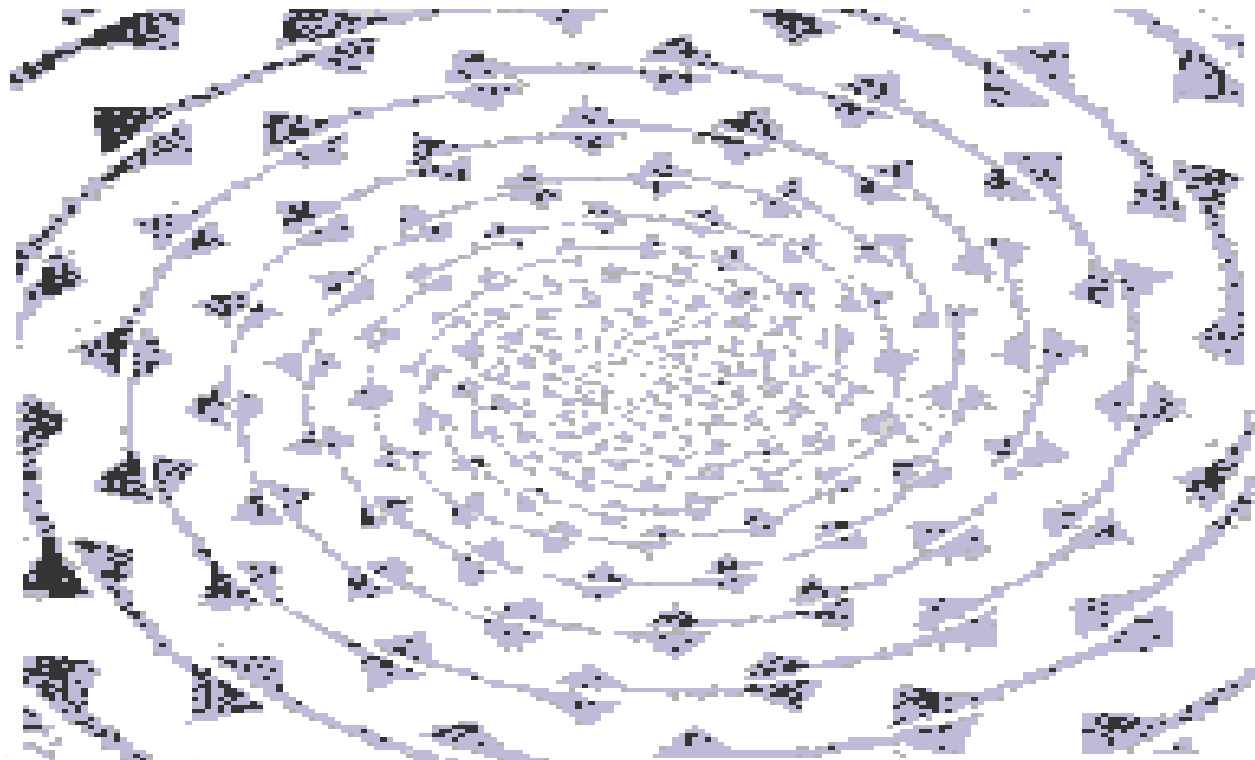


## Cellule de Recherche Interdisciplinaire en Droits de l'Homme



### National Human Rights Institutions in Europe

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# National Human Rights Institutions in Europe\*

- by Gauthier de Beco \*\* -

## Introduction

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Human rights have been recognised through various international and regional human rights instruments. However, in order to achieve respect for human rights, it is not sufficient to just create, clarify or expand the norms that protect those rights. Human rights treaties also need concrete responses within domestic systems to allow these treaties to function. The implementation of human rights therefore requires that states establish institutions, such as national institutions for the promotion and protection of human rights (NHRIs or 'national institutions'), capable of narrowing the gap between human rights standards and their application in reality.

Traditionally, NHRIs refer to two kinds of institutions: on the one hand the ombudsmen, which originated from the Scandinavian states and whose function is to defend citizens from maladministration by the public authority, and on the other hand the national institutions, which are concerned with the implementation of international human rights at national level. This article will only deal with the latter, since the ombudsman's domain does not cover the entire human rights field owing to the fact that it often focuses exclusively on national standards, and does not relate to the promotion and protection of human rights in general. In contrast to ombudsmen, which have a mediatory role rather than the general role of shaping national human rights policies, NHRIs have a more preventive role. In addition, ombudsmen often lack the necessary links with civil society that are typical for national institutions. The acronym NHRI and the term 'national institution' will therefore only refer to human rights commissions or institutes whose function is to implement all human rights unless otherwise specified. However, no precise definition of 'NHRI' can be given as yet, due to the fact that their role, function and composition all vary across the globe, including Europe. Nonetheless, as we shall see, principles, which are embodied in instruments that relate to national institutions and are recognised by international and regional human rights organisations, are now emerging that underlie the creation and strengthening of these institutions.

The purpose of this article is to evaluate the structure, mandate and functions, as well as the work undertaken and problems faced by NHRIs with particular focus on NHRIs in Europe. The article will also discuss the advantages of creating such institutions in this particular region where they do not yet exist. This article will therefore deal exclusively with the NHRIs of so-called 'old' European democracies and leave out those of non-European developed states, developing countries, and states recovering from war (such as Southeast Europe). Also, only NHRIs in the meaning of this article (excluding therefore ombudsmen institutions) which are accredited as such by their peers will be analysed. As will be seen, this results in six of them being dealt with, all of which are located in Western Europe.

This article is divided into four parts. Part I will discuss the history and role of NHRIs, the first one of which was created in 1947. In 1991, the adoption of the so-called Paris Principles

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provided for guidelines for the operation of these institutions, the important role of which was highlighted at the World Conference on Human Rights in Vienna in 1993. At European level, the Council of Europe encouraged the creation of national institutions as well as their mutual co-operation. This section will be followed by a discussion of the advantages of creating NHRIs in developed states, such as in Europe, and of these states' reluctance of doing so. Part II will deal with the composition of NHRIs. Membership of NHRIs is a sensitive issue, particularly because of the need to ensure the participation of civil society. Membership also depends on the NHRI's structure or composition model, three different kinds of which can be distinguished in Europe. Included in this analysis will be the rules governing the appointment, status and dismissal of NHRI members that guarantee their independence. Part III will examine the competences of NHRIs. European NHRIs have principally two functions, which are more or less developed depending on the institution. These functions consist in monitoring governmental action and advising government on the one hand, and promoting and educating about human rights on the other. They cover many activities, all aimed at improving knowledge of human rights. Part IV will focus on national and regional networks, which NHRIs must develop in order to fulfil their mandate. At national level, there is a need for collaboration with government and civil society, the government being ultimately responsible for the promotion and protection of human rights and civil society having the knowledge and expertise in this field. At regional level, a network of European NHRIs is currently being set up within the Council of Europe.

## 1. History and Role of NHRIs

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### A. *From 1946 to 1991: The Paris Principles*

The idea of establishing national institutions responsible for the implementation of international human rights at national level dates back to 1946. During its second session, the Economic and Social Council (ECOSOC) of the United Nations (UN) invited the then 55 Member States '... to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission of Human Rights'.<sup>1</sup> One year later, in March 1947, the French Minister of Foreign Affairs created the first NHRI in the world, the current French National Advisory Commission for Human Rights (CNCDH). However, the latter initially dealt exclusively with the French position during the drafting of new international human rights instruments, and acquired competence for national issues only in 1986.<sup>2</sup> Then, for three decades, nothing was undertaken with regard to NHRIs, except regarding the possibility of creating them which was mentioned in two Resolutions of ECOSOC.<sup>3</sup> The next significant step was taken in September 1978 by the Commission for Human Rights which convened a 'Seminar on National and Local Institutions for the Promotion and Protection of Human

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<sup>1</sup> ECOSOC Res. 2/9, 21 June 1946.

<sup>2</sup> The Commission was first named 'Consultative Commission for the Codification of International Law and the Definition of the Rights and Duties of States', and subsequently called 'Consultative Commission of Human Rights' in 1984, and 'French National Advisory Commission for Human Rights' in 1989. In French: *Commission consultative pour la codification du droit international et la définition des droits et devoirs des Etats et des Droits de l'homme*, and subsequently called *Commission consultative des droits de l'homme* in 1984, and *Commission nationale consultative des droits de l'homme* in 1989. René Cassin was its first president.

<sup>3</sup> ECOSOC Res. 772 B (XXX), 25 July 1960; ECOSOC Res. 888 F (XXXIV), 24 July 1962. Both these Resolutions invited governments 'to favour ... the formation ... of ... local human rights committees or national advisory committees'.

Rights'.<sup>4</sup> In its guidelines, which were endorsed by the UN General Assembly<sup>5</sup>, the seminar established the two main functions of the national institutions: the monitoring of government compliance with international human rights, and the promotion of these rights. NHRIs were also given their official name: 'national institutions for the promotion and protection of human rights', the underlying principles of which will be discussed in the next paragraph along with the Paris Principles of 1991.

In October 1991, a first International Workshop on National Institutions for the Promotion and Protection of Human Rights, convened by the Commission for Human Rights, was organised in Paris by the CNCDH.<sup>6</sup> This workshop saw the drafting of the 'Principles relating to the status of national institutions' commonly called the Paris Principles, subsequently endorsed by the Commission for Human Rights and the UN General Assembly.<sup>7</sup> The Paris Principles promote the creation and the strengthening of NHRIs which are to be granted 'as broad a mandate as possible'.<sup>8</sup> They also outline the different aspects of these institutions according to the following headings: A. Competence and responsibilities, B. Composition and guarantees of independence and pluralism, C. Methods of operation, and D. Principles concerning the status of commissions with quasi-jurisdictional competence (the latter being only optional). These principles now constitute the basic guidelines for the establishment and strengthening of national institutions. They enumerate the responsibilities and working methods of NHRIs, and stress the importance of these institutions being pluralist and independent.

It should be noted that the Paris Principles were written by national institutions themselves during the Paris Workshop of October 1991. Also to be noted is the fact that the UN General Assembly did not adopt these Principles as its own, but rather welcomed them and annexed them to its Resolution.<sup>9</sup> This shows that the promotion of NHRIs was a national initiative, having as the principal (sometimes only) advocate the NHRIs themselves. However, the Paris Principles have attracted widespread attention from the UN and regional organisations, including the Council of Europe, and have regularly been cited in the recommendations and declarations of these organisations, which are encouraging the establishment and strengthening of national institutions that comply with these Principles.<sup>10</sup> As a result, they are now considered as the minimum standards for NHRIs.

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<sup>4</sup> See: UN doc. ST/HR/SER.A/2.

<sup>5</sup> GA Res. 33/46, 14 December 1978, A/RES/33/46. On this seminar see: Lindsnaes and Lindholt, 'National Human Rights Institutions – Standard Setting and Achievements', in Lindsnaes, Lindholt and Yigen (eds), *National Human Rights Institutions. Articles and working papers: input into the discussions on the establishment and development of the functions of national human rights institutions* (Copenhagen: The Danish Centre of Human Rights, 2000) 1 at 5-6.

<sup>6</sup> As far as Europe is concerned, only two institutions were present at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris from 7<sup>th</sup> to 9<sup>th</sup> October 1991: the CNCDH (created in 1947), which organised the said workshop, and the Danish Centre for Human Rights (created in 1987).

<sup>7</sup> *Paris Principles* (defined at the International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris, 7-9 October 1991), adopted by Human Rights Commission Res. 1992/54, 3 March 1992 and G.A. Res. 48/134, 20 December 1993, A/RES/48/134.

<sup>8</sup> Paris Principles, A. 1).

<sup>9</sup> GA Res. 48/134, 20 December 1993, A/RES/48/134 at para. 11. See: Decaux, 'Le dixième anniversaire des principes directeurs des institutions nationales des droits de l'homme dits "Principes de Paris"', (2003) 3 *Droits fondamentaux* 11 at 21; Schokkenbroek, 'Nationale mensenrechteninstellingen in Europa: een inleidend overzicht', in van Emmerik and Smals - van Dijk (eds), *Een nationale mensenrechtencommissie in Nederland?* (Leiden: NJCM- Boekerij, 2000) 5 at 8.

<sup>10</sup> The Human Rights Committee and the Committee on Economic, Social and Cultural Rights remind State parties to the International Covenant on Civil and Political Rights 1966 (999 UNTS 171) and the International Covenant on Economic, Social and Cultural Rights 1966 (993 UNTS 3) to establish national institutions, in accordance with the Paris Principles. See, for instance, as far as European states are concerned: Concluding Observations of the Human Rights Committee regarding

The Paris Principles set out a general programme for NHRIs by laying greater emphasis on the necessity to observe certain principles, such as pluralism and independence, than on imposing formal guarantees. Furthermore, the UN General Assembly emphasises that a state establishing a national institution has ‘the right ... to choose the framework that is best suited to its particular needs at the national level’.<sup>11</sup> This gives states some leeway in choosing their approach to the creation of such an institution under their jurisdiction. As a result, NHRIs, even in Europe, vary in their role, composition and operation, according to the state’s needs and its existing human rights framework. However, a NHRI must remain within the boundaries put in place by the Paris Principles if it wants to fully qualify as a NHRI.

