

DRAFT – NOT FOR CIRCULATION

MORE THAN A SEAT AT THE TABLE: THE GENDER POLITICS OF NATIONAL HUMAN RIGHTS INSTITUTIONS

AMERICAN POLITICAL SCIENCE ASSOCIATION

SEPTEMBER 2011

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INTRODUCTION

National human rights institutions (NHRIs) have emerged during the last 15 or so years as the new darlings of the human rights system,¹ put forward variously by the United Nations and other human rights actors as the antidote to sluggish human rights implementation at the national level, the bridge between the local and the international, and critical link between civil society human rights activity and State responsibility and oversight.² While, NHRIs have not proven to be a “one-size fits all” human rights solution, they are the increasingly regarded as major human rights players in their own right, distinct from government and civil society and occupying their own unique position in the global human rights space. This development raises questions regarding the institutional space within NHRIs for addressing gender equality and inclusion, especially insofar as hastily created NHRIs – very often in poor, conflict affected

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¹ For a complete listing of national human rights institutions, <http://nhri.ohchr.org/EN/National/DirectoryOfInstitutions/Pages/default.aspx>

² See, e.g., United Nations Office of the High Commissioner for Human Rights, Fact Sheet No. 19, *National Institutions for the Promotion and Protection of Human Rights*, available at: <http://www.unhcr.ch/html/menu6/2/fs19.htm>; Julie A. Mertus, *The United Nations and Human Rights* 27 (2005).

countries – may insufficiently prioritize gender equality inclusion in their recruitment, training and operations. Further, in many countries, a lack of infrastructure and capacity already serves to hinder access to justice generally, a situation that is often more pronounced for women, sexual minorities. Moreover, women and other marginalized groups may lack the educational qualifications or working experience to participate in NHRI establishment and operations, both as members, staff or beneficiaries.

The proliferation of NHRIs is of particular consequence to the protection of disadvantaged groups generally and the amplification of neglected human rights issues. While a discrete NHRI scholarship is emerging,³ full attention has yet to be given to the specific role that such entities play in advancing the human rights of groups on the margins. This paper suggests the importance of a close read of constitutive moments in the life of a NHRI specifically for ensuring gender equality and inclusion, such as the time when stakeholders are engaged in their establishment, decisions are taken about institution composition and individual member qualifications, mandate and scope of work are devised, and programming implemented and evaluated, among other issues.

The paper begins with an overview of the emergence of NHRIs as global human rights actors and the gendered dimension of NHRI establishment and practice. It then turns to contemporary NHRI establishment and operation and examines gendered norms and practices that impact NHRI formation, mission, personnel and operation and, conversely how NHRIs can influence the structuring of gender in society. Finally, we conclude by suggesting a framework to guide the

³ See especially [please list major works including Mertus book]

human rights practitioner working on gender equality and inclusion⁴ in the space created by NHRIs.⁵

I. GENDER EQUALITY & INCLUSION AND THE EMERGENCE OF NHRIS AS HUMAN RIGHTS ACTORS

NHRIs are positioned as the great promise for sustained human rights action at the national level, responsive to the perceived disconnect between international human rights standards and mechanisms and State-level action. This may be explained, in part, by the failures of regional and international mechanisms to effectively see human rights norms implemented at the national level and inaction by the international community to prevent egregious human rights abuses in countless conflict-affected countries.⁶ Donor-driven prioritization of human rights institution building as a pre-condition for aid is a further factor. The UN has been particularly exuberant about the role that NHRIs can play in strengthening human rights implementation:

When States ratify a human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained therein. Therefore, universal human rights standards and norms today find their expression in the domestic laws of most countries. Often, however, the

⁴ We use the term “women’s and gender issues” in order to acknowledge two separate sets of issues: those pertaining to the lives of females and the

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⁶ Observers have noted other factors, among them, the drive to strengthen democracy, particularly in post-conflict states and societies in transition or, in some instances, a cynical response by governments eager to invoke NHRI establishment as a badge of human rights observance in the wake of abiding human rights violations. See Michelle Parlevliet, *National Human Rights Institutions and Peace Agreements: Establishing National Institutions in Divided Societies* (ICHRP, Versoix: 2006), at 7; Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commissions in Africa*, (New York; London; Washington DC, 2001), 2. Available at: <http://www.hrw.org/reports/2001/africa/overview/initiative/html>. (critiquing the proliferation of NHRIs in Africa).

fact that a law exists to protect certain rights is not enough if these laws do not also provide for all of the legal, powers and institutions necessary to ensure their effective realization. This problem of effective implementation at the national level has, particularly in recent times, generated a great deal of international interest and action.⁷

While the UN has largely focused its efforts on NHRI proliferation around the world, sometimes with decidedly mixed results, too little attention has been focused on NHRI effectiveness and legitimacy, particularly in specific areas of human rights practice. The standards adopted at the dawn of global NHRI expansion were decidedly ill-equipped to address gender equality and inclusion in NHRIs.

