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National Human Rights Institutions in the OSCE Area: Taking Stock of an Innovative Concept

*Building strong human rights institutions at the country level
is what in the long run will ensure that human rights are
protected and advanced in a sustained manner.*

Kofi Annan¹

Introduction

Largely since the 1990s, a set of new actors has appeared in the human rights arena: national human rights institutions (NHRIs). NHRIs were created as a unique and innovative concept; the idea was to introduce new bodies mandated solely to focus on the promotion and protection of human rights. It was envisaged that they would play a part in preventing systemic violations of human rights and respond to violations by providing advice and recommendations to governments or, in many instances, act as quasi-judicial bodies in handling individual complaints. Their role was intended neither to replace the state's responsibility for ensuring human rights compliance nor to complement it. Instead, NHRIs were set up to help states implement civil, political, social, economic, and cultural rights.

Although established by parliaments and funded from state budgets, NHRIs are functionally and institutionally independent. From the beginning, this fact has posed challenges for governments and civil-society actors alike. For governments, NHRIs have brought a level of oversight to state protection of human rights that had largely been missing up to that point. For non-governmental organizations (NGOs), on the other hand, there was an initial mistrust of NHRIs because in some cases they were seen as government bodies set up to provide "window dressing" for states' commitments to guaranteeing the protection of human rights, rather than contributing to that protection themselves.

For the international community, the impetus for the creation and development of NHRIs came from the clear need for independent local partners, operating at national level, to serve as focal points seeking to ensure greater human rights compliance by states. NHRIs were intended to serve as

Note: The views expressed in this article do not necessarily reflect the official positions of the OSCE/ODIHR.

1 United Nations General Assembly, *Strengthening of the United Nations: an agenda for further change, Report of the United Nations Secretary-General, A/57/387* and Corr.1, 9 September 2002, p. 12.

a bridge for the communication gaps that often existed between governments and civil society in individual states.

At the heart of the decision to create these institutions was the identified need to give better protection to the rights of the most vulnerable groups in all societies: ethnic, linguistic, religious, and other minorities; refugees; internally displaced people; those with disabilities; detainees; the elderly; and women and children.² It was understood and accepted that those who regularly had no voice in the making of policy decisions required special attention and protection. It was felt that strong and independent NHRIs could become catalysts for action, particularly by giving members of these vulnerable groups a voice at national level.

This was seen as vital, as there was increased recognition by states that systemic discrimination and widespread violations of human rights, including those of the members of ethnic, religious, or linguistic minorities, would invariably increase the threat of political turmoil and conflict – with serious implications for national stability and, in some cases, regional security.³

This article will discuss the nature of NHRIs within the context of the international human rights system, with a particular focus on the human dimension of the OSCE and on the role of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) as the Organization's human rights institution. It will also seek to provide answers to the question of whether these institutions have been able to meet the expectations of those groups and bodies in the international community that first advocated their establishment.

Historical Context and Concept of NHRIs

The history of NHRIs can be traced back to 1946, when the United Nations Economic and Social Council (ECOSOC) promoted the establishment of “local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights”.⁴ Up until 1990, however, few NHRIs were actually established.⁵ Before that, the International Bill of Human Rights had been adopted, consisting of three major international treaties protecting human rights of all people.⁶

2 Cf. *Keynote Speech by Prof. Brian Burdekin AO*, OSCE Supplementary Human Dimension Meeting, National Human Rights Institutions (Ombudsinstitutions, commissions, institutes and other), 14-15 April 2011, Vienna, Final Report, PC.SHDM.GAL/5/11, 20 May 2011, Annex IV, pp. 21-26, available at: <http://www.osce.org/odihr/78301>.

3 Cf. Brian Burdekin, *National Human Rights Institutions in the Asia-Pacific Region*, Leiden 2007, p. 1.

4 UN Economic and Social Council, *ECOSOC Resolution 2/9*, 21 June 1946, section 5.

5 In the OSCE area, for example, Canada, Spain, Portugal, France, and Poland.

6 The International Bill of Human Rights consists of the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Economic, Social and Cultural Rights (1966), and the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols.