In order to support new institutions and to organise meetings where they could exchange their views and information, national institutions created an International Coordinating Committee of National Institutions (International Coordinating Committee) in 1993, the committee being further composed of four regional groups comprising Africa, Europe, the Americas, and Asia-Pacific. In Europe, national institutions form the European Group of National Institutions for the Promotion and Protection of Human Rights (‘European Group of NHRIs’). With a view to bringing about an official ‘label’ for national institutions, the International Coordinating Committee established a Sub-Committee on Accreditation in 1998. The task of the latter is to elaborate a list of those institutions that either comply, do not fully comply, or fail to comply with the Paris Principles. Those that comply are granted an A-Status, those that do not fully comply a B-Status, and those that fail to comply a C-Status.<sup>12</sup> Only those institutions with an A-Status become accredited members of the International Coordinating Committee. Those with a B-Status are only granted observer status. As a result, it is now possible to know how many NHRIs are recognised as such (by their peers) both globally and regionally.<sup>13</sup>

### *B. Recognition of NHRIs at International and European Level*

Two years after the Paris Principles were written, the World Conference on Human Rights held in Vienna in June 1993 affirmed in its Declaration and Programme of Action ‘the important and constructive role played by [NHRIs] ...’ and encouraged ‘the establishment and strengthening of [NHRIs] having regard to the [Paris Principles]’.<sup>14</sup> This worldwide aspiration led to the proliferation of national institutions, especially in the developing world. By the end of the 1990s, UN Committees started to stress the role of NHRIs in several of their general comments<sup>15</sup>, and several UN organs started to encourage and support them through

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Italy, 28 October 2005, CCPR/C/ITA/CO/5 at para. 7, and Concluding Observations of the Committee on Economic, Social and Cultural Rights regarding Belgium, 1 December 2000, E/C.12/1/Add.54 at para. 8.

<sup>11</sup> GA Resolution 48/134, 20 December 1993, A/RES/48/134 at para. 12.

<sup>12</sup> Rules of Procedure for the ICC Sub-Committee on Accreditation, adopted by the International Coordinating Committee on 14 Sep. 2004, Section 5. NHRIs may also be accredited with reserve and receive an A(R)-Status, which means that although they comply with the Paris Principles, insufficient documentation has been submitted to confer them an A-Status.

<sup>13</sup> For the full list of accredited NHRIs, see <http://www.nhri.net>.

<sup>14</sup> GA World Conference on Human Rights, *Vienna Declaration and Programme of Action*, Vienna, 14 – 25 June 1993, A/Conf.157/23, Part I at para. 36.

<sup>15</sup> See, in particular: General Comment N° 10 (1998), *The role of national human rights institutions in the protection of economic, social and cultural rights*, adopted at the nineteenth session of the Committee on Economic, Social and Cultural Rights, Geneva, 16 November – 4 December 1998, E/C.12/1998/25 and General Comment N° 2 (2002), *The role of independent national human rights institutions in the promotion and protection of the rights of the child*, adopted at the thirty second session of the Committee on the Rights of the Child, Geneva, 13– 31 January 2003, CRC/GC/2002/2.

standard setting, capacity building, network facilitating and membership granting.<sup>16</sup> The Office of the UN High Commissioner for Human Rights (OHCHR) published a 'Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights' ('NHRIs Handbook of the OHCHR') to assist governments in creating such institutions and in strengthening existing national institutions.<sup>17</sup> A National Institutions Unit responsible for the establishment and strengthening of national institutions was subsequently set up as part of the OHCHR. It acts as a permanent secretariat for the International Coordinating Committee and assists NHRIs in organising their international meetings.

With regard to Europe, European Meetings of National Institutions for the Promotion and Protection of Human Rights were organised in Strasbourg by the CNCDH in November 1994, and in Copenhagen by the Danish Centre of Human Rights in January 1997 in order to start co-operation and networking. The Council of Europe, which was present, supported these two meetings. Already established national institutions encouraged European States to create NHRIs where they did not yet exist. During the second European Meeting, these institutions also decided to set up a European Coordinating Group, which can be considered as the executive arm of the European Group of NHRIs.<sup>18</sup> In 1997, as a response to these meetings, the Steering Committee for Human Rights of the Council of Europe drafted a recommendation on the establishment of independent national institutions for the promotion and protection of human rights as well as a resolution on co-operation between member states' national institutions and between them and the Council of Europe. In doing so, the Council of Europe was no longer only supporting the already widely recognised institution of the ombudsman, as it had been doing since 1985<sup>19</sup>, but started to support the newly emerging independent institutions having regard for the Paris Principles and the Vienna Declaration and Programme of Action.

Recommendation No. R (97) 14 of the Committee of Ministers to member States on the establishment of independent national institutions for the promotion and protection of human rights recommends that the governments of member States 'consider, taking account of the specific requirements of each member state, the possibility of establishing effective national human rights institutions, in particular human rights commissions which are pluralist in their

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<sup>16</sup> Cardenas, 'Emerging Global Actors: The United Nations and National Human Rights Institutions', (2003) 9 *Global Governance* 23 at 27-34.

<sup>17</sup> OHCHR Professional Training Series No. 4, *National Human Rights Institutions. A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (Geneva: UN, 1995).

<sup>18</sup> The European Coordinating Group is composed of four NHRIs: the CNCDH (presiding the Group), the Danish Institution for Human Rights (replacing the Danish Centre for Human Rights since 2002), the National Human Rights Commission of Greece, and the Irish Human Rights Commission. The functioning rules of the European Coordinating Committee are described in the Rules of Procedure of the European Group of National Institutions for the Promotion and Protection of Human Rights, adopted during the fourth European meeting of NHRIs in Dublin in November 2002.

<sup>19</sup> Until 1997, the Steering Committee for Human Rights of the Council of Europe focused solely on the institution of the ombudsman (See: Recommendation No. R (85) 13 of the Committee of Ministers to member states on the institution of the *ombudsman*, adopted by the Committee of Ministers on 23 September 1985) and on cooperation between the ombudsmen of member states and between them and the Council of Europe (See: Resolution (85) 8 of the Committee of Ministers on co-operation between the *ombudsmen*, and between them and the Council of Europe, adopted by the Committee of Ministers on 23 September 1985). In the 1980s, the Steering Committee for Human Rights, however, intended to examine the role of NHRIs within the Council of Europe, but this project was subsequently abandoned. See: 'Explanatory memorandum to Recommendation No. R (97) 14 of the Committee of Ministers to member states on the establishment of independent national institutions for the promotion and protection of Human Rights', in Directorate of Human Rights, *Non-judicial means for the protection of human rights at the national level* (Council of Europe, 1998), H/INF (98) 3, at 18-20.

membership, ombudsmen or comparable institutions’.<sup>20</sup> According to this Recommendation, member states should also ‘draw, as appropriate, on the experience acquired by existing national human rights commissions and other national human rights institutions, having regard to the principles set out in Resolution 48/134 of the General Assembly of the United Nations and in the Vienna Declaration and Programme of Action, adopted in 1993’.<sup>21</sup> The Council of Europe is thus building on already agreed principles regarding NHRIs, which it has now decided to promote in its member States.<sup>22</sup> However, the soft language of Recommendation No. R (97) 14 (which uses the terms ‘consider ... the possibility of establishing [NHRIs]’ instead of ‘encourages ... to establish ... [NHRIs]’ as in General Assembly Resolution 48/124<sup>23</sup> and ‘encourages the establishment ... of [NHRIs]’ in the Vienna Declaration and Programme of Action<sup>24</sup>) and the various possibilities open to member States regarding national institutions (which, for the Council of Europe, comprises a third open category of ‘comparable institutions’ besides human rights commissions and ombudsmen), shows the broad margin of appreciation left to states in their decision to create – or not to create – such institutions. Although it is a truism that NHRIs must be established in a way that improves the existing national human rights system, such a prudent wording appears to relegate the possibility of establishing national institutions to the inspirational, and reflects a certain lack of political will on the part of the member states of the Council of Europe. This problem leads us to the question of the usefulness of having a NHRI in a developed state, something that will be discussed in the next section.

Notwithstanding the weak language of Recommendation R (97) 14, the Committee of Ministers in its Resolution (97) 11 on co-operation between member states’ national institutions for the promotion and protection of human rights, and between them and the Council of Europe, also made the decision ‘to institute, in the framework of the Council of Europe, regular meetings with national human rights institutions of member states to exchange views and experience on the promotion and protection of human rights in their areas of competence’.<sup>25</sup> As a consequence of this Resolution, European NHRIs met within the framework of the Council of Europe, namely in Strasbourg in March 2000, in Dublin in November 2002, in Berlin in September 2004, and in Athens in September 2006, in order to develop co-operation and share experiences regarding issues common to NHRIs. These meetings were coupled with so-called Round Tables on specific human rights themes organised jointly by the Council of Europe and European NHRIs. Co-operation between NHRIs in Europe, which has been growing thanks to these regional meetings, will be further discussed in Part 4, which deals with networking.

### *C. NHRI in developed countries*

NHRIs were initially set up by developing countries, particularly by states that were in transition to democracy. These institutions were then considered as a means to build good

<sup>20</sup> Recommendation No. R (97) 14 of the Committee of Ministers to member states on the establishment of independent national institutions for the promotion and protection of Human Rights, adopted by the Committee of Ministers on 30 September 1997, Section a).

<sup>21</sup> Ibid., Section b).

<sup>22</sup> There are also references to GA Res. 48/134 and the Vienna Declaration and Programme of Action as well as the resolutions adopted during the two first European Meetings of NHRIs in the Preamble of Recommendation No. R (97) 14.

<sup>23</sup> GA Resolution 48/134, 20 December 1993, A/RES/48/134 at para. 3.

<sup>24</sup> GA World Conference on Human Rights, *Vienna Declaration and Programme of Action*, Vienna, 14 – 25 June 1993, A/Conf.157/23, Part I at para. 36.

<sup>25</sup> Resolution (97) 11 of the Committee of Ministers on co-operation between member states’ national institutions for the promotion and protection of human rights, and between them and the Council of Europe, adopted by the Committee of Ministers on 30 September 1997, Section a).



governance in these countries. Recently, however, NHRIs have also gained some ground in the so-called 'old' democracies of Western Europe. As mentioned previously, only two European national institutions were present at the time of the first International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris in October 1991. Currently, besides the CNCDH, created in 1947, and the Danish Institute of Human Rights (DIHR), created in 1987, Europe has four NHRIs (as defined in this article, excluding therefore ombudsmen institutions<sup>26</sup>) that comply with the Paris Principles, taking part in the International Coordinating Committee as accredited members.<sup>27</sup> These include the National Human Rights Commission of Greece ('Greek NHRC'), created in 1998, the Irish Human Rights Commission (IHRC), created in 2000, the National Advisory Commission for Human Rights of Luxembourg ('Luxembourg CNCDH'), created in 2000, and the German Institute for Human Rights (GIHR), created in 2001.<sup>28</sup> Steps have also been taken by NGOs, governments, and academic experts to establish similar institutions in Scotland<sup>29</sup>, the Netherlands<sup>30</sup>, Belgium<sup>31</sup>, Italy and Switzerland<sup>32</sup>. In the United Kingdom, the Commission for Equality and Human Rights, which will come into being in October 2007 and absorb the Commission for Racial Equality, the Disability Rights Commission, and the Equal Opportunities Commission, was established by the Equality Act 2006.<sup>33</sup>

Despite their proliferation in Europe, there remains on the part of European governments a certain unwillingness to create NHRIs, as well as some doubts regarding the added value they bring. The probable reason for this is the fact that, compared to developing countries, European countries are regarded by their governments as being sufficiently compliant with international human rights standards and already equipped with an efficient human rights apparatus. Developed countries also enjoy a relatively efficient judicial system, as well as, in many cases, the presence of parliamentary committees specialised in human rights in addition

<sup>26</sup> Ombudsmen institutions are excluded from this list, even if they have been granted an A-status by the International Coordinating Committee.

<sup>27</sup> The ombudsmen institutions that were granted an A-Status in Europe are: the Commissioner for Civil Rights Protection in Poland (created in 1999), the Provedor de Justiça in Portugal (created in 1999), the Ombudsman Against Ethnic Discrimination in Sweden (created in 1999), the Defensor del Pueblo in Spain (created in 2000), the Human Rights Ombudsman in Bosnia and Herzegovina (created in 2001), and the People's Advocate in the Republic of Albania (created in 2003). In addition, there is also the Northern Ireland Human Rights Commission (created in 1998), but it has only been granted a B-Status in the International Coordinating Committee.

<sup>28</sup> The EU Network of Independent Experts on Fundamental Rights, created by the Commission of the European Communities on request by the European Parliament in 2002, has drawn up a table of the existing NHRIs in the European Union, in the form of a questionnaire (CFR-CDF.Opinion1.2004). Slight changes have been made, however, since the list was drawn up, especially with regard to ombudsmen.

See: [http://crdho.cpdur.ucl.ac.be/AVIS%20CFR-CDF/Avis2004/CFR-CDFopinion.2004\\_1\\_en.pdf](http://crdho.cpdur.ucl.ac.be/AVIS%20CFR-CDF/Avis2004/CFR-CDFopinion.2004_1_en.pdf).

<sup>29</sup> The Scottish Executive has launched a proposal for a Scottish Human Rights Commission.

See: <http://www.scotland.gov.uk/consultations/justice/shrs.pdf>.

<sup>30</sup> Three public institutions concerned with the protection and promotion of human rights as well as the Netherlands Institute for Human Rights issued a public document in November 2005 for the attention of the Dutch government, wherein it urges this government to create a national institution.

See: [http://www.cbpweb.nl/downloads/overig/advies\\_NIRM.pdf](http://www.cbpweb.nl/downloads/overig/advies_NIRM.pdf).

<sup>31</sup> Several NGOs made a concrete proposal to create a Belgian Commission for Fundamental Rights by issuing a public document in April 2006, which was prepared by Olivier De Schutter and the author of this article, to the attention of the Belgian Government.

See: <http://www.justicepaix.be/documents/CommissBelgeDroitsFondam.pdf>.

<sup>32</sup> A working group of nine NGOs, supported by more than 100 other NGOs as well as trade unions, religious institutions and individuals made an official demand for the establishment of an NHRI in Switzerland in July 2001. A proposal to create such an institution was subsequently launched in the Swiss Parliament. However, it has not been successful so far. Another position paper from the working group was made public in August 2005. See: [http://www.humanrights.ch/cms/upload/pdf/050920\\_ag\\_mri\\_lang\\_f.pdf](http://www.humanrights.ch/cms/upload/pdf/050920_ag_mri_lang_f.pdf). For more information on this, see: <http://www.humanrights.ch>.