A. Paris Principles: The Received Benchmark for NHRI Legitimacy

The received set of standards according to which NHRIs are regarded as legitimate are the *Principles relating to the status and functioning of national institutions for the protection and promotion of human rights*” (Paris Principles), endorsed by the UN Commission on Human Rights in March 1992 and by the UN General Assembly in December 1993.⁸ Central among the standards reflected in the Paris Principles are that NHRIs are:

- independent, and that this is guaranteed by statute or constitution;
- autonomous from government;
- plural and diverse, including in membership;
- have a broad mandate which is based on universal human rights standards;
- possess adequate powers of investigation; and
- have sufficient resources to carry out their functions⁹

⁷ United Nations Office of the High Commissioner for Human Rights, Fact Sheet No. 19, *National Institutions for the Promotion and Protection of Human Rights*. Available at: <http://www.unhchr.ch/html/menu6/2/fs19.htm>.

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⁹ <http://www.parliamentarystrengthening.org/humanrightsmodule/pdf/humanrightunit10.pdf>

For NHRIs to serve effectively as impartial, independent and autonomous entities capable of monitoring and enforcing national and international human rights norms, particularly on behalf of marginalized groups and consistent with a rights-based gender perspective, requires a deeper level of analysis than what is reflected in the broadly crafted Paris Principles. While glosses on the Paris Principles have been developed to broaden and deepen NHRI analysis and critique, gender-specific standards and guidelines have yet to emerge.

B. The Gender Dimension of NHRI Establishment and Operation

An assessment of NHRI gender politics clearly means more than counting the number of women and men holding NHRI membership or staff positions. Consistent with approaches to domestic gender politics generally, analyzing the gendered dimension of international human rights involves something beyond evaluating the presence or absence of women in human rights treaty bodies, UN governmental delegations, and leadership positions in human rights NGOs and transnational civil society networks.¹⁰ This paper draws from and amplifies the approach taken by the United Nations in adopting a gender perspective in its institutions and programs.¹¹ This approach calls for the examination of the needs and roles of women and men in society and, with specific regard to NHRIs, assesses the implications of a gender perspective for recognizing, understanding and applying the knowledge of gender differences in NHRI establishment and operations.¹² Gender, as understood here, refers to the differences between women and men that are socially and culturally constructed. Gender roles are not fixed and can accordingly change

¹⁰ The early work of scholars such as Iris Marion Young and Carole Pateman exposed a sophisticated way of understanding gender in politics, one that is not always readily discernible even in contemporary work.

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¹² Mertus, *War's Offensive* at 15.

over time. Many other factors impact gender roles, among them, age, class, disability, ethnicity, race, and sexual orientation.

Within the context of human rights, gender-specific claims relate to violations, whether civil, political, economic, social or cultural, that women and men experience on account of – or experience differently because of – their gender. Forced abortion or castration as a form of punishment are examples of gender-specific human rights claims affecting women and men respectively. Other examples include denial of access to education for girls or forced conscription into military service for boys.

A particular category of gender-specific human rights claims includes gender-based violence, understood as “[v]iolence committed against women as women and against men as men—in other words, violence striking at what it means to be a man or a woman in a particular society.”¹³ Gender-based violence particular to women includes any act of violence “that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.”¹⁴ Such violence may occur in public or private spheres and may include violence that is condoned by or perpetrated by the state. Gender-based violence particular to men can likewise include physical, sexual or psychological harm to men, including, for example sexual violence intended to emasculate men.¹⁵

The section that follows considers contemporary NHRI practice in advancing gender equality and inclusion and in addressing gender-specific human rights claims generally, and gender-based violence more particularly.

¹³ Mertus, War’s Offensive at 16.

¹⁴ Mertus at 16. Give examples

¹⁵ Give examples

II. NHRI CONTEMPORARY PRACTICE AND THE POLITICS OF GENDER

New opportunities are created to advance women's human rights and gender issues with the establishment of any new government or independent institution or through the emergence of a new pattern of relationships, ideas and behaviors created by a human rights mandates. The establishment of NHRIs is no exception. Yet along with the opportunities that NHRIs present for advocates come some considerable challenges for addressing gender equality and inclusion both internally within NHRIs and externally in their operations and mandate fulfillment.

A. The Gender Implications of NHRI Establishment, Form, Composition and Mandate

Are NHRIs like any other human rights body? Have they managed to overcome the gender inequities inherent in other institutions? Is the process by which NHRIs are established inclusive of stakeholder groups, including women's human rights organizations, gay and lesbian organizations, and other groups addressing gender issues and concerns? Does the composition of NHRIs reflect gender balance at all levels of the organization? Do individual criteria for membership in an NHRI address the need for particular human rights experience and expertise or privilege only a certain profile likely to produce a homogenous body? Do their mandates and working plans reflect gender inclusion and focus, or do they tend to reflect a predominantly civil and political rights focus which so often privileges the human rights concerns of men? The section that follows considers these issues in turn and assesses these issues, in part, by reference to the Paris Principles, among other relevant standards.

