference or obstruction from any branch of government or any private or public entity. It would be even better if the institution would be granted separate and distinct legal personality of a nature which will permit it to exercise independent decision-making power. The NHRI needs to be able to conduct its day-to-day affairs independently of any other individual, organization, department or authority. Recommendations, reports or decisions taken by the NHRI should not be subjected to review of any other authority or entity.¹⁹⁴

The process of establishing a NHRI is important and the process should be transparent and include all relevant actors. If a wide variety of participants are being included, into the establishment process, the NHRI is more likely to have the trust and confidence of both the government as well as the people. It will be difficult to build trust if the government creates a NHRI in a climate of secrecy. In the process of creating a NHRI it can be useful with public consultations if they address for example the national human rights situation, the legal base of the institution, the mandate and powers of the institution as well as measures to ensure independence, pluralism and adequate resources.¹⁹⁵

It can be argued that an institution can never be more independent than the individuals of whom it is composed. The founding legislation for the NHRI should set out terms and conditions applicable to the members. These terms and conditions should address issues such as method of appointment, criteria of appointment, duration of appointment, whether members may be re-appointed, who may dismiss members and for what reasons as well as privileges and immunities. The Paris Principles state that, in order to ensure a stable mandate for the members of the national institution, their appointment shall be affected 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.¹⁹⁶ As mentioned earlier, it is im-

¹⁹³ Lindsnaes (2001) p. 49.

¹⁹⁴ The UN Handbook (1995) p. 10-11.

¹⁹⁵ National Human Rights Institutions Best Practice (2001) p. 9.

¹⁹⁶ Paris Principles *Composition and guarantees of independence and pluralism* paragraph 3.

portant with more specific criteria for appointment to be able to guarantee the independence in the decision-making procedures, the professional level of for example the staff as well as public credibility. The founding legislation of the NHRI should also specify, in as much detail as possible, the circumstances under which a member can be dismissed.¹⁹⁷

Another legal mean of securing independence is the granting of certain privileges and immunities to members of the NHRI. This is especially important for institutions which are granted the authority to receive and act on complaints of human rights violations. Members of a NHRI should enjoy immunity from civil as well as criminal proceedings regarding acts performed in an official capacity.¹⁹⁸

A NHRI which has no control over its finances will probably be dependent on the government or by any other body which exercises such control. The source and nature of the funding should be specified in the founding legislation of the NHRI. It is advisable to ensure that the budget of a NHRI is not connected to the budget of a government department or ministry. According to the Paris Principles, the purpose of the funding should be to enable the national institution to have its own staff and premises and not be subject to financial control which might affect its independence. The funding should also be sufficient in order to be able to secure a high level of activity and professionalism.¹⁹⁹

The personnel of the NHRI is very important for the performance of the institution as a whole. The quality of the staff is important. The credibility of the institution is partly depending on the membership of the institution being respected and independent.²⁰⁰ A NHRI should reflect the social profile of the community where the institution operates.²⁰¹ Otherwise, the institution is unlikely to reflect the diversity of society wherefore it cannot be regarded as truly representative. This will be difficult to achieve where a NHRI is composed by one person as in the case of many offices of the ombudsman. Independence, public legitimacy and accessibility are all increased if there is diversity in the membership of the NHRI.²⁰²

¹⁹⁷ The UN Handbook (1995) p. 11.

¹⁹⁸ The UN Handbook (1995) p. 11.

¹⁹⁹ National Human Rights Institutions Amnesty International's recommendations for effective protection and promotion of human rights (2001) p. 23, Lindsnaes (2001) p. 22, The UN Handbook (1995) p. 11, Paris Principles *Composition and guarantees of independence and pluralism* paragraph 2.

²⁰⁰ Lindsnaes (2001) p. 51.

²⁰¹ Paris Principles *Composition and guarantees of independence and pluralism* paragraph 1, Lindsnaes (2001) p. 22.

²⁰² The UN Handbook (1995) p. 12, National Human Rights Institutions Best Practice (2001) p. 13-15.