<sup>33</sup> Equality act 2006, 16<sup>th</sup> February 2006. The Government of the United Kingdom had already launched a White Paper of discussion regarding this issue in May 2004.

See: <http://www.cehr.org.uk/content/equalitywhitepaper.pdf>.

to equality or other specialised commissions, and ombudsmen institutions. Likewise, they also benefit from the presence of many civil society human rights organisations such as NGOs. European states therefore question the benefits of establishing NHRIs in advanced democracies.<sup>34</sup> They correctly argue that a state should not create a NHRI where such an institution does not appear to be necessary or beneficial for improving compliance with human rights. It is a fact that a state should only create a national institution provided it can bring additional value to the state's existing human rights framework. A national institution must not compete with other existing institutions working on human rights issues. Duplication of national mechanisms for the promotion and protection of human rights must be avoided and well-functioning institutions must continue their work without being replaced. This is not only for practical reasons but also to maintain the credibility of NHRIs. This concern has, for instance, been taken into account by the Government of the United Kingdom in its proposal to establish a Commission for Equality and Human Rights that would not take over the responsibility of assessing the compatibility of draft legislation with human rights treaties, a responsibility already vested in the Joint Committee on Human Rights.<sup>35</sup> Instruments that relate to the establishment and strengthening of national institutions also support this vision. As has been mentioned earlier, the UN General Assembly Resolution 48/134 and the Vienna Declaration and Programme of Action, while encouraging states to create national institutions, declare that every state has 'the right ... to choose the framework which is best suited to its particular needs at the national level',<sup>36</sup> which means that states may take into consideration their existing human rights framework before deciding to set up such an institution. So, before choosing what model to adopt for and what functions to attribute to a future national institution with due consideration for the Paris Principles, developed states have to ask themselves what are the potential benefits of creating such an institution in their jurisdictions.

What could then be the added value of establishing a NHRI in a stable democracy? Since European states as a rule are already equipped with some human rights institutions, the establishment of an all-encompassing institution might have limited objectives. However, the role played by a NHRI could become decisive in further implementing international human rights standards at national level. The added values a NHRI can bring to a developed state are at least threefold. Firstly, a NHRI could serve the purpose of coordination. Although its usefulness may be minor in this regard, it could be crucial in situations where the other institutions function properly. A NHRI should not be established to do the work of other institutions but to coordinate the activities undertaken by the human rights bodies present. A NHRI could coordinate the efforts of existing human rights actors by *inter alia* organising

<sup>34</sup> See: International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions*, 2<sup>nd</sup> edn (Versoix (Switzerland), 2004) at 64-67.

<sup>35</sup> The Government of the United Kingdom proposed to do so in its White Paper on the establishment of the Commission for Equality and Human Rights (see: supra n. 32). Although the Joint Committee of Human Rights is not an independent and pluralist national institution in the sense of the Paris Principles, it seems to enjoy adequate independence thanks to its broad mandate, its bi-cameral structure, and the judicious choice of its members. Another important aspect is that it interacts with organisations of civil society as well as experts. See: Hiebert, 'Parliament and the Human Rights Act: Can the JCHR help facilitate a culture of rights?' 2006 (4/1) *International Journal of Constitutional Law* 1 at 16 and 20. Section 11 (2) (d) of the Equality Act 2006, however, rather confusingly provides that the Commission for Equality and Human Rights may 'advise central or devolved government about the likely effect of a proposed change of law'.

<sup>36</sup> GA Resolution 48/134, 20 December 1993, A/RES/48/134 at para. 12; GA, World Conference on Human Rights, *Vienna Declaration and Programme of Action*, Vienna, 14 – 25 June 1993, A/Conf.157/23, Part I at para. 36. See also: Recommendation No. R (97) 14 of the Committee of Ministers to member states on the establishment of independent national institutions for the promotion and protection of human rights, recommending that member states of the Council of Europe consider the possibility of establishing national institutions while 'taking account of the specific requirements of each member state'. The formulation of this Recommendation sounds more like a requirement than a right for a state to take into consideration its particular needs when creating a NHRI.

consultations on specific human rights issues. It could also act as a mediator between these human rights actors thanks to its independence and its links with civil society. By so doing, a NHRI could be a means of overarching the endeavours of different state and non-state actors involved with human rights, and serving as a platform where these actors could consult each other with regard to their common human rights concerns. Establishing a constructive dialogue between civil society organisations and public authorities is the special task of NHRIs in a region such as Europe where human rights structures are already in place.

Secondly, thanks to their broad mandate, NHRIs could help ensure that national human rights policies are consistent. As mentioned earlier, public human rights bodies (which are not NHRIs) are already available in developed states. The human rights compliance they monitor, however, is only partial, since they were set up having sole regard to specific human rights, particular groups, or maladministration, and since they often only monitor compliance with specific national legislation. This is the case with equality commissions, which only deal with discrimination issues that are by and large embodied in particular legislations. Also, as already mentioned in the introduction, ombudsmen do not have the general mission of monitoring governmental action and advising government on human rights issues. Since human rights concern all areas of government, there must be an independent body which cuts across ministries (which are all) responsible for human rights. Without such a body, it is sometimes difficult to have an overall view of the human rights situation in a particular state, which affects the principle of indivisibility of human rights.<sup>37</sup> A national institution responsible for promoting respect for all human rights might help a state undertake a preventive and coherent human rights policy. A NHRI could elaborate a general approach to human rights issues, including those issues straddling the competence of different public organs and, by so doing, ensure the mainstreaming of human rights through these organs. Thanks to their broad mandate, NHRIs could provide national as well as local authorities with a general human rights perspective in relation to those areas for which they have responsibility. However, because national institutions have limited capacities, they should also focus on key areas (as do the IHRC and the DIHR<sup>38</sup>), such as those which are not covered by any other human rights body, and not tackle all human rights issues in depth.

Thirdly, a NHRI could facilitate communication between existing human rights actors. At national level, a NHRI allows NGOs to address their concerns simultaneously and with greater weight to the government. An active NGOs sector can thus find that a national institution provides a useful tool of communication with the government. One aspect worth mentioning in this regard is that the principal proponents for the creation of NHRIs in some European countries are NGOs who see the benefits they could derive from their state being provided with such an institution.<sup>39</sup> In addition, NHRIs could foster a national debate on sensitive issues by channeling to the general public information relating to specific human rights issues dealt with by government, NGOs and academics. A NHRI could also prove to be very valuable to the general public, thanks to information points and special desks set up to direct individuals to other competent institutions, and to training programmes (something that could also be useful to the state authorities at various levels). At international level, a NHRI could become a key partner of human rights bodies and thus reduce the distance between the

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<sup>37</sup> J.E. Goldschmidt, 'De leemte in de mensenrechtenhandhaving', in van Emmerik and Smals - van Dijk (eds), *Een nationale mensenrechtencommissie in Nederland?* (Leiden: NJCM- Boekerij, 2000) 61 at 73.

<sup>38</sup> See: IHRC, Annual Report 2004, available at <http://www.ihrc.ie>; DIHR, Annual Reports 2004 and 2005, available at <http://www.humanrights.dk>.

<sup>39</sup> This is the case in Belgium and Switzerland, where NGO coalitions issued public documents relating to the creation of a national institution in their country for the attention of the government. See: *supra* n. 31 and 32.

international human rights system and the national authorities.<sup>40</sup> NHRIs could monitor the implementation of international human rights treaties, for example, by ensuring the follow-up at national level of the UN committees' concluding observations and recommendations, as will be described in Part 3.<sup>41</sup> These institutions could also familiarise the general public with the work of these bodies. Lastly, NHRI could contribute to the promotion and protection of human rights abroad by advising their governments in foreign relations, and carrying out projects in countries in need. The CNDCH and the DIHR are already active in this regard. Akin to the latter institutions, national institutions could create partnerships with similar institutions in developing countries, and encourage their establishment where they do not yet exist. *A contrario*, it would be very hard for European states to achieve this were they lack such institutions at home.

## 2. Composition of NHRIs in Europe

Composition is one the most critical aspects of NHRIs, since it directly affects two fundamental principles underlying these institutions, i.e. pluralism and independence. Pluralism relates to selection, and independence to the appointment, status and dismissal of members of national institutions.

### *A. Members of NHRIs*

Guidelines relating to the selection of NHRIs members are provided for in Section 1 of Part B of the Paris Principles, entitled 'Composition and guarantees of independence and pluralism', stipulating who shall be represented in national institutions:

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

(a) Non-governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

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<sup>40</sup> Gallagher, 'Making Human Rights Treaty Obligations a Reality: Working with new Actors and Partners', in Alston and Crawford (eds), *The Future of United Nations Human Rights Treaty Monitoring* (Cambridge: Cambridge University Press, 2000) 201 at 203.

<sup>41</sup> This is one of the successful activities of the GIHR. See: Seidensticker, *Examination of State Reporting by Human Rights Treaty Bodies. An Example of Follow-Up at the National Level by National Human Rights Institutions* (Berlin: German Institute for Human Rights, 2005).

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).<sup>42</sup>

Although the composition of NHRIs may vary across the European continent, there is one thing which they should all have in common, i.e. be representative of civil society. One of the main purposes of national institutions is precisely to narrow the gap between government and civil society. In view of this, national institutions should be a means for civil society to advise and transmit its concerns to the government. Those organisations that will predominate in the composition of NHRIs will therefore be the ones that represent or have strong links with local communities, having regard for the different social categories of a given state. In other words, '[t]he composition of a national institution should, as far as possible, reflect the social profile of the community within which it operates'.<sup>43</sup> A balanced presence of men and women, and, where applicable, ethnic, religious, language, and political groups must therefore be secured.<sup>44</sup> The composition of NHRIs in particular must reflect the existence of vulnerable groups in the state. In Europe, however, it is mainly NGOs which are regarded as representing vulnerable groups and not members of the groups themselves.<sup>45</sup> Academic experts also appear to predominate in European national institutions. According to the Paris Principles, NHRIs must also encourage the participation of governmental representatives, even if only in an advisory capacity, since the latter will be the main recipients of the decisions taken by these institutions. The CNCDH, for instance, includes representatives of all the French ministers so that these representatives can relay the government's position on human rights issues and forge communication between the government and the Commission.

The composition of NHRIs in Europe is very diverse. The number of NHRI members can vary from 15 for the IHRC to 140 members for the CNCDH. This huge difference in the number of members is of no great importance since, as mentioned previously, a state that decides to create a national institution is free to define the framework which best corresponds to its particular needs.<sup>46</sup> Furthermore, the Paris Principles do not in any way specify what the number of members of national institutions should be. In view of this, the composition can differ from one national institution to another, as can their other aspects, according to the state's social, political and institutional heritage.<sup>47</sup> NHRIs, however, must comply with the basic principles underlying these institutions so as to be recognised by other NHRIs as well as by international and regional human rights organisations. These principles require *inter alia* that NGOs and other organisations involved in the promotion and protection of human rights are fully able to participate in the institution's undertakings. It should be reminded, however, that the Paris Principles emphasise the necessity of observing certain principles, in this case that of ensuring the effective participation of representatives of civil society, leaving the choice of whatever means might ensure compliance with these principles to the relevant state. States are therefore free to define the ways in which participation takes place, as long as the composition of a national institution guarantees 'the pluralist representation of social forces ... by powers which will enable effective cooperation to be established with, or through the presence of, representatives of [NGOs, trade unions, professional organisations, trends in

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<sup>42</sup> Paris Principles, B. 1)-3).

<sup>43</sup> OHCHR Professional Training Series No. 4, supra n. 17 at 12.

<sup>44</sup> Lindsnaes and Lindholt, supra n. 5 at 20.

<sup>45</sup> The IHRC, however, includes a representative (and strong defender) of the Travelling Community of this country, but this seems to be an exception. See: <http://www.ihrc.ie>.

<sup>46</sup> See: GA Resolution 48/134, 20 December 1993, A/RES/48/134 at para. 12; GA, World Conference on Human Rights, *Vienna Declaration and Programme of Action*, Vienna, 14 – 25 June 1993, A/Conf.157/23, Part I at para. 36.

<sup>47</sup> International Council on Human Rights Policy, supra n. 34 at 4.

philosophical or religious thought, and universities]’.<sup>48</sup> States, therefore, have the choice between creating NHRIs that directly cooperate with these various associations or NHRIs in which these associations have their own representatives. Despite these options, the way a NHRI is composed can still affect the relationship between NHRIs and other human rights agents. Furthermore, NHRI composition also influences the structure of a particular institution and the various functions assigned to it.

Broadly speaking, there are three different types of NHRI composition models in Europe.<sup>49</sup> Firstly, there are NHRIs, such as the CNCDH, which are composed of a broad panel of persons and organisations’ representatives involved in the promotion and protection of human rights. As mentioned above, the CNCDH has 140 members, making it the ‘largest’ national institution in Europe.<sup>50</sup> It includes 33 representatives of NGOs, 51 members selected for their competence in the human rights field (such as representatives of religious thought, academics, diplomats, and lawyers), nine French experts sitting on international human rights bodies, two members of Parliament, the Ombudsman as well as four representatives of the Prime Minister and 33 representatives of other ministers, acting in an advisory capacity. All these members, except for the government’s representatives, form the Plenary Assembly. In addition, the CNCDH has an Executive Board which defines the agenda of the plenary meetings of the assembly, a Coordinating and Reflection Committee which coordinates the work of the sub-commissions, and seven specialized sub-commissions, in which all members must actively take part.<sup>51</sup> The high number of CNCDH members involved in the promotion and protection of human rights gives the CNCDH the advantage of being rapidly informed (sometimes even before the Government) of any human rights problems arising in France. Furthermore, the NGOs’ considerable presence enables the CNCDH to take advantage of the experience of these organisations and of their connections with civil society. Also, the participation of organisations of civil society and of the ministers’ representatives (in an advisory capacity) in the plenary meetings helps to establish continuity of dialogue between both state and non-state actors within the institution.