1. Establishment

A core legitimacy marker for NHIR establishment is the process by which the NHRI is created and the extent of stakeholder involvement and public participation and awareness about the institution.¹⁶ The process ought to be broadly representative, including ministers, members of the legislature, government officials, members of major political parties, government agencies, human rights organizations, other civil society organizations, representatives from marginalized groups, judges and jurists, trades unions and professional groups, human rights experts and academics.¹⁷ The consultation process is important as public perception of the NHRI will hinge on both awareness of the roles and responsibilities of the new entity and its success will be assessed in part on its relationship with civil society organizations and its ability to chart a course that engages both civil society and government effectively.

In many situations, it is the women's groups that are the most well-organized and well trained in human rights. Thus, collaboration with national women's groups can be a particularly "powerful engine" for advancing efforts to establish a NHRI. To coordinate the establishment process, NHRI can create a key focal such as a steering committee, and an agency responsible for all point servicing. Through the space created, NHRIs can offer a crucial space within which gender relations can be re-structured, or they can become spaces within which women can display their knowledge and advance their concerns. Among the activities in which they may be engaged at this stage are as follows:

- institutional strengthening in the areas of strategic planning, program development, organizational and operational management...;

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¹⁷ Cite to AU CGP Reference Tool.

- facilitating the involvement and capacity of women advocates and activism, negotiation and policy formulation;
- translating...the knowledge which is embedded in the work of grassroots women's organizations into strategic and macro level policies...;
- financial and technical supports for civil society dialogues focused on gender issues.

2. NHRI Form

NHRI form has considerable importance for advancing gender equality and inclusion.

There is no single formula for the structure that an NHRI may take and the approach taken depends on local politics and the historical relationship between individuals and institutions within the state.¹⁸ NHRI s may be roughly typologized as follows: (i) national human rights commissions, with multiple members and broad mandate to monitor and promote national and international human rights within the domestic realm; (ii) ombudsman, often consisting of single member, mandated to receive complaints alleging certain violations of domestic norms; (iii) specialized commissions, with a specific, issue-oriented mandate designed to tackle a particular human rights issue, such as racial discrimination; and (iv) hybrid institutions, typical coupling a complaints procedure with a broader human rights mandate.¹⁹

¹⁸ Julie Mertus, *Human Rights Matters* (Stanford University Press, 2009), 3.

¹⁹ This typology is more descriptive than that provided by the UN in its Fact Sheet on NHRIs which acknowledges two broad categories (human rights commissions and ombudsmen) and mentions a third, specialized institutions addressing the human rights of a particular vulnerable group. In fact, specialized institutions are not restricted to addressing the need of a vulnerable group, but might address a thematic human rights issue and, more recently, practice has moved in the direction of creating hybrid institutions that combine functions of ombudsman and a commission). United Nations, Fact Sheet No. 19, "National Institutions for the Protection and Promotion of Human Rights," (United Nations, 19 April 1993), available at: <http://www.unhcr.ch/html/menu6/2/fs10.htm>. The International Council on Human Rights Policy also resists simplistic categorization of these diverse institutions, offering instead a variety of ways in which one can draw helpful distinctions among them. International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions* (Versoix: ICHRP, 2004), p. 5. See also Linda C. Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions

Sweden's experience with Ombudsmen is instructive.²⁰ Sweden had a propensity to respond to every group that raised discrimination claims by creating a new Ombudsman's office. With growing attention to discrimination issues in the latter part of the 20th century there arose several anti-discrimination Parliamentary Ombudsmen: the Equality Ombudsman, monitoring issues relating to gender equality; the Children's Ombudsman; the Disability Ombudsman; the Ombudsman against Discrimination on Grounds of Sexual Orientation, and the Ombudsman against Ethnic Discrimination.²¹ On January 1, 2009, all five offices were merged into the new Discrimination Ombudsman.²² By publicizing its inclusive programming,²³ Sweden then tried to guard against accusations that it had given up on any of the previously named groups. Because the ombudsmen had long been viewed as legitimate by the general public, it was able to make such a drastic change as a positive measure, in line with international human rights standards. A state without such a positive history would be unlikely to have had such an easy transition.

3. NHRI Composition/Selection

Legislation establishing a NHRI will typically include provisions relating to the overall composition of the body, including in particular (i) the number of treaty body members; and (ii) guidelines or requirements for the overall composition of the NHRI membership, as well as individual qualifications and criteria for membership. Composition provisions in establishment

in Good Governance and Human Rights Protection," 13 Harv. H.R. J. 1-69, at 11-13 (2002); Michelle Parlevliet, *National Human Rights Institutions and Peace Agreements: Establishing National Institutions in Divided Societies* (ICHRP, Versoix: 2006), at 3.