And while these treaties established the States Parties' responsibility for reporting on the implementation of the treaties, no complaint mechanism had been created by that time that would have allowed for the direct submission to the United Nations of individual complaints, except with regard to the International Covenant on Civil and Political Rights (ICCPR). The right of an individual to address complaints directly to international mechanisms would not be established until the adoption of further Optional Protocols to United Nations treaties over the subsequent years,⁷ parallel to discussions on the need for establishing NHRIs on the ground. As the debate about NHRIs and their role in supporting the rights of members of vulnerable groups developed, additional treaties were adopted to protect the rights of individuals and marginalized groups in societies.⁸

The commitment to support the creation of NHRIs around the globe was made clear in the 1993 Vienna Declaration and Programme of Action, adopted upon the conclusion of the Vienna World Conference on Human Rights.⁹ In the same year, following a long process of consultations and preparation, the "Paris Principles" were adopted by the UN General Assembly.¹⁰ These principles set minimum standards for the mandate, structure, and composition of NHRIs.

According to the Paris Principles, NHRIs must be state-funded, permanent bodies, usually established by constitutional mandate or a legislative act. Their mandate includes the protection and promotion of economic, social, and cultural rights, as well as civil and political rights.

The Paris Principles also prescribe the criteria for the effective operation of NHRIs. These include a clearly defined, broad-based human rights mandate, a membership that broadly reflects the composition of society, cooperation with civil society, and adequate financial and human resources. The most important criterion for ensuring the success of an NHRI is its functional and institutional independence, with these institutions being accountable only to the public as represented by its elected parliaments.

7 Optional Protocol to the Convention on the Elimination of Discrimination against Women (adopted in 1999), Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006), and Optional Protocol of the Covenant on Economic, Social and Cultural Rights (2008).

8 E.g., the Convention on the Rights of the Child (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), and the Convention on the Rights of Persons with Disabilities (2006).

9 United Nations General Assembly, *World Conference on Human Rights, Vienna, 14-25 June 1993, Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993*, A/CONF.157/23, 12 July 1993, section I, para. 36, available at: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.e](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.e).

10 Principles relating to the status of national institutions: Competence and responsibilities, Annex to: United Nations General Assembly. *National institutions for the promotion and protection of human rights*, A/RES/48/134, 20 December 1993 (henceforth "Paris Principles"), at: <http://www.un.org/documents/ga/res/48/a48r134.htm>, also at: <http://www2.ohchr.org/english/law/parisprinciples.htm>.

According to the Paris Principles, the responsibilities of NHRIs at national level include the submission of policy recommendations, proposals, and reports to governments, parliaments, or other public institutions; the promotion of national laws and practices in conformity with international human rights standards; and commitment to human rights education. Typical functions may also include the processing of individual complaints and the conducting of inquiries into significant allegations of human rights abuses. While the performance of these last-mentioned functions is not mandatory under the Paris Principles, the vast majority of NHRIs in the OSCE area – particularly in the territories of the former Soviet Union and the former Yugoslavia – process complaints from individuals as a key part of their mandate. NHRIs also often focus on specific themes as they seek to protect the most vulnerable and marginalized groups in a society.

While NHRIs are understood to work predominantly at the national level, in recent years their importance has also been recognized at the international level, thereby allowing them a role as catalysts in helping their respective states to implement international human rights standards. Again, while the responsibility for protecting human rights continues to lie with the states, NHRIs can assist by monitoring and providing expertise, through advocacy work, e.g. pressing for the ratification of international human rights treaties, and by reporting on human rights violations. They are encouraged to contribute actively to the Universal Periodic Review (UPR) of the UN Human Rights Council and, if accredited by the Sub-Committee on Accreditation (SCA), are entitled to submit documentation to Council sessions and enjoy the right to make oral interventions at these sessions independently of their governments.¹¹ They are further encouraged to report to human rights-treaty bodies on the progress being made in their respective states in implementing international standards. Where NHRIs do not yet exist or require further strengthening, governments regularly receive recommendations in this area in their UPR review.¹² International instruments that have come into force since 2006 include specific references to the Paris Principles, with the de facto result that governments in the OSCE region often designate their NHRIs as the monitoring body under these instruments.¹³

1993 saw the establishment, immediately after the adoption of the Paris Principles, of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (commonly referred to as the International Coordinating Committee, or ICC), a self-governing

11 For the latest session of the Human Rights Council, see UN Human Rights Council. *Information for National Human Rights Institutions*, at: <http://www2.ohchr.org/english/bodies/hrcouncil/nhri.htm>.