Pluralism as a feature of the composition of NHRIs (which is the case with the CNCDH) has gained considerable legitimacy, since it follows to the letter the wording of the Paris Principles<sup>52</sup> and is promoted by the OHCHR.<sup>53</sup> The Greek NHRC<sup>54</sup> and the Luxembourg CNCDH<sup>55</sup> have been modelled (explicitly in the latter case) on the CNCDH, even though the former has only a few NGO representatives (six out of 30 members) and the latter has no governmental representatives (out of 20 members). The legitimacy of a NHRI, however, is not guaranteed permanently on the basis of its composition, but rather on the basis of several factors, including appointment, status, dismissal of members, and its own individual

<sup>48</sup> Paris Principles, B. 1). Emphasis added.

<sup>49</sup> The purpose of the analysis of the different models of NHRI composition is not to classify all the existing institutions, but only to examine what are the options open to states and what are the consequences of choosing one particular model on future national institutions.

<sup>50</sup> The CNCDH is also the national institution with the largest number of members in the world. However, it happens that smaller NHRIs may be assisted by a very large staff, as is the case with the DIHR, so that the number of members does not accurately reflect the size of a particular institution.

<sup>51</sup> For more information on the CNCDH, see: <http://www.commission-droits-homme.fr>.

<sup>52</sup> The CNCDH’s strict compliance with the Paris Principles is possibly due to the fact that this Commission was the one that organised the first International Workshop on National Institutions for the Promotion and Protection of Human Rights during which these Principles were drafted.

<sup>53</sup> OHCHR Professional Training Series No. 4, supra. n. 17 at 12.

<sup>54</sup> For more information on the Greek NHRC, see: <http://www.nchr.gr>. See also: Papadimitriou, ‘The Greek National Commission for the Protection of Human Rights’, in Sicilianos (ed.), *The Prevention of Human Rights Violations. Contribution on the occasion of the Twentieth Anniversary of the Marangopoulos Foundation of Human Rights (MFHR)* (The Hague: Kluwer Law International, 2001) 249.

<sup>55</sup> For more information on the Luxembourg CNCDH, see: <http://www.gouvernement.lu/dossiers/justice/droitshom>.



performance.<sup>56</sup> Pluralism goes hand in hand with independence and efficiency. As regards efficiency, too many members might slow down the pace of work and discourage the participation of these members, even though they might be compensated for their presence. It therefore happens that some members in a large national institution are only formally part of the institution but do not really participate in its activities, as is apparently the case with the CNCDH.<sup>57</sup>

Secondly, there are NHRIs, such as the (recently established) IHRC, which have a restricted number of members called commissioners. The IHRC is composed of only 15 members, four of which are academics, two from NGOs, four from public institutions, and five others who have special competence in the field of human rights (a medical expert in victim-related matters, a former minister, a judge at the International Criminal Court, a lawyer, and an accountant).<sup>58</sup> A permanent staff is there to assist the IHRC.<sup>59</sup> Members are chosen for their experience, qualifications, or expertise in the field of human rights, and sit in a personal capacity. They are part-time salaried (except for the President who is full-time salaried). The limited number of members considerably reduces the budget that is necessary to employ these members so that financial resources can be invested in other areas, such as staff hiring, public campaigning and enlisting the expertise of external experts.<sup>60</sup> The fact that members of NHRIs are part-time salaried has additional advantages: adequate remuneration and sitting in a personal capacity (which makes them more independent), involvement in the day-to-day management of the NHRI (which enables them to best define their strategy and method of work), and regular presence (so that they can rapidly respond in case of emergency). Part-time employment also has the advantage of the commissioners' activities outside the NHRI being potentially beneficial to the NHRI.<sup>61</sup> This type of small NHRI can also be very efficient and less expensive than one composed of a large number of members, which would require considerable infrastructural input. Despite these advantages, there are no human rights commissions or institutes modelled on the IHRC, except for the Northern Ireland Human Rights Commission, which consists of nine part-time members and one full-time president.<sup>62</sup> The Scottish Executive, however, recently expressed its willingness to establish a similar institution and launched a consultation paper proposing a Scottish Human Rights Commission that would be composed of only 3 or 4 members assisted by a limited staff.<sup>63</sup>

Although a NHRI such as the IHRC may be very effective, its legitimacy could easily be called into question due to the lack of 'pluralist representation of the social forces ... involved in the promotion and protection of human rights' as stipulated by the Paris Principles.<sup>64</sup> Despite the fact that appointed members come from different backgrounds and that the statute

<sup>56</sup> Lindsnaes and Lindholt, *supra* n. 5 at 51.

<sup>57</sup> E. Decaux, 'Utile Cassandre, le rôle de la Commission nationale consultative des droits de l'homme', *Pouvoir et Liberté. Etudes Offertes à Jaques Mourgeon* (Bruxelles : Bruylant, 1998) 589 at 593.

<sup>58</sup> For more information on the IHRC, see: <http://www.ihrc.ie>.

<sup>59</sup> Small NHRIs should also ensure that senior staff members are representative of civil society. See: *National Human Rights Institutions. Best Practice* (London: Commonwealth Secretariat, 2001) at 14.

<sup>60</sup> See: Mohamedou, 'The Effectiveness of National Human Rights Institutions', in Lindsnaes, Lindholt and Yigen (eds), *National Human Rights Institutions. Articles and working papers: input into the discussions on the establishment and development of the functions of national human rights institutions* (Copenhagen: The Danish Centre of Human Rights, 2000) 49 at 65.

<sup>61</sup> Klerk, 'Blauwdruk voor een Nederlands mensenrechtencommissie', in van Emmerik and Smals - van Dijk (eds), *Een nationale mensenrechtencommissie in Nederland?* (Leiden: NJCM- Boekerij, 2000) 89 at 109. Contra: *National Human Rights Institutions. Best Practice*, *supra* n. 59 at 14.

<sup>62</sup> For more information on the Northern Ireland Human Rights Commission, see: <http://www.nihrc.org>. Both the Irish and Northern Ireland Human Rights Commissions are based on a commitment made by the British and the Irish Governments in the Good Friday Agreement of 10 April 1998 providing for the establishment of these two institutions.

<sup>63</sup> See: <http://www.scotland.gov.uk/consultations/justice/shrs.pdf>.

<sup>64</sup> Paris Principles, B. 1).

of the IHRC provides that it should ‘broadly reflect the nature of Irish Society’<sup>65</sup>, its members must surely fail to represent the wider community of NGOs, public institutions, universities, and other organisations that are individually involved in the promotion and protection of human rights in Ireland, since all these bodies have very distinctive features and cannot be duly represented by only a few members. Moreover, the limited membership of this type of NHRI excludes the participation of the public administration, with the result that the NHRI fails to become a platform where both state and non-state human rights actors can interact. The same can be said of NGOs, since their limited membership prevents them not only from representing but also from establishing close links with the whole NGO community. However, in order to remedy this drawback, small IHRC-type national institutions might establish long-lasting co-operation with NGOs, public institutions, universities and other organisations as well as with their government’s administration to fulfill their mandate, something which the IHRC does. One of the ways to achieve this kind of co-operation would be for NHRIs to establish formal links with these bodies by consulting them before adopting opinions, recommendations, and reports, and by seeking their participation in the institution’s activities. In order to comply with the requirement of civil-society representativeness laid down in the Paris Principles, such co-operation should preferably be officially stated in the national institution's statutes.

Thirdly, there are NHRIs, such as the DIHR<sup>66</sup>, which do not have many members but have a large representative council. Besides a council, the institute also has a board consisting of 13 leading members (comprising six academics, six members appointed by the council, and one member of staff) who are responsible for working out the research strategy and the work assignments, and an Executive Director responsible for the day-to-day management. The Council, which is responsible for defining the general guidelines and for ensuring that the activities undertaken by the members of the Board respect the statutes of the DIHR, is composed of 68 people in total, including 30 representatives of NGOs, one representative of research institutes, one of the trade unions, and one of the bar association, nine representatives of political parties represented in Parliament, the Ombudsman, six representatives of the ministries acting in an advisory capacity and four other non-voting members. The Council enables civil society organisations as well as the political forces to be informed as well as involved in the Institute’s work. As previously mentioned, the members of the Board are also members of the Council, with the result that they may collaborate with NGOs and other human rights organisations, the government, and the Parliament, all of which are represented in the Council. So far, only the GIHR, which has a very similar mandate that focuses on research, as explained in the next chapter, is in a way structurally similar to, although much smaller than, the DIHR.<sup>67</sup> It appears, however, that this kind of mandate gives more room for political pressure to be applied to members of both institutions.<sup>68</sup>

<sup>65</sup> Irish Human Right Commission Act, 31 May 2000, Section 5 (12).

<sup>66</sup> For more information on the DIHR, see: <http://www.humanrights.dk>; Kjaerum, *National Human Rights Institutions Implementing Human Rights* (Copenhagen: Danish Institute for Human Rights, 2003) (also published in Bergsmo (ed.), *Human Rights and Criminal Justice for the Downtrodden. Essays in Honour of Asbjørn Eide* (Leiden: Martinus Nijhoff Publishers, 2003) 631) at 34.

<sup>67</sup> The GIHR has, however, one additional organ. In addition to the Board (Vorstand) comprising a director and a deputy director, which runs the institution, and the Board of Trustees (Kuratorium) of 16 members, which adopts the thematic guidelines and nominates the directors, this institution has a General Assembly of 12 members that formally accepts the Boards’ Annual Report and nominates some of the members of Board of Trustees. The General Assembly would be hierarchically above the Board of Trustees. See: <http://www.institut-fuer-menschenrechte.de>.

<sup>68</sup> This has indeed be the case for the DIHR and the GIHR. See: E. Decaux, ‘Les principes directeurs des institutions nationales des droits de l’homme dits « Principes de Paris »’, in Organisation internationale de la Francophonie, *Structures gouvernementales et institutions nationales des droits de l’Homme. Expériences et perspective. Colloque international*, Cairo, 10-11 May 2003, at 69.



The three different NHRI composition models mentioned above fully comply with the Paris Principles. While a national institution may be composed of members representing civil society, as is the case in France, it may also have a small number of members, as is the case in Ireland. A mixture of both these two organisational structures can be achieved, as in the case of Denmark, where the small number of leading members is supervised by a larger assembly. While a particular structure has both advantages and disadvantages, no particular NHRI composition model can claim to be the most suitable for every European state wishing to set up a NHRI. However, what is important for the legitimacy of NHRIs is that their composition effectively represents ‘the social forces ... involved in the promotion and protection of human rights’<sup>69</sup> through their close co-operation with or the presence of representatives of civil society.

### *B. Appointment, Status and Dismissal of Members of NHRIs*

The Paris Principles do not make provision for a clear set of guidelines regarding the appointment, status and dismissal of members of NHRIs, as they do for the selection of these members. With regard to the appointment of members, the Paris Principles stipulate that it should take place ‘by means of an election or otherwise’<sup>70</sup> and ‘be effected by an official act which shall establish the specific duration of the mandate’.<sup>71</sup> However, additional sources point to further provisions. According to the NHRIs Handbook of the OHCHR, the method, criteria, and duration of appointments and reappointments, and the reasons for dismissal must be laid down in the founding statutes of national institutions.<sup>72</sup> Members’ appointments must preferably be a prerogative of Parliament<sup>73</sup> – and not of the government –, and appointed members should elect chairpersons themselves.<sup>74</sup> Despite the former requirement, members of European NHRIs, like the CNCDH<sup>75</sup> and the IHRC<sup>76</sup>, are by and large appointed by act of the state’s executive branch (the Prime Minister for the former and the Government for the latter). Furthermore, the rules of appointment must be akin to those applicable to civil servants, and reflect the principles of publicity, fairness, and impartiality. They must clearly indicate the conditions that will have to be applied (preferably by Parliament) for appointment to the NHRI. Conditions for membership may be experience, qualifications, training or expertise in the field of human rights.<sup>77</sup> However, in large national institutions, such as the CNCDH, the statutes will rather include provisions regarding the current occupation of candidate members, since the elected members will be sitting in a representative capacity.<sup>78</sup> It is also important that future members already have a certain authority as this may be necessary in order for governments to take their opinions seriously.

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<sup>69</sup> Paris Principles, B. 1).

<sup>70</sup> Ibid.

<sup>71</sup> Ibid., B. 3).

<sup>72</sup> OHCHR Professional Training Series No. 4, supra n. 17 at 11. See also: International Council on Human Rights Policy, supra n. 34 at 14.

<sup>73</sup> OHCHR Professional Training Series No. 4, supra n. 17 at 11; International Council on Human Rights Policy, supra n. 34 at 112.

<sup>74</sup> This is the case with the DIHR. See: Yigen, ‘Guarantees of independence of National Human Rights Institutions: Appointment and Dismissal Procedures of Leading Members’, Lindsnaes, Lindholt and Yigen (eds), *National Human Rights Institutions. Articles and working papers: input into the discussions on the establishment and development of the functions of national human rights institutions* (Copenhagen: The Danish Centre of Human Rights, 2000) 59 at 69.

<sup>75</sup> See: *Décret constitutif de la Commission Nationale Consultative des Droits de l’Homme*, 30 January 1984, Article 3 (1).

<sup>76</sup> See: Irish Human Right Commission Act, 31 May 2000, Section 5 (3).

<sup>77</sup> The conditions mentioned are those that must be fulfilled in order to become a member of the IHRC, according to Section 4 (4) of the Irish Human Rights Commission Act, 31 May 2000.