²⁰ Equinet: European network of equality bodies, "The Swedish Equality Ombudsman in the Spotlight," at <http://www.equineteurope.org/403.html>.

²¹ Ibid.

²² Ibid.

²³ Office for Democratic Institutions and Human Rights, Human Rights Education in the School Systems of Europe, Central Asia and North America: A Compendium of Good Practice (2009), 15-16, at http://www.google.com/url?sa=t&source=web&cd=6&ved=0CDsQFjAF&url=http%3A%2F%2Fwww.o-hchr.org%2FDocuments%2FPublications%2FCompendiumHRE.pdf&rct=j&q=sweden%20publicizes%20new%20%22equality%20ombudsman%22&ei=dnJITuTBM8XXKgQeNq-nFBg&usg=AFQjCNGtjuZUz81LcGRKABOFRFEQGCgtZQ&sig2=3cZ1TyIkq_RmD4_xuKA3oQ&cad=rja.

legislation can reflect an attempt to ensure that the body is truly representative of the society for which it is being established and the particular concerns of that society for diversity in national bodies. Individual criteria or qualifications for membership can help ensure relevant expertise and experience for undertaking the role of commissioner. The engagement of stakeholders in the establishment process is particularly important for addressing the requirements for composition and individual selection and underscores the importance of participation in legislative drafting for women's groups and other groups advancing gender issues during NHRI establishment. The Paris Principles call for members of the Commission to be representative of society.²⁴ In many instances, the provisions found in legislation do not expressly provide for members to be drawn from specific groups, though they may call for certain characteristics to be reflected, such as: (i) gender balance; (ii) certain subject-matter qualifications; (iii) ethnicity or minority membership; (iv) language; (v) religion; and (vi) disability.

New Zealand is interesting in that it requires consideration of the overall composition of the body in the selection of individual members who may be drawn from a large pool of candidates with knowledge of, or experience in, “the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society.” It does not expressly require members to be drawn from specific cultures or groups. Greece, provides an alternative approach, where the members are drawn from highly specified groups in order to achieve a specific overall composition. In _____, an amendment was introduced whereby gender balance was specified.²⁵

²⁴ Paris Principle, supra note _____ at ____.

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Strengthening the equal participation of men and women in the political and public life is a well-established principle of international human rights law and figures prominently in human rights discourse.²⁶ Insofar as equality of participation is a core component of fundamental human rights and freedoms, equal participation is instrumentally desirable, as participation strengthens democracy and, thus, advances all the liberal values associated with it. Moreover, because women's experiences with conflict are different than men (because of their different socially-constructed gender roles) women bring different skills, interests and needs to conflict analysis and problem solving.

There are four main approaches to this problem of gender inclusion in NHRI composition. First, there is the possibility of neglecting gender inclusion in NHRI composition altogether. The actors involved in the composition of a NHRI could ignore or deny altogether the existence of a glass ceiling, or any other inequities, and thus do nothing. Indeed this approach is commonplace and it reflected in the composition and selection requirements of NHRI legislation in which no account is taken of gender balance or relevant gender expertise. Thus, the NHRI legislation for Uganda,²⁷ Mongolia,²⁸ Palestine,²⁹ among others, reflects this invisibility.

On the other side of the spectrum of responses, the actors involved in composition of a NHRI could acknowledge the glass ceiling and address it firmly and directly by appointing women with backgrounds in women's human rights and gender issues to top positions in NHRIs. The requirement that the appointee have a strong background in women's human rights is

²⁶ See, e.g., Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc. A/810 at 71 (1948); International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/63`6 (1966), entered into force Jan. 3, 1976.

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absolutely imperative, as sensitivity to and knowledge about women and gender cannot be presumed simply because someone is a woman. (A man with a strong background in women's human rights and gender issues would also be acceptable.)

The other two approaches to the composition dilemma fall somewhere between denying that a problem exists and making strong female appointments. Closer to the “do nothing” end of the spectrum, a NHRI could make a proclamation, either in their implementing legislation or elsewhere, declaring their respect for diversity in NHRI composition, but not ever offering anything specific to address the matter. Alternatively, the fourth approach would be to add in a specific diversity plan, such as quotas for the inclusion of women and other people who tend to be marginalized and overlooked. Both of these approaches are based on the assumption that collectively the members of the NHRI should reflect the diversity of society and the range of vulnerable groups.

The outcome of the appointment process provides a clear signal to the public about a NHRI's priorities and its independence. In Azerbaijan,³⁰ for example, the media immediately seized on the fact that the first Ombudsman is a leader in the movement for women's human rights. Elmira Suleymanova, who was elected in 2002 for a seven year term, and then re-elected in 2006, was described as not only engaging in feminist work in the local level, but on the international level as well.³¹ For some members of the media, the appointment of Suleymanova underscored the independence and, hence, the legitimacy of the Ombudsman's office. Others, however, who viewed the activism in negative terms, portrayed Suleymanova as a captive of the

³⁰ Republic of Azerbaijan Human Rights Commission Ombudsman's web site: <http://www.ombudsman.gov.az>.