12 For example in the Netherlands, Switzerland, Turkmenistan, and Uzbekistan.

13 This applies to the Optional Protocol to the UN Convention Against Torture, which was adopted on December 2002 by the United Nations General Assembly and came into force in June 2006, and equally to the Convention on the Rights of Persons with Disabilities, which was adopted by the UNGA on 13 December 2006 and came into force on 3 May 2008.

body with the Office of the UN High Commissioner for Human Rights (OHCHR) serving as its secretariat that is mandated to review compliance with the Paris Principles through its SCA.¹⁴ The SCA comprises four members – one from each region.¹⁵ The established norm is that only one NHRI can exist per country.¹⁶

A number of bodies can be NHRIs; in the OSCE area, the terminology varies, encompassing ombudsperson institutions,¹⁷ human rights¹⁸ or advisory commissions,¹⁹ and human rights institutes.²⁰ In the newly independent states of the former Soviet Union and the former Yugoslavia, all NHRIs have been set up as “hybrid” ombudsperson institutions, with mostly complaint-handling functions but nevertheless a broad mandate in the area of human rights protection and promotion.

NHRIs have now been established in most of the OSCE’s 56 participating States. These currently include 30 ombudsperson institutions, eight commission-style institutions, four institutes, and other bodies. Specialized independent bodies for the protection of certain groups, such as children’s ombudsperson institutions or gender equality commissions, are not considered to be NHRIs; neither would a classical ombudsperson institution which focuses solely on the legality of administrative proceedings in the state of administration be considered as such.²¹

The OSCE and NHRIs

Along with other international actors, such as the UN OHCHR, the United Nations Development Programme (UNDP), the Council of Europe (CoE), and others, the OSCE has a long history of supporting the establishment of

14 For more information on accreditation, see the ICC website at: <http://nhri.ohchr.org/EN/Pages/default.aspx>.

15 The regions are classified as the Americas, Europe, Africa, and Asia-Pacific. Note that the OSCE area covers all countries in Europe as well as Canada and the United States of America. Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan are presently not members of either the European or the Asia-Pacific Group.

16 With the exception of the United Kingdom, where, in addition to the United Kingdom Equal Treatment Commission, the Northern Ireland Human Rights Commission and more recently the Scottish Human Rights Commission have also been accredited with “A Status” by the SCA.

17 Ombudsperson institutions across the OSCE area have a variety of titles, including, for example, Human Rights Ombudsman (Tajikistan, Slovenia), Chancellor of Justice (Estonia), Human Rights Defender (Georgia, Armenia), Public Defender (Albania), Defensor del Pueblo (Spain), Provedor de Justiça (Portugal), Commissioner for Human Rights (Azerbaijan), and Commissioner for Civil Rights Protection (Poland).

18 National Human Rights Commissions exist in, for example, Ireland, France, Greece, the United Kingdom, Scotland, and Northern Ireland.

19 In Luxembourg, the Consultative Commission of Human Rights is an advisory commission.

20 National Human Rights Institutes can be found in, for example, Germany (German Institute for Human Rights), Denmark (Danish Institute for Human Rights), Norway (Center for Human Rights), and Slovakia (Slovak National Center for Human Rights).

21 For example, the Parliamentary Ombudsmen in Sweden.

NHRIs. As early as 1990, OSCE commitments called on participating States to establish these institutions.²²

With its field presences on the ground in countries in transition, the OSCE was able to serve as a long-term partner for national governments and civil society, providing sustained support and expertise in establishing NHRIs. Each of the OSCE's field operations has engaged to some degree in supporting the process of establishing NHRIs in their host country. Today, NHRIs exist in each of the countries in which the OSCE operates or has previously operated (with the exception of Belarus). OSCE field staff have been active in advocating the establishment of these – ideally – independent bodies by providing legislative and technical guidance during the process of drafting legislation and appointing heads of these institutions, and by facilitating capacity-building activities on a wide range of thematic and operational issues for NHRI staff.