<sup>78</sup> See: *Décret constitutif de la Commission Nationale Consultative des Droits de l’Homme*, 30 January 1984, Article 2.

With regard to the status of NHRI members, the latter must be guaranteed independence from the government and stability in the exercise of their mandate. In this regard, the only requirement of the Paris Principles is that the duration of the mandate must be specified in the official act providing for the appointment of the national institution's members.<sup>79</sup> However, long-term mandates for a duration of 5 years are recommended.<sup>80</sup> Such terms enable the members of a national institution to tackle not only the symptoms but also the root causes of human rights problems. Short-term mandates affect the independence of members, since the latter might have future job opportunities in mind. A long-term mandate must be renewable only once.<sup>81</sup> The possibility of renewing a mandate, even if only once, is nonetheless controversial<sup>82</sup>, even though the Paris Principles are rather lenient in this regard by stipulating that '[t]his mandate may be renewable, provided that the pluralism of the institution's membership is ensured'.<sup>83</sup> Remuneration of members, which is part of the state's duty to provide adequate funding for NHRIs as enshrined in the Paris Principles<sup>84</sup>, must be adequate to enable NHRIs to attract well-qualified member candidates and enable hired members to work independently.<sup>85</sup> Members on a part-time or full-time salary should be paid the same as civil servants or the judiciary.<sup>86</sup> Members that take part in the plenary assembly must be paid according to the hours they put in. Members of small NHRIs, however, are subject to occupational restrictions. These members may not hold a political mandate or work in the public administration.<sup>87</sup> The Paris Principles in this regard explicitly stipulate that, should representatives of government be present in a national institution, these representatives must only participate in an advisory capacity.<sup>88</sup> As a result, part-time or full-time commissioners who run small national institutions may not concurrently hold a political mandate or work in the public administration. This, of course, does not preclude the national institution establishing links with this administration.

Finally, causes for dismissal must be specified in the statutes of a NHRI.<sup>89</sup> Reasons for dismissal include failure to participate, as is the case with the CNCDH<sup>90</sup>, and serious wrongdoings, as is the case with the IHRC.<sup>91</sup> According to the NHRIs Handbook of the OHCHR, only Parliament – which as mentioned previously should be solely empowered to appoint NHRI members – should be entitled to make decisions regarding their dismissal.<sup>92</sup>

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<sup>79</sup> Paris Principles, B. 3).

<sup>80</sup> International Council on Human Rights Policy, supra n. 34 at 16.

<sup>81</sup> *National Human Rights Institutions. Best Practices*, supra n. 59 at 16. Members of the IHRC are eligible for a term of at least 5 years, renewable for a further term of at least 5 years, members of the CNCDH for a term of 3 years, and members of the DIHR for a term of 4 years, renewable once.

<sup>82</sup> Against the renewability of mandates of members of NHRIs, see: International Council on Human Rights Policy, supra n. 34 at 12.

<sup>83</sup> Paris Principles, B. 3). These Principles are the minimum standards for NHRIs. Provision for non-renewable long-term mandates are of course permissible.

<sup>84</sup> Paris Principles, B. 2).

<sup>85</sup> Yigen, supra n. 74 at 77.

<sup>86</sup> Ibid.; *National Human Rights Institutions. Best Practice*, supra n. 59 at 14.

<sup>87</sup> International Council on Human Rights Policy, supra n. 34 at 14.

<sup>88</sup> Paris Principles, B. 1) e.

<sup>89</sup> International Council on Human Rights Policy, supra n. 34 at 15.

<sup>90</sup> The mandate of members of the CNCDH, who fail to participate in three consecutive meetings without a valid reason, might be terminated by the Bureau of this Commission, according to Article 3 (7) of the *Décret constitutive de la Commission Nationale Consultative des Droits de l'Homme*.

<sup>91</sup> See: Irish Human Rights Commissions Act, 31 May 2000, Section 7.

<sup>92</sup> OHCHR Professional Training Series No. 4, supra n. 17 at 80.

### 3. Competence of NHRIs in Europe

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NHRIs are mandated to protect and promote human rights, a move backed by the Paris Principles. These Principles also stipulate that they ‘shall be given as broad a mandate as possible’.<sup>93</sup> A typical feature of NHRIs is their comprehensive mandate, covering both civil and political, economic, social and economic rights.<sup>94</sup> In contrast, there are national institutions that are not NHRIs in the sense of the Paris Principles which are only responsible for specific legislation.<sup>95</sup> As with other aspects relating to national institutions, the functions of national institutions may vary from one to the other within the boundaries set by the Paris Principles. The function of NHRIs is threefold: to monitor governmental action and advise government, to promote and educate about human rights, and, optionally, to investigate alleged human rights violations. European NHRIs, however, tend to focus on the first two functions.<sup>96</sup>

#### A. Monitoring Governmental Action and Advising Government

One of the principal functions of European NHRIs is to monitor and advise state authorities, in particular the Government, by examining the compliance of draft laws and existent legislation with international human rights standards and by advising government on issues relating to the protection and promotion of human rights.<sup>97</sup>

This function is outlined in Section 3 (a) of Part A. of the Paris Principles, entitled ‘Competence and Responsibilities’:

3. A national institution shall, *inter alia*, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicise them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

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<sup>93</sup> Paris Principles, A. 2). The Paris Principles also state that this mandate ‘shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence’.

<sup>94</sup> OHCHR Professional Training Series No. 12, *Economic, Social and Cultural Rights. Handbook for National Human Rights Institutions* (Geneva: UN, 2005) at 35.

<sup>95</sup> These national institutions are usually anti-discrimination bodies, especially in developed countries such as those in Europe. Because of their limited mandate, they do not fully comply with the Paris Principles. An example of this is the Belgian Centre for Equal Opportunities and Opposition to Racism and the Dutch Equal Treatment Commission, which consequently only have a B-Status in the International Coordinating Committee.

<sup>96</sup> See in general: Kjaerum, ‘The Experiences of European National Human Rights Institutions’, Lindsnaes, Lindholt and Yigen (eds), *National Human Rights Institutions. Articles and working papers: input into the discussions on the establishment and development of the functions of national human rights institutions* (Copenhagen: The Danish Centre of Human Rights, 2000) 113. As mentioned in the first chapter, these two functions were already acknowledged in the guidelines of the ‘Seminar on National and Local Institutions for the Promotion and Protection of Human Rights’ held in September 1978 (See: UN doc. ST/HR/SER.A/2). Note however that the DIHR acquired competence in 2003 to hear complaints of discrimination on grounds of race or ethnic origin, and created a Complaints Committee for Ethnic Equal Treatment for that purpose. For a description of the working of this Committee, see: Kjaerum, ‘The Protection Role of the Danish Human Rights Commission’, in Ramcharan (ed.), *The Protection role of National Human Rights Institutions* (Leiden: Martinus Nijhoff Publishers, 2005) 23 at 33-37.

<sup>97</sup> The term ‘monitoring’ is not referred to in the Paris Principles. This might follow from the fact that NHRIs are set up more to pay attention to promote human rights than to control respect for these rights. See: Lindsnaes and Lindholt, *supra* n. 5 at 47.

- (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
- (ii) Any situation of violation of human rights which it decides to take up;
- (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government.<sup>98</sup>

For some NHRIs in Europe, monitoring governmental action and advising government is the principal activity. Checking the compliance of legislation with human rights standards is for them one of the best ways to prevent human rights violations. National institutions, such as the CNCDH, have principally an advisory role in this sense towards government. As stated in the Paris Principles, they evaluate the compatibility of national legislation with the fundamental human rights principles which are laid down in the international human rights instruments to which their state is a party. The monitoring brief of NHRIs covers both future as well as existing legislation. Although legal analysis is time consuming, it appears that those who draft future legislation are now more attentive to its compatibility with international human rights, especially since they know that there is a monitoring body that will review the legislation in question.<sup>99</sup> NHRIs, however, should not limit themselves to assessing compliance with international human rights treaties but should also evaluate the broader implications of laws on human rights.<sup>100</sup> This they can do by cooperating with civil society organisations. NHRIs are also empowered to make recommendations and proposals to the government for adopting new legislation or amending existing legislation. Given the fact that it is primarily a 'national' institution, a NHRI must first have a good understanding of national legislation by paying close attention to national legislative developments before it can review legislation and issue legislative recommendations. In addition, it must follow developments in international human rights law, and be acquainted with the jurisprudence of international courts and the observations and recommendations of treaty bodies. In Europe, by monitoring legislation, NHRIs are taking over part of the judicial bodies' function of checking the constitutionality of draft laws and existing legislation, which involves monitoring compliance with the fundamental rights enshrined in the Constitution. This is a positive change, since judicial bodies do not *a priori* specialise in human rights and are therefore not the most suitable bodies to monitor human rights compliance. In addition, as mentioned earlier, in contrast to these bodies, NHRIs must consider the human rights impact of draft legislation not just in legal terms. Since national institutions can also act

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<sup>98</sup> Paris Principles, A. 3) a.

<sup>99</sup> Kjaerum, 'The Protection Role of the Danish Human Rights Commission', *supra* n. 96 at 28. See also: Ryle, 'Pre-legislative scrutiny: a prophylactic approach to protection of human rights', 1994 *Public Law* 192 at 194.

<sup>100</sup> OHCHR Professional Training Series No. 4, *supra* n. 17 at 24.

preemptively, they have a much broader mandate than the judiciary when it comes to scrutinising legislation.<sup>101</sup>

NHRIs may also conduct general inquiries and submit reports to national authorities on human rights issues that seem important or urgent, something which European NHRIs all undertake. This allows them to have in-depth discussions on these issues. Any national authority can consult NHRIs directly. National authorities comprise any agent exercising state power. By national authorities, therefore, is meant not only the Government and Parliament, but also ‘any other competent body’ according to the Paris Principles.<sup>102</sup> This includes decentralised authorities, such as the police forces and public social welfare centres, and federated political bodies in federal states. In addition to national authorities, any one should be entitled to raise his or her human rights concerns to the NHRI.<sup>103</sup> Another function that NHRIs have is to monitor compliance with fundamental rights, not only in theory but also in practice. In order to do so, however, national institutions must be familiar with the way domestic legislation is implemented. This is only possible if they work closely with civil society organisations.<sup>104</sup> Monitoring the implementation of human rights includes, for instance, observing the practice of law enforcement agents, such as the police and the army, and visiting places of detention, as provided for in the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.<sup>105</sup> Thanks to their independent status, NHRIs can also deal with less addressed and even unpopular issues. The latter might include, for example, the human rights-related problems affecting vulnerable migrant foreigners including mothers with children, as is the case with the DIHR, as well as respect for the economic, social and cultural rights of persons with disabilities and, in particular, the conditions for the provision of services for the disabled, as is the case with the IHRC.<sup>106</sup> In order to deal with these issues, NHRIs, once again, must be in a position to closely collaborate with organisations in touch with local communities and vulnerable people.

Beside monitoring governmental action, the Paris Principles require that NHRIs contribute ‘to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, ... express an opinion on the subject, with due respect for their independence’.<sup>107</sup> Since the preparation of reports by qualified experts based on good-quality data involves considerable investment by States, and since the implementation of international human rights falls directly into the ambit of NHRIs, the latter, therefore, should, according to the Paris Principles, contribute to the preparation of these reports.<sup>108</sup> An opportunity for them to do so would be when reporting to all treaty bodies, since their mandate encompasses the whole

<sup>101</sup> Kjaerum, *National Human Rights Institutions Implementing Human Rights*, supra n.66 at 21; Kjaerum, ‘The Protection Role of the Danish Human Rights Commission’, supra n. 96 at 28.

<sup>102</sup> Paris Principles, A. 3) a.

<sup>103</sup> Paris Principles, C. a.

<sup>104</sup> Kjaerum, *National Human Rights Institutions Implementing Human Rights*, supra n. 66 at 22; Kjaerum, ‘The Experiences of European National Human Rights Institutions’, supra n. 96 at 115.

<sup>105</sup> See: Part IV on the national preventative mechanisms (Articles 17-24) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 2003, (2003) 42 ILM 26. Article 18 (4) of this Protocol provides that: ‘[w]hen establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights’. This can be interpreted as encouraging states to use NHRIs as national prevention mechanisms in the sense of this Protocol. See: International Council on Human Rights Policy, supra n. 34 at 19.

<sup>106</sup> See: DIHR, Annual Report 2005, available at <http://www.humanrights.dk>; A. Connelly, *The Irish Human Rights Commission and the Implementation of Economic, Social and Cultural Rights* (Paper submitted at the International Round Table on National Human Rights Institutions and Economic, Social and Cultural Rights, New Delhi, 29 November – 1 December 2005).

<sup>107</sup> Paris Principles, A. 3) d.

<sup>108</sup> OHCHR Professional Training Series No. 4, supra n. 17 at 27.

range of international human rights. However, it is best that governments review these reports *a posteriori* before submission, since national institutions cannot take over governmental responsibilities. Notwithstanding the wording of the Paris Principles and the government's probable desire to be (partially) released from its reporting obligations, a closer look at the consequences of NHRIs participating in the preparation of state reports would lead one to conclude that it would be preferable if these institutions did not contribute to the preparation of these reports (although the CNCDH actually does), since NHRIs have a monitoring function vis-à-vis the government (enshrined in an official mandate) just like the treaty bodies to which these reports are addressed.<sup>109</sup> It would therefore be preferable if these institutions only drew parallel reports or prepared separate additional opinions, as is the case with the Greek NCHR. This option, which is also provided for in the Paris Principles, has more regard for NHRIs independence as well as the state's sole responsibility to report to the treaty bodies. No participation at all is also an option (the best one in my view), especially since the preparation of parallel reports or so-called 'shadow-reports' is traditionally the task of NGOs.<sup>110</sup>

NHRIs, however, can be very useful in another aspect of the reporting process. They can actively take part in the follow-up to the concluding observations made by the treaty bodies following examination of the state reports. This function could be seen as part of the monitoring function of national institutions, even if it is not explicitly provided for in the Paris Principles. In order to ensure that treaty bodies' observations and recommendations are effectively taken into account by governments, the GIHR has for instance developed a procedure in the form of meetings, in which the key actors involved at national level with the implementation of these observations and recommendations are invited to participate.<sup>111</sup> This procedure aims to establish a constructive dialogue between government representatives, particularly those representing the ministries in charge of preparing state reports and those responsible for implementing treaty bodies observations and recommendations on the one hand<sup>112</sup>, and civil society, parliamentarians, academics, and where possible members of the UN Committees themselves on the other hand.<sup>113</sup> National institutions could act as facilitators during these meetings and put in place a process of regular and consistent follow-up to the treaty bodies' observations and recommendations. By so doing, they might also become key partners of treaty bodies and, in a way, their extension at national level.