³¹ Elmira Suleymanova's biography, available on the Republic of Azerbaijan Human Rights Commission Ombudsman's web site, at: <http://www.ombudsman.gov.az/view.php?lang=en&menu=6>.

west.³² The appointment of women to decision-making positions is imperative. Nonetheless, the correction of mere inclusion of women may not be sufficient to expose the gendered impact of political decisions, that is, the impact on men's and women's roles, relationships, opportunities and achievements.

4. Mandate and Powers

The mandate of a NHRI, and the decisions made as to the scope of NHRI powers, also provide an opportunity for ensuring that a NHRI will address women's human rights and gender issues. The Paris Principles guidance on this aspect of NHRI establishment is as follows, but is not particularly illuminating:

A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.³³

The solution appears to be simple: include a provision in the mandate that directs the NHRI to address these issues. However, very few NHRIs choose this route. Instead, following the Paris Principles, they typically opt for a brief statement outlining a far-reaching and broad mandate, for example stating that the NHRI is to cover "the full range of human rights issues."³⁴ The exact nature of the human rights issues that are to be addressed then is left to NHRI to determine, either through the strategic planning process or otherwise and as reflected in its Web page and

³² A1Plus.am, "Suleymanova Does Not Meet International Standards," at <http://www.a1plus.am/en/politics/2005/09/8/3788>.

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³⁴ See, for example, Department of Labour, Government of Montserrat, Human Rights Commission, Pursglove Report for the Establishment of a National Human Rights Institution for Montserrat (2008), 29, at: http://labour.gov.ms/?page_id=14.

other self-publications.³⁵ The benefit of this approach is that a flexible mandate permits the NHRI to change with the time, taking on new issues when social movements raise them. The drawback of this approach is that the issue selection process becomes essential for gender inclusion and yet there is little in the way of guidance from the establishment legislation and hinges on the transparency and inclusiveness of the NHRI strategic planning process. Particularly at the early stage of a NHRI's existence, crucial decisions are made as to the powers of the NHRI and the degree of its receptiveness for women and gender issues, putting considerable pressure on women's human rights organizations and other groups advancing gender issues.

To take one prominent example, a decision must be made as to whether the scope of NHRI work includes both the private and public sector. Traditionally, human rights become matters of public concern only when the state was implicated (through both its actions and its failure to act.) This limitation, known as the "state action requirement"³⁶ almost guarantees that the lived reality of women and sexual minorities (lesbian, gay and transgendered) will be missed. Realizing the imperative of addressing harms committed in the private sector, the South African Commission on Gender Equality made clear from its inception that it would monitor all sectors of society to ensure that they are promoting gender equality.³⁷

³⁵ Commonwealth Secretariat, Comparative Study on Mandates of National Human Rights Institutions in the Commonwealth (2007) 37, at: www.thecommonwealth.org/publications; United Nations, Office of the United Nations High Commissioner on Human Rights, National Human Rights Institutions: Principles, Roles and Responsibilities (2010), 69, available at www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf

³⁶ International Federation for Human Rights, Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms (July 2010), 175, at www.unhcr.org/refworld/pdfid/4c3d5ff62.pdf.

³⁷ Commission for Gender Equality, at http://www.cge.org.za/index.php?option=com_content&view=article&id=46&Itemid=68;

B. Specific NHRI Functions

[introduce functions, summarizing from paris principles]

1. NHRI Legislative Review

The relationship between the NHRI and legislators demands specific attention. In most cases, the NHRI has the ability to advise government and legislators on draft and existing legislation and submit recommendations to the parliament. While this a role for governmental entities with gender mandates to perform, for example, Pakistan's National Commission on the Status of Women, for example, has the mandate to review all laws, rules and regulations affecting the "rights of women and make recommendations towards ending discrimination and achieving gender equality."³⁸ It is important, however, for the independent national human rights institution to likewise undertake such reviews.

The power of NHRIs to analyze legislation and make recommendations is important for the promotion of human rights for two reasons: (1) it may lead to the codification of human rights principles into domestic law, and; (2) it raises the awareness of lawmakers about international treaty obligations and human rights norms.³⁹ For advocates for women's human rights and the rights of sexual minorities, the advisory process works to even out the power imbalance amongst them --- i.e. suddenly the advocates have something the lawmakers want -- and forces parliament to take their issues seriously.

2. NHRI Complaints Mechanisms

Other issues that help shape the structure and work of the NHRI center upon whether a complaints mechanism will be available and, if so, for whom. NHRI complaints mechanisms are

http://www.cge.org.za/dmdocuments/website_genderpolicyworkplace.doc;
http://www.cge.org.za/index.php?option=com_content&view=category&id=36&Itemid=59.

³⁸ National Commission on the Status of Women- Pakistan, <http://www.ncsw.gov.pk/index.php>.