3.3.2.2 Defined Jurisdiction and Adequate Powers

The subject-matter jurisdiction will normally be set out in the founding legislation of the NHRI. To be effective, a NHRI should possess a clearly defined subject-matter jurisdiction.²⁰³ There are both advantages and disadvantages of formulating the scope of the jurisdiction either too narrowly or too broadly. The functioning of a NHRI is governed by its mandate which determines the scope of the work and areas of jurisdiction. A NHRI should, according to the Paris Principles, be given as broad a mandate as possible specifying its composition and its sphere of competence.²⁰⁴ It should be broad enough for the institution to address different human rights issues, relevant for the society, and at the same time be specific enough to provide a focused direction for the work of the institution. The institution need to be able to carry out the work most needed in relation to the human rights situation in the country. However, even if serious human rights violations are limited in the specific country, it is important that the mandate of the institution is broad enough for these violations to be addressed by the NHRI. The competence to deal with these violations, in an appropriate manner, should never fall outside the jurisdiction of the institution.²⁰⁵

Public legitimacy is likely to be greater the more fundamental the legal base of the institution is. However, this is not sufficient since legitimacy also need to be won. Acquiring legitimacy depends on three different elements. The issue of appointment is a fundamental indicator of the independency of the institution. The activity of the institution is crucial. What does the institution focus on and whom does it serve? The legitimacy is also determined by the ability of the institution to help those that seek assistance.²⁰⁶

3.3.2.3 Accessibility

The efficiency of the NHRI is also depending on the accessibility. The institution need to be accessible to the individuals it is established to protect or whose interests it should promote. The accessibility influences the legitimacy of the institution. An inaccessible institution is probably not effective.²⁰⁷

There are some practical matters that should be taken into account when trying to improve the accessibility. A NHRI cannot be accessible if the people are not aware of the institution or are ill-informed about its existence or functions. The individuals or groups who are most vulnerable to human rights violations will often be difficult to reach through the usual channels of communication. The NHRIs operating well, are those that are able to communicate to the public what they stand for and what their mechanisms

²⁰³ The UN Handbook (1995) p. 12.

²⁰⁴ Paris Principles *Competence and responsibilities* paragraph 2.

²⁰⁵ Lindsnaes (2001) p. 84-87.

²⁰⁶ Lindsnaes (2001) p. 51.

²⁰⁷ The UN Handbook (1995) p. 13, Lindsnaes (2001) p. 52.

are. NHRIs need to identify vulnerable groups and develop a way of working which enables them to reach out meaningfully to these groups. While doing this, NHRIs sometimes have to confront local taboos or controversial cultural prohibitions. The process of raising awareness of human rights is likely to lead to complaints being brought forward. Besides promoting information about the existence of the institution it is also important for the institution to be physically accessible. Decentralizing, with regional or local offices, might be one way of improving accessibility. Another way is to recruit field officers to serve in different regions. A national institution can increase its physical accessibility by developing rules of procedure which obviate the need for personal attendance. A complaints procedure, requiring physical attendance of complaints and witnesses, might be inaccessible to a great part of the population.²⁰⁸

3.3.2.4 Cooperation

Yet another way of increasing the efficiency of the institution is cooperation which is also mentioned in the Paris Principles. A national institution will probably not be efficient and function alone. Different NHRIs in different parts of the world share similar goals and cooperation between these institutions is often mutually reinforcing.²⁰⁹ It is also important to establish and strengthen cooperative relationships with a wide range of other organizations and groups.²¹⁰ NHRIs stand at the crossroads of government and civil society and the institution is occupying no mans land. NHRIs should therefore define and delimit the space they occupy in relation to other institutions, civil society and in relation to the government as well as the judiciary.²¹¹

A NHRI should establish contact with NGOs as well as with community groups which are involved in the promotion and protection of human rights. This support and cooperation with such institutions can result in improving the visibility of the institution by informing the general public of its existence. Representatives of NGOs can also be formally attached to the NHRI in an advisory or decision-making capacity. Furthermore, persons most vulnerable to human rights violations are often unwilling to approach any official body wherefore the cooperation with NGOs can be very useful. NGOs have an operational flexibility which results in them being able to gather detailed information which can be very useful for the NHRI. Furthermore, intergovernmental organizations can provide NHRIs with resources and experiences available within the intergovernmental organizations. In addition to this, intergovernmental organizations can also be useful in facilitating contacts between NHRIs.²¹²

²⁰⁸ The UN Handbook (1995) p. 14, Lindsnaes (2001) p. 53, National Human Rights Institutions Best Practice (2001) p. 31.

²⁰⁹ A/56/255 (2001) p. 11, The UN Handbook (1995) p. 15.

²¹⁰ The UN Handbook (1995) p. 14.

²¹¹ Lindsnaes (2001) p. 54.

²¹² The UN Handbook (1995) p. 15.