### *B. Promoting and Educating about Human Rights*

Since NHRIs represent a (non-judicial) mechanism for the implementation of international human rights at national level, they also have the task of fostering an awareness of human

<sup>109</sup> International Council on Human Rights Policy, supra n. 34 at 19; Amnesty International, *National Human Rights Institutions – Amnesty's International's recommendations for effective protection and promotion of Human Rights*, 2001 (AI Index: IOR 401/007/2001) at 9.

<sup>110</sup> Additional information in state reports provided by national institutions could also lead to the proliferation of different opinions, sometimes from the same actors. Treaty bodies may thus have to deal with official state reports prepared by the administration, separate opinions from NHRIs that may call on NGOs to formulate these opinions, and so-called 'shadow-reports' by (the same) NGOs. In the above-mentioned scenario of NHRIs directly contributing to the preparation of state reports, as recommended by the Paris Principles, the reliance of these institutions on NGOs expertise could lead to the absurd result of NGOs (indirectly) assisting the state in the preparation of its reports.

<sup>111</sup> See: Seidensticker, supra n. 41.

<sup>112</sup> Although only one ministry is usually in charge of reporting on a particular human rights treaty to the respective treaty body, it appears that several ministries are in fact concerned with the implementation of the observations and recommendations of each of the treaty bodies. It is therefore advisable that national institutions invite not only the representatives of the ministry principally involved in the implementation of particular treaties, but also the representatives of other ministries who (should) take part, even incidentally, in the implementation of these treaties. Ibid. at 14.

<sup>113</sup> Ibid. at 14-17. According to the GIHR, the media should be excluded of these meetings, because publicity of the debates might deteriorate the dialogue with the ministries representatives.

rights. The tasks of promoting and educating about human rights are inextricably linked, both of them aiming to forge a human rights culture in a given country (and sometimes abroad) by disseminating to the largest possible extent information on these rights. For practical purposes, however, these issues will be discussed in separate paragraphs in this section.<sup>114</sup>

The promotion of human rights involves many activities, including collecting, producing and disseminating information materials, organising promotional events and encouraging community initiatives, working with the media, and making the NHRI known to the public.<sup>115</sup> All these activities tend to increase the public's awareness of human rights and hence their acceptance, leading to a corresponding change in behaviour. The purpose of promotional activities is also to inform people about their rights and to make sure that they are aware of all the protection mechanisms available to them.<sup>116</sup> These activities contribute considerably to the prevention of human rights violations. Giving national institutions such a human rights promotion brief can be seen as part of the state's obligation to promote international human rights. Ideally, NHRIs should start by gathering human rights information in an information centre that would be open to all sections of the population. Issues to be discussed should not only concern basic human rights problems, but also new and sensitive issues that may be perceived by some sections of the population as unacceptable or that put into question institutional behaviour or governmental action. NHRIs should remain independent even in the face of negative public or governmental opinion, and not hesitate to deal with these issues. Information material might include both international human rights instruments, state reports, treaty body observations and recommendations, domestic human rights legislation, and information about existing protection mechanisms at national and international level<sup>117</sup>, and more importantly information specifically aimed at and easily understood by all sections of the population. Human rights awareness information should, in particular, be easily understood by the most vulnerable and most marginalised in society, including immigrants, homosexuals, the handicapped, the different minority groups, as well as women and children.<sup>118</sup> In order to disseminate human rights as widely as possible and particularly among those who most need it, NHRIs should work closely with local communities, educational institutions, NGOs, and other organisations that protect and represent vulnerable people. In Europe, there are many NGOs already involved in such promotional activities. NHRIs should therefore work with these organisations. Also, should other public institutions concerned with the protection of specific human rights exist alongside NHRIs, there should be a clear understand between them to avoid any conflict of interest or duplication of activities. Where national institutions resort to NGOs or public institutions, they should adopt definite guidelines to ensure that the activities resulting from their co-operation remain within the scope of their competence and that they take place in a coordinated manner.

Some NHRIs in Europe have undertaken to promote the understanding of human rights through research. This they achieve by publishing the results of their studies, organising seminars and conferences, and offering a wide range of expert advice in the field of human rights.<sup>119</sup> Such national institutions are particularly suited to the European context, where

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<sup>114</sup> The NHRIs Handbook of the OHCHR also makes this distinction in its third chapter entitled 'The Task of Promoting Awareness and Educating About Human Rights' and treats both promotion and education under separate headings. The distinction made in this article is, however, regarding the fact that promotion includes widespread education about human rights and that education about these rights also contributes to helping people realise their rights, purely practical.

<sup>115</sup> See: OHCHR Professional Training Series No. 4, *supra* n. 17 at 18-27.

<sup>116</sup> *Ibid.* at 23.

<sup>117</sup> *Ibid.* at 18-19.

<sup>118</sup> International Council on Human Rights Policy, *supra* n. 34 at 20.

<sup>119</sup> The emphasis on certain competences will be reflected in a national institution's composition. NHRIs which are placing an emphasis on research have as a result many academics on their boards.

human rights structures are often already in place.<sup>120</sup> Research allows these institutions to deal with the root causes of human rights problems and to contribute to the understanding of human rights. A leading example of such NHRIs is the DIHR, which aims to communicate human rights information through research, analysis, information, education and documentation at both national and international level.<sup>121</sup> At national level the DIHR develops training programmes in collaboration with NGOs to improve human rights awareness. At international level the DIHR collaborates with regional organisations and partner countries to disseminate international human rights standards among target groups. The GIHR is developing similar promotional activities.<sup>122</sup> The fact that some European NHRIs specialise in promotional activities, however, does not mean that their function is limited to research and that other European institutions only focus on monitoring and advising. On the one hand, research carried out in order to communicate human rights information does not, as regards the DIHR, rule out monitoring and advising state authorities on human rights issues.<sup>123</sup> On the contrary, large scale research undertaken by the DIHR serves as a base for changes in legislation and practice in Denmark.<sup>124</sup> Also, there is a clear link between the activities of monitoring and advising, and that of promoting human rights, since the former contributes to the dissemination of human rights standards *in casu* to the state (political) authorities. On the other hand, NHRIs that are specialised in monitoring and advising do not spend all their time exercising these functions. One good example is the CNCDH. Although its principal function is to review legislation and advise government, it also endeavours to promote human rights by publishing studies and organising human rights awards.<sup>125</sup> Every year the CNCDH issues the ‘Human Rights Prize of the French Republic - Liberty - Equality – Fraternity’<sup>126</sup> as well as the ‘René Cassin Medal’.<sup>127</sup> These prizes aim to reward people for their commitment to human rights.

Educating about human rights basically means sharing understanding of these rights. As with the promotion of human rights, the aim is to prevent human rights violations by creating a culture of respect for human rights. The values of teaching and educating about human rights are recognised in the Preamble of the Universal Declaration of Human Rights of 1948, which proclaims that everyone ‘shall strive by teaching and education to promote respect for these rights and freedoms’.<sup>128</sup> A reminder of their importance was also given in the Vienna Declaration and Programme of Action, adopted at the Vienna World Conference on Human Rights in 1993.<sup>129</sup> Some human rights treaties, namely the Convention on the Rights of the Child and the Convention against Torture and other Cruel or Degrading Treatment or

<sup>120</sup> Pohjolainen, *The Evolution of National Human Rights Institutions. The Role of the United Nations* (Copenhagen: The Danish Institute for Human Rights, 2006) at 19.

<sup>121</sup> See: <http://www.humanrights.dk>.

<sup>122</sup> See: <http://www.institut-fuer-menschenrechte.de>.

<sup>123</sup> For the monitoring activities of the DIHR, see: Kjaerum, *National Human Rights Institutions Implementing Human Rights*, supra n. 66 at 20-22; Kjaerum, ‘The Protection Role of the Danish Human Rights Commission’, supra n. 96 at 26-31. The GIHR has, however, no mandate to monitor governmental action. See: <http://www.institut-fuer-menschenrechte.de>.

<sup>124</sup> See: Kjaerum, ‘The Protection Role of the Danish Human Rights Commission’, supra n. 96 at 30.

<sup>125</sup> See: <http://www.commission-droits-homme.fr>.

<sup>126</sup> This Prize is presented by the Prime Minister on the 10 of December each year (which is the International Human Rights Day proclaimed by the United Nations) and rewards five people for their activities and projects on the effective protection and promotion of Human Rights. See: <http://www.commission-droits-homme.fr>.

<sup>127</sup> This Medal is awarded each year by the Minister of Education. It is designed to reward people for their firm and exemplary action, usually as part of a school project, in relation to the promotion and protection of human rights in France or abroad. The competition is open to students, groups of students, and entire classes in both private and state-owned French secondary and vocational schools in France and abroad. See: <http://www.commission-droits-homme.fr>.

<sup>128</sup> Universal Declaration of Human Rights, adopted by GA Res. 217 A (III), 10 December 1948, A/810 at 71, Preamble *in fine*.

<sup>129</sup> GA World Conference on Human Rights, *Vienna Declaration and Programme of Action*, Vienna, 14 – 25 June 1993, A/Conf.157/23, Part I at para. 33.



Punishment, also provide for the widespread dissemination of the rights covered by these conventions.<sup>130</sup> Educating about human rights can therefore be considered as a right in itself, from which follows an obligation by states to develop specific programmes.<sup>131</sup> The UN General Assembly proclaimed a ten year-period, starting 1 January 1995, the UN Decade for Human Rights Education (1994-2004), and endorsed a Plan of Action for this Decade in its Resolution 49/184.<sup>132</sup> This Plan of Action gives NHRIs a central role regarding human rights education at national level.<sup>133</sup> The setting up of national institutions with competence in human rights education is thus a suitable way for states to fulfil their obligation to educate citizens about human rights. As with the promotion of human rights, there are many NGOs already doing so in European states. NHRIs may therefore very well rely on NGOs to fulfill this role, although they are not altogether meant to delegate it to them, since governmental educational programmes that are run by NHRIs would have more weight in the eyes of the public, and since coordination by NHRIs would ensure that these programmes are part of a coherent national strategy. It goes without saying that in order to be in a position to coordinate human rights education activities, NHRIs should first undertake a minimum of research into human rights.

There is no one way to educate about human rights. However, some principles could be elaborated to make it as successful as possible. If not part of a formal educational course, human rights training should be carried out in a practical, non-academic way. To do so, human rights language should be demystified. The wording of international human rights instruments should be adjusted so as to be readily understood by the target audience, and training carried out by individuals familiar with the audience.<sup>134</sup> Human rights principles should therefore be translated into everyday language. Instructors, however, should always be able to refer, in whatever terms they might chose, to the legal basis of their statements. This safeguards against confusing respect for human rights with kindness and charity, although the two might overlap, and ensures that the audience knows that human rights involve practical obligations entitling one to legal claims. This is particularly important as regards economic, social and cultural rights, which can easily be confused with better living conditions. In addition, human rights training should use an interactive approach, and refer to concrete examples familiar to the target audience.

Human rights training should be carried out at both formal and informal level. At formal level human rights education should start in primary school and continue in secondary school as well as in university. In schools, it should help children and adolescents integrate well into society. Because of their official status, NHRIs are well-positioned to co-operate with educational institutions to provide education of this kind. With regard to universities, although it is important that they offer a general course on international human rights law,

<sup>130</sup> See: Article 42 of the Convention on the Rights of the Child 1989, 1577 UNTS 3, and Article 10 of the Convention against Torture and other Cruel or Degrading Treatment or Punishment 1984, 1465 UNTS 85.

<sup>131</sup> Marie, 'Human Rights Education, a Fundamental Resource in the Prevention of Violations', Sicilianos (ed.), *The Prevention of Human Rights Violations. Contribution on the occasion of the Twentieth Anniversary of the Marangopoulos Foundation of Human Rights (MFHR)* (The Hague: Kluwer Law International, 2001) 269 at 275.

<sup>132</sup> GA Resolution 49/184, 23 December 1994, A/RES/49/184.

<sup>133</sup> See: Plan of Action for the United Nations Decade for Human Rights Education, 1995-2004: Human rights education - lessons for life, UN Doc. A/51/506/Add.1, 12 December 1996, para. 12 and 28 a. This Decade is now over. However, following its proclamation on 10 December 2004 of the World Programme for Human Rights Education (2005-ongoing), the General Assembly adopted a revised draft plan of action for the first phase of this Programme, which focuses on primary and secondary school systems (See: GA Res. 59/113, 5 August 2005, A/RES/59/113 B).

<sup>134</sup> OHCHR Professional Training Series No. 4, supra n. 17 at 18; *National Human Rights Institutions. Best Practice*, supra n. 59 at 21.

more important still is that lecturers giving other types of courses give due consideration to the human rights aspects of their courses. Not only is this applicable to law courses, but also to social sciences, applied sciences and medicine, all of which include some human rights aspects. However, this would not be feasible if human rights centres undertaking research into and providing teaching of human rights did not endeavour to interact with other departments and faculties of universities. NHRIs could help these centers encourage all lecturers to tackle the human rights aspects of their course by, for example, setting up consultation procedures and exchanges of information.