³⁹ Mertus, *Human Rights Matters*, 6-8.

one among an array of human rights methods that NHRI can employ to effectively advance gender claims.⁴⁰ While some scholars have commented on the overly legalistic approach taken to building NHRIs and the over-emphasis on establishing quasi-judicial complaints procedures, to the exclusion of other strategies, such mechanisms can offer an important avenue for the pursuit of gender claims, particularly where mechanisms, where they exist within an NHRI's mandate, are harnessed to advance gender claims is an important and empirically measurable benchmark.

The complaint mechanism of an NHRI should be simple, accessible, inexpensive and expeditious, with, where needed, confidentiality should be guaranteed. Individual complaint mechanisms are important for women because so many of them have been denied access to justice. Over the long term, increasing women's access to justice will require major changes in the legal system to bring it into conformity with international norms and standards. In the short term, NHRI individual complaints mechanisms offer a demonstration that the state, prodded by the NHRI and cajoled by women's rights and gender advocates, can make improvements in the legal sector.

The Special Court for Sierra Leone, established by an agreement between the UN Secretary-General and the Government of Sierra Leone, provides a salient example of a complaints mechanism that was designed at the outset to accommodate gender claims. It started operations in 2002 with a mandate to 'try persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law' during the war. Notably, the Court's

⁴⁰ Other important yet often under-appreciated human rights methods include the integration of human rights education into primary, secondary and university curricula as well as informal education, strengthening human rights organizational capacities, and deepening human rights capacity among the judiciary and foreign ministries tasked with applying and monitoring human rights implementation, respectively.

Statute adopted a broad definition of sexual violence, including ‘rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence’, and explicitly called for the appointment of gender-sensitive staff to deal with crimes of sexual violence. The Court took specific steps to ensure that crimes of sexual violence are adequately addressed, including developing a prosecution strategy that incorporated crimes of sexual violence from the outset; y tasking a trial attorney to develop a prosecution plan for sexual violence crimes; Assigning two experienced female investigators (out of a team of ten) to investigate crimes of sexual violence; adopting a gender-sensitive interview method to ensure that victims felt comfortable reporting crimes; emphasising witness preparation to ensure that witnesses understood the implications of testifying. The first judgments of the Court included convictions for rape as a crime against humanity and sexual slavery.⁴¹

3. NHRI Investigative Powers

The power and authority of the NHRI to conduct investigations and on-site investigations is also a formative matter that must be addressed upfront. Investigations backfire as long as NHRIs are not formally granted the authority to compel co-operation is essential to the fact-finding function of the NHRI.⁴² NHRIs should have the power to effectively address non-cooperation, obstruction, or victimization in an investigation, for example refusals to produce evidence. This is particularly important in cases where an imbalance of power already exists – or

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⁴² United Nations Development Programme (UNDP), *Programming for Justice: Access for All*, A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice (2005), 112-113, at: <http://www.scribd.com/doc/56533439/16/NATIONAL-HUMAN-RIGHTS-INSTITUTIONS>; Mertus, *Human Rights Matters*, 73 (citing Boris Topic’s assertion that “the ability to compel government to comply [was] absolutely necessary, not only form the view of getting the information, but because it showed the public that the Ombudsman is separate from the government”).

is perceived as existing—between men and women in the particular case under consideration.⁴³

4. Relationship of NHRI to International Institutions

Another issue of great importance to women concerns the manner in which the NHRI will cooperate with the efforts of international treaty bodies. NHRIs have a role to play in scrutinizing, and where needed, correcting or supplementing through shadow reporting, government reports submitted to international treaty bodies. In so doing, they should make specific recommendations to the executive and the parliament regarding the steps needed to achieve compliance. In the case of women's rights, the primary treaty is the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). NHRIs monitoring CEDAW must somehow balance the duty to facilitate accurate state reporting (for example through the provision of information to government or comment on draft government reports) and the responsibility to remain independent from state influence.⁴⁴

The UN human rights system is beginning to realize the promise of engagement with NHRIs whose contemplated role in national level monitoring can and should be reinforced through the treaty body efforts and the work of special procedures and Charter bodies. This is so especially in view of the important progress already being done within the International Coordinating Committee of NHRIs.⁴⁵ Progressive development of guidelines to facilitate such participation is needed and yet a ready model exists in the Convention on the Rights of the Child Committee's

⁴³ Ibid at 162.

⁴⁴ For NHRIs possible roles in treaty reporting processes, see Asia Pacific Forum, at: <http://www.asiapacificforum.net/services/international-regional/un/human-rights-council/treaty-bodies>; for more general information about NHRIs and their relationships with civil society and government, see Mertus, *Human Rights Matters*, 3, 7.