3.3.2.5 Operational Efficiency

Operational efficiency concerns every aspect of an institutions proceeding such as the requirement and selection of personnel, the development of working methods as well as rules of procedure. Operational efficiency may have an impact on the capacity of the institution to discharge its responsibilities adequately. This might be the case especially when NHRIs often are understaffed, under-resourced as well as overburdened.²¹³

Certain aspects of operational efficiency are particularly relevant to this type of institution. Fundamentals, for operational efficiency are for example sufficient human resources and adequate continuing funding. This can also, apart from jeopardizing efficiency, damage the external credibility of the NHRI. It is unlikely that NHRIs will have a surplus of either staff or funding wherefore all NHRI should develop methods of managing scarce resources. The effective management of resources requires for example a strict setting of priorities sticking to a fixed and approved budget. NHRIs establish their working methods and rules of procedure which is also relevant for the operational efficiency of the institution.²¹⁴

3.3.2.6 Accountability

NHRIs, at the national level, work primarily with government agencies and departments in all branches, executive, judiciary and legislative. An institution created by the government runs the risk of being seen as if it is belonging to the government. To achieve a constructive relationship, two different elements are necessary, namely independence from the executive branch of government as well as accountability to the legislature. Accountability is about creating authority which will ensure that NHRIs can fulfill its functions without interference. However, accountability is also about ensuring the public at large to see what the institution is doing and that this is being done properly.²¹⁵

A NHRI will always be legally and financially accountable to the Government and/or parliament in accordance with the legislative basis of the NHRI. Usually, NHRIs are required to submit reports on their activities to the parliament or to a similar body for consideration. Reporting requirements should be specified in the founding legislation of the institution. This should include for example frequency of reports, issues to be reported on as well as procedure for examining reports.²¹⁶

A NHRI should also be accountable to its clients since the institution exists to serve the public. The public should have a mechanism for assessing how

²¹³ The UN Handbook(1995) p. 15.

²¹⁴ The UN Handbook (1995) p. 15.

²¹⁵ Lindsnaes (2001) p. 55.

²¹⁶ The UN Handbook (1995) p. 17.

effectively the NHRI is performing its mandate. Public accountability can for example be achieved through evaluations of the activities of the institution. All official reports of the NHRI should be subject to open scrutiny and comment.²¹⁷

3.3.3 Efforts of the United Nations to Strengthen NHRIs

NHRIs have very different history, and the contexts in which they operate vary. It is therefore difficult to sum up the main achievements of the institutions. However, their number has increased over the years and will probably continue to do so in the near future. Most of the institutions have been able to show concrete results from their work.²¹⁸

NHRIs play an important role in translating international human rights norms into laws, policies and practices that ensure respect for human rights at the local level. The establishment and strengthening of NHRIs is a key objective of the Office of the High Commissioner. It is an important component in its programme of advisory services and technical assistance in the field of human rights. The activities include practical advice to Governments on an appropriate constitutional or legislative framework for a new institution as well as advice concerning the functions, powers and responsibilities of such an institution. Support is provided in the design of effective management structures and strategic plans, complaints-handling systems, human rights education as well as supporting human rights information and documentation. Treaty monitoring bodies also request states to provide information relating to the establishment of NHRIs.²¹⁹

The capacity of the UN to help individual countries in building strong NHRIs must be strengthened according to the Secretary-General. Building strong human rights institutions at the national level will probably in the long run ensure that human rights are further protected and advanced. The establishment or strengthening of such institutions should be a principal objective for the UN. The Secretary-General emphasized that these activities are especially important in countries emerging from conflict.²²⁰

²¹⁷ The UN Handbook (1995) p. 17, Lindsnaes (2001) p. 55, National Human Rights Institutions Best Practice (2001) p. 27.

²¹⁸ Lindsnaes (2001) p. 48.

²¹⁹ A/58/261 (2003) p. 3.

²²⁰ A/57/387 (2002) p. 2.

3.4 Discussion and Conclusion

NHRIs were created since there was a need for an institution which could serve as an implementation mechanism through the functions of monitoring, promoting and protecting human rights. In order to fulfill this role, the NHRI need to extend the traditional distinction between the state and the civil society. NHRIs combine a form of state approval with independence and autonomy. NHRIs focus on promotional activities and on creating conditions for implementing human rights at the national level. This is very different from NGOs, such as Amnesty and Human Rights Watch, which traditionally focus on monitoring human rights violations.