Recognizing the OSCE's expertise in building institutions in a post-conflict environment, the OSCE missions in Bosnia and Herzegovina and in Kosovo were basically engaged in creating and setting up the national human rights institutions there. In Bosnia and Herzegovina, the OSCE was specifically mandated under the Dayton Peace Agreement²³ to appoint a Human Rights Ombudsman; in Kosovo, the OSCE set up the Ombudsperson Institution – headed by an international Ombudsperson – and financed its operations for several years. In Kazakhstan, on the other hand, the OSCE Centre in Astana has, since September 2009, implemented a capacity-building project with a specifically designated, full-time staff member who organizes study tours for the Ombudsperson Institution's staff, as well as workshops and conferences. The Centre has also sought to move forward the process of creating the legal basis for the establishment of a Paris-Principles-compliant NHRI.²⁴

ODIHR and NHRIs

Complementing the work of OSCE field operations, OSCE/ODIHR has supported the development and activities of NHRIs since its establishment in 1991. The Office has reviewed legislation establishing NHRIs, served as an OSCE-wide knowledge hub on NHRI-related issues and, when requested by states, offered technical assistance. Since 2009, a major focus of ODIHR's work in this field has been on providing support to NHRIs that have been

22 Cf. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, section 27, in: Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe, Analysis and Basic Documents, 1972-1993*, Dordrecht 1993, pp. 439-465, here: p. 455.

23 Cf. *Dayton Peace Accords*, Paris, 14 December 1995, Annex 6, Chapter Two, Part B, Article IV.2.

24 The Office of the Ombudsman in Kazakhstan is the only institution in the OSCE area which could qualify as an NHRI to be established by a Presidential Decree.

designated as national detention-monitoring bodies, the so-called National Preventive Mechanisms under the Optional Protocol to the UN Convention Against Torture.

In 2011, the Lithuanian OSCE Chairmanship has made NHRIs one of its three priority issues within the human dimension. Throughout the year, ODIHR provided expertise to the Chairmanship, while increasing its programmatic engagement in areas which have hitherto been left unexplored by other international actors; these areas include the role of NHRIs in gender equality and women's rights, and the relationship between NHRIs and civil society. An OSCE Supplementary Human Dimension Meeting (SHDM) on the subject of NHRIs was held in Vienna on 14 and 15 April to provide a platform for the discussion of this issue among governments, civil society, and NHRIs.²⁵ In order to intensify the discussions started at the SHDM, ODIHR, in conjunction with the OSCE Chairmanship, organized a conference in Vilnius on 13 and 14 July, which was attended by NHRIs from 34 OSCE participating States and one Mediterranean Partner with a view to discussing the relationship between NHRIs and the main national stakeholders, including representatives from the executive, national parliaments, the judiciary, and civil society.

Challenges and Opportunities

NHRIs can play a key role in the protection and promotion of human rights, and the number of these institutions set up in the OSCE area over the past 20 years demonstrates the widespread recognition of their importance. However, the question remains as to whether the expectations of the international community have so far been fulfilled. Have the overall efforts resulted in the creation of strong and independent human rights bodies that can trigger improvements to an existing human rights climate or help to ensure greater human rights compliance by a state? Or, in some cases, have governments set up NHRIs to represent a commitment to human rights that, in reality, does not exist?

One way to attempt to answer these questions is to examine the use of the ICC's accreditation process as a tool for review. One third of all accredited institutions are from the OSCE area. These 22 NHRIs have all been accredited with "A" status, indicating compliance with the Paris Principles.²⁶ Drawing from this the conclusion that such accredited NHRIs are effective

25 Cf. OSCE, Supplementary Human Dimension Meeting on National Human Rights Institutions (ombudsinstitutions, commissions, institutes and other mechanisms), 14-15 April 2011, at: http://www.osce.org/event/shdm2011_1.

26 These institutions are from Albania, Armenia, Bosnia and Herzegovina, Canada, Croatia, Denmark, France, Georgia, Germany, Greece, Ireland, Luxembourg, Northern Ireland, Norway, Poland, Portugal, the Russian Federation, Scotland, Serbia, Spain, Ukraine, and the United Kingdom.

and efficient would, however, not necessarily be accurate. The review process carried out by the SCA does not evaluate the effectiveness or impact of an NHRI; instead, it analyses the fulfilment of baseline requirements for NHRIs. These, as outlined above, include a clear mandate to protect and promote human rights, a strong legislative framework, and adequate human and financial resources.