⁴⁵ For more on this work, see Harvard Law School Project on Disability, *available at* <http://www.hpod.org>.

articulation of guidelines for the participation of partners in its work in a proactive effort to promote engagement that is meaningful and substantive and the newer practice of the CRPD Committee.⁴⁶

At the same time, NHRI resources are spread thin and participation in the UN human rights system or regional bodies is typically only possible for the best funded NHRIs. Even those with ample funding must assess the comparative advantage of engaging with the UN human rights system at the international level versus a more focused domestic agenda.

III. Towards a Framework for Gender Inclusive NHRI Practice

The foregoing discussion suggest that promoting gender equality and inclusion in NHRI practice requires specific and sustained action both internally, within the composition and working methods and policies of the NHRI, as well as externally, in its programming and the implementation of its mandate vis a vis the State, civil society and other actors. This section draws together elements necessary for a gender inclusive NHRI practice along the continuum from pre-establishment through establishment and operations. In so doing, this section identifies key steps that should be taken for true gender inclusivity in NHRIs.

A. Pre-Establishment Opportunities for Gender Inclusion

⁴⁶ See CRC Guidelines for the Participation of Partners (NGOs and Independent Experts) in the Pre-Sessional Working Group of the Comm. on the Rts. of the Child, U.N. Doc. CRC/C/90, Annex VIII, available at <http://www2.ohchr.org/english/bodies/crc/docs/guidelines-E.pdf>.

B. Creation of NHRI Gender Policies and Strategies

A precondition for NHRIs to integrate gender into their operations is the establishment of a policy on gender devising a specific strategy to achieve gender-specific strategic goals. This is particularly important where, as in most cases, NHRI establishment legislation provides no gender equality mandate. Gender policies should reflect the principle that men and women should benefit from NHRI human rights protection and oversight. In addition, NHRI operations should recognize and accommodate their different needs and facilitate their roles in decision-making.

Gender policies of NHRIs should be linked to benchmarks and timetables for implementation and should also be monitored and evaluated on a consistent and ongoing basis. Sex-specific data on the impact of projects should be gathered. This data can be shared with partners as part of trainings or regular dialogues and evaluations for monitoring compliance. Staff should be welcome to give feedback on the made to creation of gender policies and changes should be made to accommodate their concerns.

C. Enhancing NHRI Organizational Awareness of Gender

All staff can be trained on the meaning of gender and its application to human rights concerns to their work. Four key dimensions of human rights violations should be considered. First, women's human rights are violated in ways distinct from men. For example, women face sexual abuse of a nature that very few men face. Second, gender-related circumstances make women's suffering different (and often worse) than men's suffering. One illustration of this phenomena is that women are often subjected to domestic violence after their men return from war, in a climate

where police do not take seriously women's cries for help. The third key dimension is that the consequences human rights abuses are often gender specific. Finally women's access to remedies may influence their willingness to take part in what could be a very long process.⁴⁷

D. Implementing Gender Inclusive NHRI Programming

There are two main approaches to improve inclusivity of NHRI programming. One is to mainstream gender throughout the NHRI; the other is to create a focal point on gender. Both approaches have drawbacks. The focal point approach encourages NHRI staff to remain ignorant about gender. After all, the only part of the institution caring about gender is the focal point. In contrast, the mainstreaming approach makes gender *everyone's* business. In so doing, however, "mainstreaming risks submerging gender so that the problems no longer are given attention."⁴⁸ Given these potential difficulties, some NHRIs combine a modified version of both approaches. In any event, experience has demonstrated that flexibility should be built into the NHRI structure for emerging issues.

E. Introducing Gender-Specific NHRI Programming

Greater attention to gender at the early stage of a NHRI's creation and existence should result in more gender-specific programming, such as projects addressing women's vulnerability to sexual violence and incorporating their ideas for improving police handling of domestic violence. Other projects may involve promoting the health care needs of gay, lesbian and transgendered people and addressing their right to nondiscrimination. Refugee women may be a

⁴⁷ *War's Offensive on Women*, 13.

⁴⁸ *Id.*, 107.

focus for the NHRI—or girls, economic migrants or women with disabilities....The particular programming depends on the NHRI. With a gender focus, the potential programs are multiplied.

CONCLUSION

The establishment and strengthening of NHRIs is increasingly prioritized by governments and is firmly situated on the agenda of bilateral and multilateral development, peace and security communities. NHRIs undoubtedly represent an important opportunity for advancing women's human rights and the integration of gender issues within domestic as well as international human rights movements. And yet in the two decades since NHRIs have proliferated on the human rights front, they are stretched thin, caught between the promise held in their far-reaching (and ever expanding) mandates and the realities of limited resources and capacities. Some of these institutions were hastily created, often at the behest of the international community, and lack the national legitimacy necessary to fulfill their mandate and implement their ambitious work plans. Frequently, they possess overlapping responsibilities with other national institutions endowed with gender inclusion mandates, either creating coordination problems leading to inefficiencies and duplication or, worse, inter-agency tensions leading to conflict.⁴⁹ Still, these institutions hold great potential for advancing human rights agendas and should be regarded as significant actors through which to press for gender equality and inclusion. Gender equality and inclusion in the work of NHRIs should be being recognized as a key to operational effectiveness, local ownership and strengthened oversight. Ensuring the appointment of female commissioners and the recruitment of female staff, preventing gender-based human rights violations, and

⁴⁹ Cite to Lord ISA paper

collaborating with women's organizations contributes to creating an efficient, accountable and participatory NHRI responsive to the specific human rights situation and needs of men, women, girls and boys.