The success and effectiveness of a NHRI, in promoting and protecting human rights, is depending on its ability to be legitimate, accountable and accessible and whether the institution is truly independent or not. The independency is related to that the institutions are being qualified and diverse in their membership, adequately staffed and resourced as well as accessible to the public. Most of all the legitimacy, accountability and independence of the institution depend on establishing a strong loyalty to the civil society and the people as well as, meanwhile, maintaining effective access to government as well as judicial bodies.

There are many questions that can be asked regarding NHRIs. First of all, one might still wonder what a NHRI actually is and what the status of the institution really is. What institutions should in fact be allowed to call themselves NHRIs and what does this imply? Is it good or bad that the functions differ from country to country even though the purpose is the same? This will all be addressed further in the analysis below.

4 Analysis

4.1 Is it Possible to Prevent Conflicts by Implementing Human Rights?

In order to be able to prevent conflicts one has to be in the past, in the present and in the future. This is part of the art of conflict prevention. The causes of a conflict yesterday might be the causes of a conflict tomorrow. An incorrectly settled peace today might result in a new conflict. There might be threats in the future needed to be handled today in order to be reduced. However, the threats are only potential and will not always result in a conflict. A situation, where there is a potential for a violent conflict, normally contains a combination of different factors that reinforce one another. Each and every factor, or threat, themselves might not be a real threat but the combination may be very dangerous. To be able to prevent conflicts it is important to acknowledge each and every aspect of the conflict, each and every cause of the conflict as well as each and every threat. It is crucial to be aware of every aspect of the conflicts to be able to achieve peace. It is also crucial to find a common ground, built on common norms, which I will come back to later.

A new type of organized violence is emerging which could be described as a mixture of war, organized crime and massive human rights violations. The actors are both global and local, public and private. An informal criminalized economy is built into the functioning of the new wars. Furthermore, environmental degradation is forcing people to leave their homes to find new places to settle. People are hereby forced together where there is a lack of resources such as water, leading to competition and tension. State legitimacy is becoming a victim when people get frustrated because the state is not able to perform its basic tasks such as provide for, and protect their citizens. People loose faith in their own state and other identities, than being a citizen, may become more important. Political leaders and international institutions have been helpless since they have not been able to come to terms with the logic of the new conflicts. The new conflicts have been treated either as old wars or as anarchy. New ideas and measures are necessary to handle these new types of conflicts. It is crucial to know the character of the conflicts as well as its causes.

A new culture of conflict prevention is developing and includes security policy, development assistance policy, migration policy and environmental policy. It is fundamental to address the deepest causes of conflict such as economic despair, social injustice and political oppression. Negative peace

is a necessary, but not a sufficient condition for peace. Positive peace includes social justice and puts the human being in the center instead of the state. Positive peace is based on the abolition of structural violence, and should be the foundation when preventive measures are initiated. A positive peace built on human rights.

The character of the conflicts today, the causes of conflict and the potential threats are changing and the measures taken to prevent them need to be adjusted if we are to prevent these conflicts. Change is emerging, moving from a culture of reaction to a culture of prevention and towards creating peace instead of keeping peace. As always, change will not be achieved overnight. It is, as always, depending on the political will. However, there seems to be a political will since it is a more sensible policy to identify and stop conflicts before they escalate into violence, in order to save human life and money as well as other recourses. The political will needs to be backed up by knowledge and action to accomplish the necessary change. Further change is needed, and to be able to accomplish this, it is crucial to study the relationship between human rights and conflict prevention further, on one hand as a preventive measure and on the other hand as a system of a common norm to be the foundation of conflict prevention. A common ground, or norm, is very important when it comes to conflict prevention. Identity politics could probably be prevented with the politics of ideas. The politics of ideas concerns forward looking projects where those who support the idea are included in contrary to identity politics which is backward looking and exclusive. The question is how this politics of ideas should be created.

A culture of prevention should be built on a culture of human rights in order to build a common culture on common values. Moving from reaction, to prevention, and maybe towards a culture of creation. To create and form a common ground, a politics of ideas, built on the culture of human rights is a good starting point. Human rights is a system of norms concerning all aspects of life for all people. Guidance concerning what constitutes acceptable exercise of power and norms for participation of minorities can be found in human rights as well as economic- and social development. Principles for a community founded on the rule of law, such as the principle of non-discrimination, freedom of association, freedom of expression as well as the right to a fair trial, are to be found in the various human rights conventions.