Educating about human rights outside the formal education system includes training all those whose activities relate (or could relate) to human rights protection and who are in contact with vulnerable people in need of such protection. These include lawyers, judges, prosecutors, prison officials, law enforcement personnel, military forces, NGOs, trade union officials, the media, and welfare personnel.<sup>135</sup> Human rights training could take place in the form of seminars or discussion groups, and should be incorporated into all kinds of training courses intended for government as well as other types of personnel, to the same extent as health and safety education. Human rights training is the specific task of NHRIs. The DIHR, for instance, is offering an introductory course in human rights for government administration staff, as well as for development co-operation advisors, schools and even the business community.<sup>136</sup> The GIHR is teaching human rights for police officers.<sup>137</sup> The DIHR is also providing training outside Denmark, namely for prosecutors and lawyers in China and for police officers in Kyrgyzstan.<sup>138</sup> The CNCDH is offering short courses for foreign civil servants.<sup>139</sup> By so doing, these NHRIs are contributing to the worldwide dissemination of international human rights.

Although human rights promotion and education, where successfully carried out, undoubtedly contributes towards preventing human rights violations, it is something that is difficult to evaluate as it is a slow process. Evaluating the real impact of the work carried out by NHRIs in this regard is a hard task, since it is by nature long-term. Measuring the increasing attention paid to international human rights by those trained in human rights could be done, for example, by requesting that participants complete a post-training evaluation form.<sup>140</sup> Although their knowledge of human rights could be rapidly assessed using these forms, their change in behaviour can only be tested over time. The impact of promotional human rights activities for the general public is even more difficult to evaluate. Because of this, it may sometimes be politically difficult to appreciate the benefits of creating a NHRI for the sake of promoting and educating about human rights. Although solutions do exist, they are costly and are not easy to bring about (not least because of the difficulty of crediting human rights improvements to NHRI involvement). Nonetheless, NHRIs, for example, could establish indicators to assess how far training is applied in practice, and monitor the positive changes with regard to human rights on the ground.<sup>141</sup> This would also make NHRIs more accountable and help them to increase their effectiveness.

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<sup>135</sup> OHCHR Professional Training Series No. 4, supra n. 17 at 18; *National Human Rights Institutions. Best Practice*, supra n. 59 at 22.

<sup>136</sup> See: DIHR, Annual Report 2004, available at <http://www.humanrights.dk>.

<sup>137</sup> See: GIHR, Annual Report 2004, available at <http://www.institut-fuer-menschenrechte.de>.

<sup>138</sup> See: DIHR, Annual Reports 2004 and 2005, available at <http://www.humanrights.dk>. The DIHR seems to be more involved in promoting human rights abroad than in Denmark, so that in a way it can be considered more as a technical cooperation agency than as a national institution.

<sup>139</sup> See: <http://www.commission-droits-homme.fr>.

<sup>140</sup> International Council on Human Rights Policy (co-published with the OHCHR), *Assessing the Effectiveness of National Human Rights Institutions*, (Versoix (Switzerland), 2005) at 35-36.

<sup>141</sup> *Ibid.* at 36-37.

## 4. Establishing Networks

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### A. National Networks

The relationship between NHRIs and other agents concerned with the promotion and protection of human rights must be seen in the light of their *raison d'être*: to narrow the gap between government and civil society. This is one of the most important functions that NHRIs can play in developed states such as in Europe. The collaboration of public authorities with NHRIs is essential, since the public authorities are the main recipients of the NHRIs' recommendations and proposals. The participation of civil society organisations in the work of NHRIs, which in Europe takes place chiefly through NGOs, is also fundamental, since it is civil society that is affected by human rights. The present section will discuss the networking of NHRIs' with both government and NGOs in two separate sections.

#### (i) NHRIs and the Government

In order to function properly, NHRIs require the co-operation of governments. This is particularly important as regards the monitoring and advising function of NHRIs, since it requires a responsive reaction from the government – or governments in federal states – to which recommendations and proposals are addressed. Although governments are by no way bound by the opinions of NHRIs, they should actively contribute to establishing a constructive dialogue between NHRIs and the public administration. Such dialogue facilitates the incorporation of human rights issues into the political discourse.<sup>142</sup> It also contributes to the human rights education of civil servants who make decisions that affect human rights.<sup>143</sup> European NHRIs, which are well-versed in monitoring legislation, can thus ensure that the entire public administration is fully aware of the human rights impact of its intended decisions. This is why, for instance, the CNCDH insists on having representatives of all the French ministries as members in their Plenary Assembly. The GIHR, likewise, insists on including all the different ministries potentially concerned by treaty bodies' observations and recommendations as participants in the dialogue on their follow-up. In contrast, the IHRC only monitors legislative proposals made by the Ministry for Justice, Equality and Law Reform, which is too restrictive. NHRIs also provide civil society organisations with an institutionalised channel through which they can make their claims to government. It also allows these organisations to become cognisant of the government's position regarding their human rights concerns. NHRIs that facilitate such a dialogue greatly contribute to the effective implementation of human rights.

In order for NHRIs to act as platforms where both state and civil society actors can interact, it is essential that NHRIs become rapidly acquainted with the government's preoccupations, initiatives, and difficulties regarding the promotion and protection of human rights. The government (or Parliament) should also send draft legislation to the NHRI for review, even if the latter has the power to raise issues of its own motion, which is the case with the CNCDH and the IHRC. Without this information being available to them, it is very difficult for national institutions to exercise their monitoring and advising function vis-à-vis the

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<sup>142</sup> Cardenas, *Adaptive States: The Proliferation of National Human Rights Institutes*, Policy Working Paper T-01-04, (Harvard University Carr Centre for Human Rights, 2001) at 5.

<sup>143</sup> Dickson, 'The Contribution of Human Rights Commissions to the Protection of Human Rights', 2003 *Public Law* 272 at 279.

government. Officially, however, European governments are not obliged to consult their NHRIs, although this happens in practice. The collaboration of state authorities with NHRIs at institution level can take place in several ways. As seen earlier, this can take the form of the public administration being represented (without voting rights) within the national institution, or alternatively of closely cooperating with this administration. The latter might take place by, for instance, regularly inviting administration staff to the working groups which prepare the institution's recommendations, proposals or reports, or through the appointment of NHRI contact persons within the public administration who might inform national institutions about the government's position in relation to human rights.<sup>144</sup> Whatever way in which the exchange of information between national institutions and the ministries is guaranteed, collaboration should preferably take place across all ministries – at both federal and federated level within federal states –, since human rights are transversal issues that concern the whole public administration. Such collaboration could contribute to the mainstreaming of human rights. Although collaboration with NHRIs is primarily a government issue, involvement of the Parliament, the judiciary and the local authorities is likewise highly recommended. Working with Parliament, especially, has many advantages, since Parliament can make a government accountable for its attitude towards a NHRI<sup>145</sup>, and since it can make legislative proposals in response to the NHRI's opinions. A NHRI should therefore be able to exchange all the necessary information regarding the government's reaction to its recommendations and proposals, and issue opinions directly to Parliament. In order to collaborate with Parliament, a NHRI could have a representative of Parliament as member, or have a contact person in Parliament.<sup>146</sup> Parliament could also occasionally call representatives of the NHRI to discuss the human rights questions raised by proposed legislation, as is the case with the DIHR.<sup>147</sup> It is also important to define the relationship between NHRIs and other public human rights institutions, bearing in mind that NHRIs must remain independent and not automatically adopt these institutions' opinions.

One of the primary obstacles to the effective functioning of NHRIs in Europe is the fact that their recommendations and proposals are frequently not followed up. NHRIs have only a consultative power and, unlike the government, may not make any binding (political) decisions. A by-product of this limitation is that their opinions are often not taken into consideration by the government. Indeed, European national institutions often have to urge it to do so. NHRIs, therefore, should be able to remedy this lack of collaboration on the part of government. One such remedy, and the most obvious one, which has been suggested in the Paris Principles, provides that 'the national institution may decide to publicise' its recommendations and proposals.<sup>148</sup> In addition, a NHRI could refer to the problems of collaboration with government to Parliament in its annual report or at any time it deems it necessary. As previously mentioned, it is important in view of this that links between NHRIs and Parliament be established. Another way of compelling the government to respond to the NHRI's opinions would be to force it to justify its decisions whenever it does not follow the recommendations and proposals made by the NHRI. A special provision in this regard could be provided for in the statutes of the NHRI. Such a procedural requirement would compensate for the lack of binding power of the NHRIs' opinions as well as lay the foundations for establishing a permanent dialogue between NHRIs and the government. Another related problem concerns the time allowed to national institutions to scrutinise draft legislation.

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<sup>144</sup> Klerk, *supra* n. 61 at 98.

<sup>145</sup> International Council on Human Rights Policy, *supra* n. 34 at 22.

<sup>146</sup> The contact person in Parliament should communicate the opinions of the NHRIs to all the political groups in Parliament. In certain cases it might be useful for the national institution to also send these opinions directly to the political groups.

<sup>147</sup> Kjaerum, 'The Protection Role of the Danish Human Rights Commission', *supra* n. 96 at 28.

<sup>148</sup> Paris Principles, A. 3) a.

Governments often want to push ahead with new legislation so that consultation with NHRIs becomes almost impossible.

## (ii) NHRIs and NGOs

The relationship between NHRIs and NGOs must first be examined according to their differences. NHRIs and NGOs vary significantly in their legal base, function and competences.<sup>149</sup> NHRIs are established by act of the State.<sup>150</sup> As a result, NHRIs have an official mandate and are provided with formal powers which are limited by and linked to the state authorities. The relationship between NHRIs and the state, the executive branch in particular, is therefore regulated by law. Also, NHRIs are financially dependent and have to account for their work, usually to the state's legislative branch. In contrast to NHRIs, NGOs are part of civil society, regulate their own work programme and have no formal relationship with the state authorities, all of which guarantee them greater independence.<sup>151</sup>

One particular problem regarding NHRIs as opposed to NGOs relates to their representation in international *fora*<sup>152</sup>, such as the UN Human Rights Council (which replaced the UN Commission on Human Rights on 16 June 2006). NHRIs have formally only been able to speak under agenda item 18b of the annual sessions relating to national institutions, in other words only in relation to themselves. However, their intervention has been accepted by the former UN Commission on Human Rights in every matter relating to their mandate despite the mistrust of NGOs, which are afraid of losing ground.<sup>153</sup> Such a feeling, however, is based on a lack of understanding of the essential differences between these two human rights actors.

Despite NGOs enjoying greater independence than NHRIs, the latter may have different advantages to NGOs. Because NHRIs have formal powers, their decisions are endorsed with a certain legal authority. As a consequence, individual or collective NGO demands channelled through a NHRI might have more impact on governments than would be the case if they were channelled through the media or through unofficial means. A state can obviously only ignore the voice of an independent, state-appointed body with difficulty. As mentioned previously, by virtue of their Statutes NHRIs could force the government to respond to their recommendations and proposals unlike NGOs which cannot be granted such powers. The very existence of a NHRI also gives the opportunity for NGOs to coordinate their action

<sup>149</sup> See: OHCHR Professional Training Series No. 4, *supra* n. 17 at 10.

<sup>150</sup> While this may happen by constitutional amendment, law, or presidential decree, only the first two ways of establishing NHRIs give the best guarantees of their independence. See: Lindsnaes and Lindholt, *supra* n. 5 at 14-17. According to the Paris Principles, national institutions shall only be established 'by a constitutional or legislative text'. See: Paris Principles, A. 2).

<sup>151</sup> Qafisheh, 'Defining the Role of National Human Rights Institutions with regard to the United Nations', (2004) 36 *Legal Reports Series of the Palestinian Independent Commission for Citizens' Rights* (PICCR) 1 at 21.

<sup>152</sup> The representatives of NGOs that occasionally represent national institutions of which they are member in international organisations, must be aware of their particular position. Without clearly stating in which capacity they speak, these representatives might confuse those to whom they address their statements in these organisations, because the latter might not understand why they sometimes take different positions than their own organisation. They must therefore make clear that they express the views of the national institution and not those of the NGO that they represent in this institution.