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	WOMEN	GENDER
ESTABLISHMENT		
FORM		
COMPOSITION		
MANDATE & POWERS		
Inclusive	\	
Cooperation w/ treaties, etc.		
Public & Private Sector		
Legislation Review		
Complaint Mechanism		
Investigations		
Work w/ civil society		

NHRI Gender Assessment Framework [cite to war's offensive chart on page 110]NHRI
Institutional Design for Gender Impact

- 1) Does the establishment legislation for the NHRI reflect a gender dimension in its mandate?
- 2) Does the overall composition of the NHRI reference gender balance?
- 3) Do the individual criteria for membership in the NHRI reference **women's human rights expertise, gender??**
- 4) Does the NHRI mandate reference gender equality?

- 5) Does the NHRI relationship with government and NGOs address engagement women's human rights organizations? With GLBT groups? With governmental focal points on gender?

- 1) General Considerations for NHRI Gender Impact What are the differentiated needs, interests and capacities of men and women in the population targeted by the NHRI?
- 2) Who are the intended beneficiaries of NHRI programming and what assumptions are being made about them? Who is being excluded in this calculus?
- 3) Who devised the goals of NHRI action on gender issues? Are those goals shared equally by women and men, with the same emphasis and prioritization? Will NHRI action promote gender equality?
- 4) Who is likely to benefit from NHRI action and who is likely to lose? Which men and which women? Are sexual minorities considered?

NHRI Strategic Planning

- 1) Does the NHRI have a stated gender policy or guidelines?
- 2) How does proposed NHRI programming affect the productive, reproductive, and/or social roles of women and men – as family members, partners, mothers and fathers, educators, agricultural workers, income earners, community leaders, etc?
- 3) What proportion of NHRI programming participants (commissioners and staff) are women and have their views been taken into account? Are sexual minorities and have their views been taken into account?
- 4) How have women among the participants and beneficiaries been consulted?

NHRI Program Implementation

- 1) How are women and men involved in program implementation? Are women involved in the program's project staff, as beneficiaries, as advocates?
- 2) How does the programming affect women's and men's access to, and control over, resources and benefits?
- 3) Is there ongoing and consistent attention paid to possible changes in the pattern of women's and men's lives? In the lives of sexual minorities?
- 4) Have women and men in the community grown in gender awareness through their participation in the program?

NHRI Complaints Mechanisms

- 1) Are complaints mechanisms accommodating to the specific needs of women and men? Are procedures equally accessible to both women and men?

- 2) What proportion of complaints are submitted by women? By men?
- 3) What proportion of complaints concern women's human rights violations and gender issues? What proportion is successful?

NHRI Program Monitoring and Evaluation

- 1) Do female and male beneficiaries participate equally in NHRI monitoring processes?
 - 2) Do NHRI monitoring requirements include a measure for gender equality, a measure for customer satisfaction, and do they reveal the extent to which the policy is successfully addressing the different needs of women and men?
 - 3) How can external organisations representing different groups in the community help in monitoring the policy outcomes?
 - 4) _ Are measures in place to initiate an investigation or to change the policy if it is not delivering either the equality objective defined at the outset of the project or equality of opportunity for women or men?
 - 5) Is the policy promoting and delivering equality of opportunity for women and men?
 - 6) Have the objectives been met for women and men?
 - 7) _ Did one group receive greater benefit than others – if so how will the imbalance be addressed? Were inputs allocated equitably?
 - 8) _ What was the overall impact of NHRI programming on the status and quality of life for women and men?
 - 9) _ Did the process involve women and men? Did it seek out and value their views equally?
 - 10) _ Is there a need for additional data collection and do targets and indicators need adjusting in the light of experience?
 - 11) _ What lessons are there for improving future policies and services, who needs to be informed and how is the information to be presented?
 - 12) Do M&E staff have the capacity to integrate gender issues?
 - 13) Is M&E sex and age data disaggregated?
 - 14) Have the gender-related objectives, indicators and benchmarks been reached? Are measures in place to initiate change if these are not being met?
 - 15) What was the overall impact of the programme on men, women, girls and boys? Has the programme increased their security and access to justice?
- _ Do male and female beneficiaries participate equally in M&E?
- _ Are specific measures taken as part of the M&E processes to reach marginalised beneficiaries such as rural communities and non-literate groups?
- Does NHRI programme adequately involve men and women? Were their views incorporated into the programme?
- _ How has the programme affected participation of men and women in security sector institutions and
- 1) security sector oversight?