The human rights instruments do exist and they do provide a sufficient human rights protection if they are implemented. If human rights are not implemented, threats to peace and security will probably rise over time. Different potential threats need to be addressed. The structural threats, such as environmental problems and water scarcity, are usually not threats to peace alone. However, again, in combination with other tensions conflicts do arise.

Some might say that structural prevention could be perceived as covering everything that should be done to create a better world. The most effective conflict-prevention in the long run is probably, as implied, well-governed

countries. However, to be able to prevent all different types of conflicts both structural and operational prevention is needed. It is important to maintain this dual perspective. Preventive diplomacy must not be underestimated. On the other hand, operational prevention alone might result in trying to combating symptoms. It is important, however, to explore this further and gather information on effective strategies. Otherwise, there might be a tendency of trying too much in too many areas which might not give the result expected. Structural prevention is aiming at avoiding conflicts in the long run by creating better conditions where tension can be solved by other means. However, does it really matter if a measure is taken to prevent conflicts or to prevent poverty? The Secretary-General has stressed the importance of making a distinction between regular development and humanitarian assistance programmes on one hand, and those implemented as a preventive or peacebuilding response to problems that could lead to the outbreak or recurrence of violent conflicts on the other hand. I agree. Previous chapters have shown the importance of knowing the root causes of the specific conflict trying to erase these causes by different measures. A peace strategy shall be built on the probable causes of a conflict and targeted on preventing these by taking different measures needed in the particular situation.

As well as human rights, the threats, causes and solutions are universal, indivisible, interdependent and interrelated. Everything is connected. The question is where to start. Poverty cannot be erased in the midst of conflicts and conflicts cannot be prevented if poverty is not erased. Sustainable development cannot be achieved where there is a violent conflict. At the same time sustainable development is a precondition for a peaceful society. The measures needed to be taken are depending on the situation. Crises management and conflict handling is needed in case of conflicts. Violence need to be stopped. Hereafter, a peacebuilding operation can begin. However, if there is a society showing signs of potential conflict, preventive measures may erase these problems. Combating poverty might result in a sustainable society instead of a violent one. Many causes of conflict could probably be erased or reduced if human rights were implemented. Many conflicts where thousands of people suffer are in fact often created and triggered by a few because of greed and hunger for power. Ethnicity has been exploited for this reason in former Yugoslavia where other factors, such as the massive propaganda, also were important in creating a conflict. If people are educated and if the press is free it might be more difficult for these people to get the power. Especially, if there is a well-functioning political system as well as well functioning institutions where changes in society can be canalized. For example, most conflicts begin with peaceful demonstrations. These can usually be handled by early mediation or through canalizing the information through various institutions which will probably result in a dialogue. Interference by a third part in a later stage is usually not of any help, if violence has begun.

The richer countries will probably have to realize the advantages for themselves in order to be willing to invest in other parts of the world. Implementing human rights takes political will, money as well as knowledge. The po-

litical will to implement human rights everywhere might be improved if it can be proved that this will lead to peace and security where money can be saved. However, one might wonder who the security and peace is meant for. Even if some threats seem as the most pressing depending on wealth, geography as well as power - collective security is depending on acceptance of that the threats, which each region perceives as the most urgent, are in fact equally so for all. The threats of today are interconnected. Everybody will profit, in the long run, from peace. I do believe in the implementation of human rights as a way of preventing conflicts. This might also, as mentioned, be a good approach in the strive of getting the countries to realize the importance of implementing human rights all over the world.

The human rights instruments give a good human rights protection if they are implemented. The role of Governments in the implementation and realization of human rights is of great importance. Without the implementation at the national level the international system for monitoring and implementation is of little use except for pointing out states that misbehave. Each state must be responsible for the protection and promotion of human rights. It is crucial for a state committed to human rights to establish a national infrastructure, including institutions, which can promote and protect human rights. The problem of effective implementation at the national level has, as the thesis has shown, generated interest and action. NHRIs have a very unique role in promoting and protecting human rights, which will be discussed further below.

4.2 NHRIs – An Efficient Tool to Implement Human Rights?

Every conflict is unique and the causes are complex. An exhaustive list of the causes is impossible. Furthermore, the preventive measures needed to be taken in each case are also unique. Conflict prevention, by the implementation of human rights, is also unique so far that every attempt to implement human rights need to be adjusted to the specific country and to the specific situation. If human rights are to be implemented, different measures need to be taken with variation for each country. The institution, in this case NHRI, trying to implement human rights, need to be adjusted to each and every country. No single model of NHRIs can or should be recommended for all countries as an appropriate mechanism to fulfill their international human rights obligations. Each country is unique regarding local culture, legal traditions and existing political organization wherefore NHRIs should be set up taking into account all of these differences in each country. On one hand, it seems to be acceptable that the task varies between the NHRIs as long as the purpose is the same. This will probably increase the efficiency of the work of the institution. However, the efficiency might also be affected by the fact that today there is a wide range of different institutions which create great confusion. It is not only the name that varies, which I will get back to.