<sup>153</sup> See: CHR Res. 2005/74, 20 April 2005, E/CN.4/RES/2005/74 at para. 11 a). This Resolution, however, provides that only national institutions accredited by the Sub-Committee on Accreditation of the International Coordinating Committee have this right. The UN General Assembly also decided that the NHRIs' level of participation in the Commission on Human Rights sessions should be maintained in the UN Human Rights Council sessions, albeit without explicitly granting NHRIs full participation in these sessions. See: GA Res. 60/251, 3 April 2006, A/Res/ 60/251 at para. 11.

where necessary, by allowing them to collectively deal with the human rights issues which are in the ambit of different organisations. However, this does not mean that the work of NHRIs should replace NGO endeavours, which remain indispensable for the protection and promotion of human rights. NGOs should therefore collaborate with NHRIs without being co-opted by them, otherwise they might lose their independence and run the risk of spending more of their energies on political positioning than on challenging governments. In addition, NGOs must be able to influence and question formal structures, which can be done through informal participation mechanisms.<sup>154</sup> NGOs should collaborate with NHRIs to realise their claims insofar as they consider it necessary and for as long as they regard the NHRI as an independent and representative body. They should not hesitate to withdraw from discussions with a NHRI if no suitable outcome is likely to be reached. Notwithstanding their collaboration with the NHRI, they should be able to operate at a distance and (informally) monitor and pressurise it. Participation in the legal framework created by a national institution must not prevent NGOs from doing likewise. Also, where no NHRI exists, they should strongly advise the state to establish one, as it happening in Belgium and Switzerland.<sup>155</sup>

It should be pointed out that the participation of NGOs in the work of NHRIs is fundamental for NHRIs as well. The latter cannot work without the close co-operation of organisations closely linked to civil society (mainly NGOs), which have a sound knowledge as well as a deeply rooted expertise in the field of human rights.<sup>156</sup> In practice, NHRIs should collaborate with NGOs in order to get in touch with local communities and be appraised of the day-to-day problems affecting vulnerable groups. As mentioned in the previous section, NHRIs also rely on NGOs for human rights promotion and education. Ensuring the involvement of human rights-concerned NGOs, as endeavoured by European NHRIs, is one of the principal requirements for ensuring that NGOs function effectively and remain legitimate. By and large, however, NGOs tend to be over-represented in European NHRIs at the expense of other human rights organisations, such as ‘trade unions, concerned social and professional organisations, ... trends in philosophical or religious thought’ which are mentioned in the Paris Principles.<sup>157</sup>

In principle all NGOs with a human rights mandate should somehow be linked to NHRIs, given the breadth of the latter’s mandate. This link could take two different forms depending on whether NGOs are being directly represented or not within the NHRI. Should NGOs have representatives in a NHRI, a balance must then be provided to ensure that all civil and political, social, economic and cultural rights as well as all vulnerable groups are covered by the different NGO mandates. Where NGOs dealing with specific human rights or vulnerable groups are represented, endeavours must be made to ensure that the remaining NGOs dealing with other specific human rights or vulnerable groups are given equal representation. The same applies to NGOs that only co-operate with NHRIs, as is usually the case with smaller NHRIs. Ideally, the latter should set up an alliance with as many NGOs as possible.<sup>158</sup> The alliance should include not only NGOs whose ambits cover all human rights, but also those that focus on particular human rights or vulnerable groups. The number of NGOs involved in a NHRI, however, should be restricted to include only those that focus on human rights, something which may sometimes be difficult to achieve.

<sup>154</sup> Pearson, ‘Non-Governmental Organisations and International Law: Mapping New Mechanisms for Governance’, 2004 (23) *Australian Year Book of International Law* 73 at 100-101.

<sup>155</sup> See: supra n. 31 and 32.

<sup>156</sup> See International Council on Human Rights Policy, supra n. 34 at 98.

<sup>157</sup> Paris Principles, B. 1).

<sup>158</sup> Small NHRIs are in a way more flexible than large NHRIs, since they can establish as many alliances with NGOs they wish without having to change their statutes. It may also be difficult for large NHRIs to embrace all the NGO community in their membership.

### *B. NHRIs and the Council of Europe*

NHRIs are not only creating networks at national level, but are also themselves part of international and regional networks. As mentioned in the first part of this article, national institutions have been given the support of and worked together with international and regional organisations. Only co-operation with and within one particular regional organisation, namely the Council of Europe, will be discussed in this section. In Europe, this organisation has formally encouraged inter-NHRI co-operation<sup>159</sup>, and organised several meetings in order to achieve this.

There are at least two advantages with NHRIs networking with other NHRIs and establishing links with regional organisations. Firstly, being part of a network allows them to exchange information and share experiences. With regard to human rights concerns affecting or being common to more than one country, NHRIs can coordinate their efforts and adopt common positions. In this way co-operation between NHRIs could lead to transgovernmental human rights networks that would be parallel to existing NGOs networks where issues of international human rights implementation at state level could be discussed.<sup>160</sup> Developing relationships with international and regional organisations in addition to those being built between NHRIs themselves has additional advantages for both. With regard to Europe, while the Council of Europe could receive valuable information from NHRIs on the human rights situations of its member States, NHRIs could in turn use the expertise and competence as well as assistance of the Council to create a forum where these institutions could interact.<sup>161</sup> Secondly, by networking NHRIs can encourage governments to establish NHRIs where none exist, and monitor existing ones to ensure that they function independently and effectively. As mentioned by Morten Kjaerum<sup>162</sup>, NHRI networks form a real ‘safety net’ on which these institutions can rely in case governments try to weaken their action or affect their independence.

European NHRIs which are members or observers of the International Coordinating Committee, i.e. which have an A or a B-status, respectively, within this Committee, form the European Group of NHRIs.<sup>163</sup> This Group cooperates with the Council of Europe through meetings held for them by this organisation, the last one of which took place in Athens in September 2006. Additional mechanisms have even been set up to reinforce this relationship. The European Coordinating Group, which forms the executive body of the European Group of NHRIs, is in charge of relations with the Council of Europe<sup>164</sup> and was granted observer status at the Steering Committee for Human Rights of the Council of Europe in 2001. The European Group of NHRIs also participates in transnational human rights seminars, such as

<sup>159</sup> See: Resolution (97) 11 of the Committee of Ministers on co-operation between member states’ national institutions for the promotion and protection of human rights, and between them and the Council of Europe, adopted by the Committee of Ministers on 30 September 1997, Section a).

<sup>160</sup> Cardenas, *Adaptive States: The Proliferation of National Human Rights Institutes*, supra n. 141 at 5-8.

<sup>161</sup> Council of Europe, *First Round Table with the National Human Rights Institutions. 3<sup>rd</sup> European Meeting of National Institutions. Compilation of reports, statements and recommendations*, 16-17 March 2000, NHRI (2002) 012, at 54-56.

<sup>162</sup> Kjaerum, *National Human Rights Institutions Implementing Human Rights*, supra n. 66 at 7. Morten Kjaerum is the chairman of the International Coordinating Committee and director general of the DIHR.

<sup>163</sup> European NHRIs that have only been granted a B-status by the International Coordinating Committee have no voting rights in the European Group of NHRIs. See: Rules of Procedure of the European Group of National Institutions for the Promotion and Protection of Human Rights, adopted during the Fourth European Meeting of NHRIs in Dublin in November 2002, Section 2 (3).

<sup>164</sup> Rules of Procedure of the European Group of National Institutions for the Promotion and Protection of Human Rights, adopted during the Fourth European Meeting of NHRIs in Dublin in November 2002, Section 6 (2) (b).

that organised by the Council of Europe on the protection of human rights and fight against terrorism.<sup>165</sup> Thanks to such co-operation, NHRIs in Europe could become key partners of the Council and gradually act as its extension at national level. Were this to be achieved, regional human rights organisations, such as the Council of Europe, could then gradually be assigned a more subsidiary function that would focus on supporting the capacity-building of national mechanisms for the promotion and protection of human rights, including NHRIs, and act as only a last resort were these mechanisms to fail to work properly.

Despite the existing co-operation between European NHRIs both with and within the Council of Europe, their level of networking remains quite low. The institutionalisation of NHRI co-operation seems to progress at a rather slow pace, despite the Council of Europe having organised the meetings of the European Group of NHRIs since 2000. Beside these meetings as well as the annual international meetings of the International Coordinating Committee, co-operation took place so far in a mostly informal way. The European Group of NHRIs has no legal or geographical base to form a solid network, and must rely on the four national institutions forming the European Coordinating Committee if it wants to act, which weakens its clout *vis-à-vis* the public. Improved co-operation between these institutions could be achieved by for instance setting up a special unit for national institutions, as is the case with the OHCHR, or a permanent body with NHRI representatives in the Council of Europe. The low degree of institutionalisation of the NHRI network in Europe might reflect a certain lack of political will on the part of European states, which contrasts considerably with the recognised importance of implementing international human rights at national level.<sup>166</sup> However, a first step towards the creation of a permanent structure through which national institutions in Europe can exchange information and provide assistance to each other was made in 2003 through the establishment of a Liaison Office for European NHRIs at the Office of the Commissioner for Human Rights of the Council of Europe. This was done to boost co-operation between the European Group of NHRIs via the presidency of the European Coordinating Group and the Council of Europe Office of the Commissioner for Human Rights. The Liaison Office is *inter alia* responsible for the organisation of meetings between the European NHRIs and the corresponding Round Tables on thematic issues. In addition, a project called JOIN was officially launched jointly by the Office of the Commissioner for Human Rights of the Council of Europe, the European Group of NHRIs, and the National Institution Unit of the OHCHR during the 4<sup>th</sup> Round Table of European NHRIs in Athens in September 2006, the aim of which is to assist European states in creating and strengthening national institutions.<sup>167</sup> Additional proposals were made during this Round Table in order to strengthen co-operation between European NHRIs, both with and within the Council of Europe.<sup>168</sup>

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<sup>165</sup> See: European Group of National Institutions for the Promotion and Protection of Human Rights, Newsletter 2, May-August 2005, available at <http://www.nhri.net>.

<sup>166</sup> The lack political will of the European states with regard to NHRIs is also reflected in the wording of Recommendation No. R. (97) 14 of the Council of Europe, as discussed in the first part of this article.

<sup>167</sup> It is worth noting that the mandate of JOIN (Joint Operations for Independent National Institutions for the Promotion and Protection of Human Rights) explicitly states that it is not the purpose of this project to advocate one NHRI model, but only compliance with the Paris Principles.

<sup>168</sup> Among the interesting proposals made during the 4<sup>th</sup> Round Table of European NHRIs was the possibility of establishing a common NHRI Charter on the role of NHRIs with respect to the right to privacy, which was one of the themes of this Round Table. Another proposal was to create a NHRI-based advisory committee of lawyers that would assist the Council of Europe Commissioner for Human Rights who may now 'submit written comments and take part in hearings' before the European Court of Human Rights by virtue of Protocol 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention. The conclusions of the 4<sup>th</sup> Round Table of European NHRIs and the Athens Declaration 2006, which will embody these conclusions, are not available yet.



## Conclusion

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The purpose of this article was to analyse the various aspects of NHRIs, with particular focus on European NHRIs. In 1991, NHRIs came under the provisions of the so-called Paris Principles, which set out minimum standards for their establishment and operation. The NHRIs' important role has been recognised in various instruments at both regional and international level. Nonetheless, questions have been raised in Europe as to the benefits of creating national institutions. Three kinds of models of composition can be distinguished in European NHRIs, the rules regarding their members' status varying accordingly. Of the three models none can claim to be most appropriate. By and large, European NHRIs tend to focus on monitoring governmental action and advising government on the one hand, and on the promotion and education about human rights on the other. Although the integration of national institutions in the Council of Europe is improving, progress is rather slow despite some of their recent integration-promoting initiatives.

Two considerations arise from the results of the above analysis. Firstly, it is a fact that European states have traditionally been sceptical about creating an additional domestic human rights body, since they regard themselves as being already equipped with a more than adequate human rights apparatus. NHRIs were only regarded as useful creations in states that were in transition to democracy. This attitude, however, seems to have changed, at least to some degree, since the end of the last decade. European states are now establishing NHRIs and regard the Paris Principles as their cornerstone. The work achieved by national institutions in Europe, such as the CNCDH and the DIHR, and more recently the IHRC and the GIHR, probably contributed to this change. In addition to six of them being granted an A-Status by the International Coordinating Committee and being part of this Committee as accredited members, and one coming into being next year, five NHRIs (as defined in this article, excluding therefore ombudsmen institutions) are on their way to being created, all of which in Western Europe. Secondly, there is no specific NHRI model on the European continent. Although some typical features can be distinguished, all existing institutions have their own structure, mandate, and functions, and therefore vary across Europe. Variations among NHRIs are not something that the Paris Principles object to, their emphasis being more on NHRIs observing certain principles, such as pluralism and independence, than formal guarantees. These principles are rather soft-law rules, created and monitored by peers, providing for guidelines, and leaving states the freedom to choose how to enact them. The standardisation of national institutions is neither necessary nor required, as confirmed by UN General Assembly Resolution 48/134<sup>169</sup> and Council of Europe's Committee of Ministers Recommendation No. R (97) 14.<sup>170</sup> A by-product of this consideration is that states willing to establish national institutions may first think of the benefits derived from it for their existing human rights framework. European NHRIs, therefore, must not duplicate but support the work undertaken by existing human rights actors. It might, therefore, sometimes be more useful for European states to create a national institution capable of channeling the action of other bodies than to set up an institution resulting in a substantial apparatus.

Because of the proliferation of NHRIs in Europe, the work they carry out as well as the means for increasing their effectiveness should be closely examined. National institutions in Europe contribute to the prevention of human right violations by monitoring laws and practices and by spreading human rights knowledge. NHRIs can increase this knowledge through their

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<sup>169</sup> GA Res. 48/134, 20 December 1993, A/RES/48/134 at para. 12.

<sup>170</sup> Recommendation No. R (97) 14 of the Committee of Ministers to member states on the establishment of independent national institutions for the promotion and protection of Human Rights, adopted by the Committee of Ministers on 30 September 1997, Section a).

coordination activities, by making use of their broad mandate, and by acting as a driving force in establishing networks between the different human rights actors. In this way, they can act as a platform where state representatives and civil society organisations (mainly NGOs) could consult and learn from each other within a cooperative environment. The resulting dialogue might replace the often more confrontational relationships between state and non-state actors, and somehow narrow the gap between governments and civil society. By so doing, NHRIs can considerably improve the international human rights awareness of those responsible for drafting legislation, those whose action may affect human rights, and the general public. European NHRIs, however, are facing two kinds of problems. Firstly, because they are only consultative bodies, their opinions are often not followed up and sometimes even totally ignored. The time allowed for these institutions to scrutinise legislation is also often scarce. Remedies must therefore be found to ensure better collaboration with government. Secondly, the positive effects of human rights promotion and education, which is one of the principal activities of European NHRIs, are not always immediately visible and are often difficult to evaluate. In view of this, it might not be politically interesting for a government to create a NHRI.

In the light of the achievements of NHRIs in Europe, however, these new actors could be said to constitute an essential component in the implementation of international human rights at national level, if properly created and provided governments collaborate with them. By bringing together the different human rights actors and raising human rights awareness, they could forge a human rights culture and contribute to the prevention of human rights violations, even, as has been suggested, in developed countries such as in Europe.