In principle, it can be stated that those NHRIs that have the greatest formal guarantees of effectiveness and independence are almost certainly going to be those where the government has the greatest commitment to protecting human rights.²⁷ Complying with the Paris Principles, therefore, greatly increases the likelihood of NHRIs being effective in protecting and promoting the human rights of a country's population, as well as making an impact as on the state's policies and legislation.

The essential criteria set forth by the Paris Principles have, however, been raised at the above-mentioned OSCE Supplementary Human Dimension Meeting on NHRIs as areas requiring further substantial improvement. At the Preparatory Meeting of NHRIs, concerns were raised that these criteria were often still not being implemented in practice. Participants noted that a number of governments still lacked a full understanding of the role of NHRIs, with the result that NHRIs were provided with a weak legislative framework and insufficient resources to fully exercise their functions, and that recommendations made by NHRIs were being implemented inadequately.²⁸ It is noteworthy that nine out of the 14 NHRIs represented at the meeting were accredited with "A" status at that time.

Of equal concern is the fact that a survey released in 2009 by the UN OHCHR concluded that although there was general agreement that NHRI mandates were sufficiently broad, ensuring that they had access to adequate resources and were financially independent remained a challenge.²⁹ Many respondents in the survey also noted the need to strengthen relationships with national stakeholders, such as executive branches, parliaments, and judiciaries.³⁰ Participants at the aforementioned conference organized in Vilnius by ODIHR and the OSCE Chairmanship in July 2011 were particularly keen to address those relationships. While elaborating on good co-operation practices was the focus of the conference, many NHRIs highlighted the constant challenges they face in exercising their mandate along the lines of those challenges described above. This demonstrated the clear need for further enhancement of these relationships in the future.

27 Cf. International Council on Human Rights Policy, *Performance & Legitimacy: National Human Rights Institutions*, Versoix 2004, p. 1, at: http://www.ichrp.org/files/reports/17/102_report_en.pdf.

28 Recommendations from the Preparatory Meeting can be viewed at: <http://www.osce.org/odihr/84064>.

29 Cf. UN Office of the High Commissioner for Human Rights, *Survey on National Human Rights Institutions*, Geneva, July 2009, pp. 4-5.

30 Cf. *ibid.*, p. 5.

Additional challenges include a low level of awareness about NHRIs³¹ and insufficient engagement by NHRIs with civil-society organizations, which often serve as the “eyes and ears” of different communities and can contribute valuable expertise to the work of NHRIs. By their nature, civil-society organizations are often in a position to provide better access to rural or minority populations which NHRIs would otherwise not be able to reach. Furthermore, having acknowledged the importance of the relationship between NHRIs and civil-society actors, ODIHR conducted a survey in 2010 which explored the current level of engagement between the two. An analysis of the responses received from 27 NHRIs in the OSCE area revealed that civil-society organizations are frequently not used as sources of information or expertise.³²

Lessons Learned

The level of commitment a government displays towards an NHRI can be seen in the initial stages of its establishment. Where institutions have been set up on the basis of a commitment by the state to adhere to international human rights principles or have been initiated by the will of the people, the likelihood of the NHRI being strong and effective is high. In Poland, for example, the Office of the Public Defender was established in 1987 during a period when the country’s communist regime was in the process of seeing its power challenged and needed to give signals to the population that their demands were being heard.³³ This resulted in the institution being set up on a legislative basis that provided it with far-reaching powers, a situation that to this day remains exceptional in the OSCE area.

Where the decision to establish an NHRI is inspired from outside, however, the result is often a lack of support for the institution or a lack of understanding of its role on the part of both government and civil society. The perceived need to establish NHRIs has become a global trend, with international pressure serving as an external impetus for states to establish NHRIs. Such pressure can be brought to bear through international instruments, such as recommendations from the UPR or from Concluding Observations by UN treaty bodies, or through international presence in a country. This applies particularly to countries involved in the transition to democracy, where there are often many international actors on the ground. In cases where it is not the state’s actual prerogative to make the decision to introduce an institution exercising quasi-external oversight of that state’s success in guaranteeing and protecting human rights, it is significantly less likely that an NHRI will be

31 *Survey on National Human Rights Institutions*, cited above (Note 29).