First of all, are NHRIs really needed? Is it not enough with an elected parliament and an independent judiciary? Well, the surrounding world shows that this is not enough. In democracies around the world human rights are not being fully implemented even with a parliament and an independent judiciary. The question should rather be if it is possible to establish NHRIs in all countries and if they can be efficient, wherever and however, they are established.

There is not an ultimate definition of a NHRI even though the first notion of the NHRI has been pared down by subsequent work of the UN. A more narrow group of institutions have emerged, based on particular common functions such as educating, promoting, advising and investigating complaints of violations committed by public, and occasionally private, entities. Some institutions are, so to speak, real NHRIs and thereby accredited by the ICC and are in compliance with the Paris Principles, some are accredited with a reservation, some have observer status and the others are not in compliance with the Paris Principles. This leads to confusion where the credibility of the institutions as such might be endangered. The question is also whether all these different institutions should have the same status as they are very different. Should they for example be able to speak in the Commission on Human Rights? When it comes to NHRIs in various situations we have to face the classic dilemma. Is it better to include rather than to exclude? An institution which is included might be easier to affect and assist in the work towards becoming an effective promoter and protector of human rights. On the other hand, improvements might come faster if it is kept outside. These are all important matters, followed by others, which affect the credibility of the institution as such. The credibility will be further addressed below.

Is it possible to have the same demands on an institution in a rich and developed country as in a poor country? Is it possible for the different institutions to perform the same mandate? The Paris Principles seem to be a compromise, as it often is when it comes to politics and human rights. It seems as if they were formed to fit all institutions already being established as well as the institution wished-for. It would be interesting to compare the work of an ombudsman and the work carried out by a full credited Commission for Human Rights, in countries with different as well as similar circumstances. Since the circumstances, for the promotion and protection of human rights, vary in every country it might be wise to have rather flexible Principles.

There are different problems in the international hierarchy. When reading the Paris Principles, NHRIs seem to be a great idea and leave an impression of a very extensive and almost magnificent institution. However, it seems as if the institutions are excluded, at least partly, from world politics and the debate concerning human rights. There are several issues needed to be discussed regarding the status of NHRIs when they are represented at UN meetings for example. Should they represent their country? Should they be recognized as NGOs? Should they be recognized as a third category of institutions on the international arena? The status of NHRIs has varied over

time. It would probably be for the best if every NHRI could speak for themselves as an institution. However, this would probably be impossible to carry through due to the timeline on many meetings. It would probably be good if they were recognized as a third category of institutions at the international arena. Their status and task is very different from all the others. ICC would then be the spokesman. However, when different national aspects are addressed it should be possible for the NHRI of that country to be able to address the meeting. The NHRIs should however not be in the same category as the countries or the NJOs. Furthermore, it might be wise to limit the opportunity to speak to the NHRI accredited by the ICC. This is also to strengthen the credibility of the institution. In this case, the accreditation process is becoming more important wherefore the process must be very clear and precise.

The mandate at the national level is clear. It is also understandable that the Paris Principles were formed giving the NHRI the possibility to decide how to perform their mandate. However, the status at the international and national level is still diffuse. The purpose is to promote and protect human rights at the national level but the institutions are also seen as a bridge between the different levels, at least in theory. One might wonder why NHRIs were established and what the thoughts were behind the Paris Principles. Is it possible to regulate such important institutions with these few principles? Are the Paris Principles a desperate try to create a symbolic institution with no real power or status? After all, this was hopefully and probably not the intention. However it seems to be, to some extent, the effect. At the same time it is crucial to remember the need for such institutions all over the world, in the strive towards the implementation of human rights. Important functions, such as promoting awareness, educating, monitoring, advising and investigating human rights violations, are crucial in the work of implementation, especially in combination with knowledge of what is needed in the specific country. I would however like to see more similar institutions in all countries, gladly in a separate building, separated from the state authority, where all people work with human rights for the people, as a kind of national miniature of the United Nations. The task can still vary but I do believe that the symbolism, such as having one building and a common name, is important.

NHRIs have a unique role, combining a form of state approval with independence. Further on, they are unique in relation to NGOs which focus on monitoring human rights violations. NHRIs focus on promotional activities and on creating conditions for implementing human rights at the national level. It is important that NHRIs define and delimit the space they occupy in relation to other institutions, civil society and in relation to the government as well as to the judiciary. This is crucial for the credibility and effectiveness of the institution.

NHRIs neither should, nor could be seen as a substitute for mechanisms in the ordinary justice system. The ability to receive, and to act on complaints, should be seen as an additional measure of security ensuring the protection

of all rights of all citizens. The NHRI should guarantee an accessible, rapid and inexpensive resolution of the matter offering something which the legal system often cannot offer. Yet another thing NHRIs can offer is expertise in the field of human rights.

After all, the profile of the NHRIs became more distinct after the adoption of The Paris Principles. The issue is occasionally raised whether to adjust the Principles to the experiences of the past decade. Even if the Principles are wide they have served their purpose as a common frame of reference in establishing the institutions. It would probably be better to develop the work in ICC further, for example the accreditation process. Furthermore, the ICC could probably speak louder and advise their members more.

The political will is essential if human rights are to be implemented. Without the political will it is impossible for a NHRI to function effectively. It is necessary with some support from the government. However, the political will can normally be influenced by the people. The implementation of various human rights treaties play an important role. NHRIs could have an important role to play in relation to the treaty bodies. For example, if Sweden had one central human rights institution, instead of various ombudsmen, it could publicize state reports and concluding observations at a web page informing as well as creating debate about human rights violations. Today, each and every ombudsman has a web page. It is rather difficult to look upon these different ombudsmen as one institution. In another country the NHRI could assist with human rights knowledge to the people writing the report, as well as assisting them.

The expectations of NHRIs must be realistic. It cannot be expected that NHRIs should solve problems that governments and the international community have been unable to address effectively. The NHRIs are neither set up to replace human rights organs of the UN nor NGOs. The role of the NHRI is complementary. However, vested with efficient powers, the institutions will be a strong player in the human rights field, domestically as well as internationally. There are for example many ways in which NHRIs can contribute to the development of stable states by undertaking investigations of alleged violations of human rights, providing advice to the government concerning for example legislation, promoting and educating about human rights as well as building bridges between government and civil society.

NHRI are mandated to make recommendations and proposals, not just applying human rights law. NHRIs normally have the option to recommend new legislation or amendments to existing laws. This is a wider mandate than that of most traditional ombudsmen. Normally, an ombudsman will be excluded from intervening in the legislative process, unless it is directly affecting the ombudsmen institution itself. The mandate is broader for the NHRI since it is called upon directly to address the responsibility of the State to fulfill its human rights obligations. This is a rather huge and important difference since an important part of the implementation of human

rights concerns the legislation of the country. NHRIs should not be excluded from this area, if they are to be called a NHRI.

NHRIs play a unique role with their ability to understand national circumstances and local challenges. NHRIs are often better than others to evaluate the performance of the government concerning human rights. Since NHRIs are mandated to monitor and raise awareness of human rights they can play an important and catalytic role in creating a culture of human rights. This is crucial. However, NHRIs would probably be more successful, if they could be more focused. They ought to be given a formal status, both at the national and at the international level. NHRIs can be a source of deep, objective and local knowledge. This information could be passed on to for example the Commission on Human Rights or to the treaty bodies.

It is crucial to promote and educate about human rights. Promoting human rights implies working towards a culture of respect for, and observance of, human rights at the national level where NHRIs can play a vital role. Once again, their special status and their specific knowledge of the country make them effective in being able to target the information and the promotion activities.

Serious violations of human rights often result in conflicts. Information on human rights violations has shown to be an early warning system of importance. NHRIs will probably be able to see the subtle changes which are difficult for others to see. This requires however education and training. Furthermore, it requires a willingness to see the changes. This requires that the NHRIs are independent from the state as it might be an actor in the beginning of a conflict. The state might for example be the oppressor leading to resentment. Once again, the independency is of great importance for a well functioning NHRI if they are to carry out their mandate. Furthermore, being a part of an early warning system requires direct channels to, for example, the Secretary-General.

The success and effectiveness of a NHRI, in promoting and protecting human rights, is depending on its ability to be legitimate, accountable and accessible and whether the institution is truly independent or not. The independency is related to being qualified and diverse in their membership, adequately staffed and resourced as well as accessible to the public. Most of all the legitimacy, accountability and independence of the institution depend on establishing a strong loyalty to the civil society and to the people as well as, meanwhile, maintaining effective access to government and to judicial bodies.