32 On file with ODIHR.

33 Source: Interview with staff from the Office of the Public Defender of Poland on 21 October 2011.

able to fulfil its role properly. As mentioned above, NHRIs can end up as mere window dressing, with little real relevance to a country's commitment to defending human rights. While international support and advice can certainly help governments to adhere to international human rights commitments, they can never serve as a substitute for genuine political will which allows the establishment of an independent and effective NHRI.

Also of particular importance for ensuring an NHRI's legitimacy and success is the nature of the process leading up to its establishment.³⁴ If the consultative process leading to the establishment of the NHRI is insufficiently transparent, inclusive, and consultative, it is unlikely that such a government-funded body will enjoy the trust of the general public.

The lack of genuine political will to ensure full human rights compliance by a state presents another key challenge to the work of NHRIs. Where there is no commitment on the part of the state, there will be no interest in equipping the NHRI with the tools necessary for it to be effective. The institutions will naturally be likely to lack a strong legislative framework and adequate financial resources, having neither qualified staff nor the knowledge and political standing to contribute constructive recommendations to legislation, policies, and practices relating to human rights compliance.

The selection of the person or persons to head an NHRI is one critical indicator of the likelihood of its success, and can be a sign of the state's degree of commitment to creating an effective institution. If the individual³⁵ or individuals³⁶ chosen to lead the NHRI are likely to stand up for human rights, particularly if they enjoy a reputation both in the government and in civil society to advocate the protection of those rights, the institution is likely to be in a position to achieve real results in moving the situation vis-à-vis human rights forward in the country in question.

Furthermore, it is of the utmost importance that the head of an ombuds-person institution is selected in a transparent manner with a consultative and inclusive process involving all the relevant actors – representatives of the public at large in particular – in the decision. This process is the key to guaranteeing the NHRIs independence, diversity and accessibility.³⁷ While these selection criteria have been defined in the General Observations of the SCA,³⁸ few OSCE participating States have so far applied them.

One positive example stands out in the United Kingdom, where the method of selection for heads of the NHRI in Scotland is an open, merit-based application process that is led and fully managed by the parliament.³⁹ A more common practice, however, is a process by which the heads of institu-

34 Cf. Burdekin, cited above (Note 3), p. 14.

35 In the case of an Ombudsperson Institution.

36 In the case of a Human Rights Commission or Human Rights Institute.

37 Cf. UN High Commissioner for Human Rights, *Annual Report 2011*, A/HRC/16/77, p. 8.

38 Cf. UN High Commissioner for Human Rights, *Annual Report 2010*, A/HRC/13/45, Annex 4, p. 37.

39 Cf. *Intervention by Prof. Alan Miller, Chair of the Scottish Human Rights Commission, at the OSCE Conference for NHRIs*, 13-14 July, Vilnius.

tions are de facto selected by the executive and then approved by the parliament. In the worst case, the appointed candidate(s) might be essentially the political representative of the governing interests or simply weak or ill-prepared for the post. Even if all the other essential criteria for success have been met, it is unlikely in such an instance that the NHRI will succeed in fulfilling its intended functions effectively. The danger of such a result is particularly great in cases where strong emphasis is placed on the personality of the institution's head – which is the case in many OSCE participating States, particularly in the Balkans and the Commonwealth of Independent States.

In the OSCE area today, there are many instances where the genuine commitment of a state to adhere to international human rights must be questioned. In one OSCE participating State, for instance, the institution was created by means of a peace agreement after an armed conflict. While the agreement sensibly took into account the specific political setting of the newly-formed country, it created an institution in which operations are jeopardized, paradoxically, by this same politically complex landscape which is reflected in the structure of the institution. As a result, the NHRI seems to be prevented from utilizing its potential to the full. In other regions in the OSCE area, where participating States have faced serious challenges in adhering to international human rights standards, the creation of NHRIs appears to have been driven solely by the international community. As a result, all such institutions remain weak without showing any tangible results in terms of changing the human rights culture. In one such participating State, the parliament has recently amended the law establishing the NHRI, extending the criteria for dismissal of the Ombudsperson. Under this new amendment, the head of the institution can be dismissed if the parliament does not approve the institution's annual report. This development naturally undermines the independence of an NHRI and will probably result in limiting the ability of the institution to criticize the government's policies.