As mentioned earlier, NHRIs vary from country to country, and so do the ways of ensuring independence. This often follows the local legal tradition for that kind of administrative bodies or courts. This is probably a good idea in most cases. However, it is important to be careful since courts in various countries do not have public confidence because of corruption and so forth. A principle of continuation is developing in practice, stipulating that there

shall be a continuation of the individuals running the institution. This, in order to prevent a government from being able to silence an institution by changing the law and then managing the institution with individuals that have more suitable views, from the governments perspective.

Public legitimacy is likely to be greater the more fundamental the legal base of the institution is. This is however not sufficient. Legitimacy needs to be won. Acquiring legitimacy depends on different elements such as the appointment and the activity of the institution. What does the institution focus on and whom does it serve? The legitimacy is also depending on the ability of the institution to help those seeking assistance. The power to receive and to investigate violations is probably of little value without a corresponding ability to provide remedies and is likely to undermine the credibility of the complaints procedure. The means available, to resolve complaints, will affect public perception and the ability to successfully foster a culture of respect for human rights. Delays, in the provision of remedies, will probably reduce public confidence in the NHRI and might scare the victims from looking to the NHRI for redress.

NHRIs at the national level primarily work with government agencies and departments in all branches, executive, judiciary and legislative. An institution created by the government runs the risk of being seen as if it belongs to the government. Accountability is about creating authority which will ensure that NHRIs can fulfill its functions without interference. However, accountability is also about ensuring that the public is able to see what the institution is doing and if it is being done properly. In countries where people do not trust the government, the NHRI might have to work with NJOs in order to build trust. This will probably take some time but is of great importance. Many different institutions in society are important if human rights are to be implemented.

A pluralist representation is emphasized in the Paris Principles. The credibility of the institution is partly depending on the membership of the institution being respected and independent. A NHRI should reflect the social profile of the community. Otherwise, it cannot be regarded as truly representative. This will be difficult to achieve where a NHRI is composed by one person as in the case of many offices of the ombudsman. Independence, public legitimacy and accessibility are all linked to this and will probably be improved with a diversity of the institution.

It is important to always bear in mind that national institutions and human rights are part of the political society. Even if the NHRI suggest great recommendations for improving the legislation and thereby the human rights protection there might be no interest what so ever from the government. The lack of political will is a huge problem which is not easy to solve. If the government is unwilling to accept advice and guidance from the institution there is a great need for a political dialogue. The institution might have to use international cooperation to address this problem to put pressure on the government. This is yet another argument emphasizing the importance of

having clear channels in the international hierarchy. The NHRI will probably have to choose its battles, as always in politics. However, with the promotional activities of the institution, it might be able to change politics, through the people.

This thesis should be rewritten in a couple of years since the next decades probably will show how much impact NHRIs have had, and will have, on the protection and promotion of human rights. Hopefully, there will be more information as well as research in the field of human rights protection and conflict prevention as well as research on NHRIs and their ability to implement human rights at the national level as well as being a new player in the new human rights machinery.

However, despite the problems, NHRIs are probably one of the most promising developments in promoting as well as protecting human rights. After all, the institutions, or to be more specific the Paris Principles, are only slightly more than ten years old. Some institutions were established a long time ago but some just recently. It will probably take a few more years to develop their work within other organizations and institutions. While working with this I have got the idea that the main problems with the institutions are not in the domestic work, but rather as mentioned, in relation towards other institutions and organizations. For example, the UN should, throughout the organization, more clearly encourage the institutions and their work. NHRIs can be very useful for the UN in restoring, the faith in and the credibility of, the human rights system. The Secretary-General has put emphasis on them but their status need to be more specific. NHRIs are new, and important players in the field of human rights. It is essential that the institutions gain the trust of people. Otherwise, they will be of little use.

5 Conclusions

If you want peace, do not arm for war but arm for humanity. Moving towards a culture of prevention, by establishing a culture of human rights implemented at the national level, is probably the most efficient way to prevent conflicts of today and tomorrow. NHRIs must be seen as an essential tool in the implementation of human rights. If NHRIs are an efficient tool or not depends on their ability to be legitimate, accountable and accessible and on whether the institution is truly independent or not. It is also depending on the future. To be even more efficient in the future it is important to establish their genuine role and thereby give them a position as a strong actor in the human rights machinery.

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