The "use" of NHRIs by states to pay lip service to their human rights commitments is not, however, limited to countries in transition or newly-established democracies; this type of window dressing also exists among more established democratic states. This is often the result of their treating the protection of human rights as a consideration in foreign-policy and foreign development-aid decisions instead of an obligation at national level. A comparative analysis⁴⁰ conducted by the European Union's Fundamental Rights Agency (FRA) identified a lack of commitment to the existence and development of strong and effective NHRIs in a number of EU member states. While the human rights records in these cases might not be comparable with those in many transition countries, a similar lack of commitment can be. In some EU countries, for example, NHRIs have been set up in the

40 European Union Agency for Fundamental Rights/FRA, *National Human Rights Institutions in the EU Member States – Strengthening the fundamental rights architecture in the EU*, Luxembourg 2010, at: http://fra.europa.eu/fraWebsite/attachments/NHRI_en.pdf.

form of human rights institutes or advisory commissions that mostly have advisory and research functions and focus on the promotion of human rights. These institutions have been successful in fulfilling these briefs, but they often have no mandate to protect or intercede on behalf of individuals. The rationale most often given for the creation of NHRIs of this type is that there were already inner-governmental oversight bodies or parliamentary petition committees with the role of ensuring the protection of individuals' human rights in these countries. Such arguments demonstrate a failure to understand the principle, nature, and role of NHRIs.

The Way Ahead

While there is no need to fine-tune or develop the Paris Principles any further, it does appear to be necessary to create indicators and benchmarks for use in evaluating the performance of NHRIs, applying standards beyond the normative review of the Paris Principles. This would allow for the assessment and measurement of the impact NHRIs make. Such an evaluation could be used to facilitate public discourse on the work of NHRIs and to provide support to governments in fulfilling the commitments they made when agreeing to establish these institutions.

To date, there has been little focus on reviewing the actual performance of NHRIs, with few requests from governments, civil-society bodies, or the NHRIs themselves to look at this question. The international community has been equally cautious in seeking to evaluate NHRIs. There are a number of factors hampering the introduction of assessment or review processes.

First, the concept of external governmental oversight is still relatively new, as are these institutions themselves, which means that undertaking such an evaluation might still be premature at this point. It is probably not yet time for internal reviews or those carried out by the international community, particularly as most of the latter group is still engaged in the process of aligning themselves with the work of these institutions rather than seeking to criticize them.

Second, such a technical assessment of NHRIs would be difficult to carry out effectively, given the wide variety of mandates and structures under which NHRIs currently function and the many different contexts in which they operate.

Finally, the international community appears to be hesitant about carrying out such an evaluation, as a fully-fledged assessment of performance would potentially result in some NHRIs being deemed to lack the necessary ability to perform their functions properly or, more seriously, to lack the willingness to perform as mandated. In a number of cases, the latter assessment would result directly from a lack of commitment on the part of the state to establish a truly independent and effective NHRI.

Despite these concerns, the ability to review the work and nature of NHRIs is vital to the monitoring of states' success in meeting their obligations to promote and defend the human rights of their citizens. For OSCE participating States, this would provide an opportunity to improve the implementation of relevant OSCE commitments to support the development and enhancement of a culture of human rights.

Conclusion

If NHRIs are to genuinely become key players in the protection and promotion of human rights, OSCE participating States themselves have to show a genuine commitment to the protection of these rights. Only in this case will NHRIs have the leverage to fulfil their role effectively. Over the past 20 years, they have become an indispensable component of human rights protection at national level, and the relevance of these institutions seems likely to grow inexorably. The international community must continue to play a vital role in supporting governments in this process, while simultaneously displaying a degree of sensitivity to different national contexts and allowing sufficient time for real progress to be made. When enough time has passed, the next step in this development will be the establishment of indicators that can be used to measure the performance of NHRIs and suggest additional steps that can be taken by governments, and the institutions themselves, to achieve further progress. Supporting this process should lead to the increased, and more effective, protection of human rights by the state, underpinning the security not only of individuals but of the states themselves at national and regional levels.