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Sub-National Human Rights Institutions and Transgovernmental Networks

Andrew Wolman*

Abstract:

Transgovernmental networks have played a prominent role in the evolution and development of national human rights institutions ('NHRIs') by promoting cooperation, best practices, and engagement at the international level, and providing NHRIs with legitimacy through the accreditation process. The role that transgovernmental networks play in the development of sub-national human rights institutions ('SNHRIs'), however, has yet to be examined. This article attempts to fill this gap by comparing networking patterns of national and sub-national human rights institutions. This article concludes that while SNHRIs are able to derive certain benefits from their membership in ombudsman associations, they are currently missing out on many of the other benefits that NHRIs derive from their membership in the International Coordinating Committee for National Institutions for the Protection and Promotion of Human Rights ('ICC') and its affiliated networks. This article therefore proposes that the ICC establish a separate membership category for SNHRIs, with membership conditioned on compliance with a set of principles based on the Paris Principles, but revised so as to be applicable to sub-national bodies.

Keywords: Sub-National Human Rights Institutions; National Human Rights Institutions; Transgovernmental Networks; Ombudsmen

1. Introduction

Transgovernmental networks such as the International Coordinating Committee for National Institutions for the Protection and Promotion of Human Rights ('ICC') and its affiliated regional networks have played a prominent role in the growth and development of NHRIs. These networks have incentivised NHRI conformity with best practices,¹ facilitated NHRI exchange of information and coordination on particular human rights issues,² encouraged and assisted in the development of new NHRIs,³ provided legitimacy and credibility through accreditation,⁴ and

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¹ Andrew Byrnes, Andrea Durbach, and Catherine Renshaw, 'Joining the Club: The Asia Pacific Forum of National Human Rights Institutions, the Paris Principles and the Advancement of Human Rights Protection in the Region' (2008) 14 *Australian J Hum Rts* 63.

² Catherine Renshaw, 'The Role of Networks in the Implementation of Rights in the Asia Pacific Region' in Hitoshi Nasu and Ben Saul, *Human Rights in the Asia-Pacific Region* (Routledge 2011): 202-7.

³ Catherine Renshaw and Kieren Fitzpatrick, 'National Human Rights Institutions in the Asia Pacific Region: Change Agents under Conditions of Uncertainty' in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance, and Social Change* (CUP 2012): 166.

⁴ *ibid* 165; Sulini Sarugaser-Hug, 'How a Peer-Review Mechanism can Influence the Implementation of International Human Rights Standards: Why the Work of the Sub-Committee on Accreditation of the

effectively developed outlets for participating in United Nations activities.⁵ The UN General Assembly, Human Rights Council and treaty bodies have all, at various times, encouraged NHRIs to join the ICC.⁶ Over the past decade, NHRI networking has been the subject of a growing number of academic studies, which have generally lauded the networks' beneficial effects on the evolution of NHRIs.⁷

While the importance of networking for NHRIs is by now clear, there is far less understanding of the potential and actual use of networking by the sub-national counterparts of NHRIs, which are here termed sub-national human rights institutions (SNHRIs), and defined as *independent non-judicial governmental institutions that possess a sub-national mandate, and whose mission includes the implementation of human rights norms*. As with NHRIs, SNHRIs stand to reap significant gains from transgovernmental networking. They also have often shown a willingness to engage in networking with their peers at the global, regional, and in some cases the domestic levels. To date, however, there has been very little academic examination of the phenomenon of SNHRI networking. This is in part a symptom of a broader tendency among both scholars and practitioners to overlook sub-national human rights actors in favor of national or supra-national institutions.⁸

In this article, I attempt to fill this lacuna by examining the role that transgovernmental networks play in the work of SNHRIs, in comparison with the role that they play for NHRIs. I show that while SNHRIs currently enjoy some of the benefits of transgovernmental networking, they generally lack access to the most influential and effective networking opportunities available to NHRIs, with negative implications for SNHRI effectiveness and engagement in the international human rights system. I conclude with prescriptive recommendations for optimising the potential for transgovernmental networks to improve the quality of human rights work undertaken by SNHRIs.

International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Matters' (2012) 18 Australian J Hum Rts 45, 62.

⁵ Sonia Cardenas, 'Emerging Global Actors: The United Nations and National Human Rights Institutions' (2003) *Global Governance* 23, 33-34; Kirsten Roberts, 'National Human Rights Institutions as Diplomacy Actors' in Michael O'Flaherty et al (eds) *Human Rights Diplomacy: Contemporary Perspectives* (Leiden, Martinus Nijhoff, 2011): 230-34.

⁶ Sarugaser-Hug (n 4) 47.

⁷ See, eg, Meg Brodie, 'Progressing Norm Socialisation: Why Membership Matters - The Impact of the Accreditation Process of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights' (2011) 80 *Nordic J Intl L* 143; Noha Shawki, 'A New Actor in Human Rights Politics? Transgovernmental Networks of National Human Rights Institutions' in Noha Shawki and Michaelene Cox (eds) *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics* (Ashgate 2009) 41; Tom Pegram, 'Global Human Rights Governance and Orchestration: National Human Rights Institutions as Intermediaries' *Eur J Intl Rel* 1, 14 (Advance Access Published 6 Oct 2014, DOI: 10.1177/1354066114548079); Byrnes et al, 'Joining the Club' (n 1); Renshaw, 'The Role of Networks' (n 2).

⁸ Noha Shawki, 'Global Norms, Local Implementation – How are Global Norms Translated into Local Practice?' (2011) *Globality Stud J* <<https://gsj.stonybrook.edu/article/global-norms-local-implementation-how-are-global-norms-translated-into-local-practice/>> accessed 15 November 2014; International Council on Human Rights Policy, 'Local Rule: Decentralization and Human Rights' (2002) 42.

2. Sub-National Human Rights Institutions: An Overview

While the term ‘sub-national human rights institution’ has been employed on occasion in recent years by the UN and other actors,⁹ it has not yet entered wide circulation. Thus, before going further, a brief introduction to the concept is warranted. In broad terms, SNHRIs can be considered as the sub-national counterparts of NHRIs, and the two institutional types share many of the same characteristics. As is the case with NHRIs, the most important distinguishing factor of SNHRIs is their independence: they are governmental bodies, but operate outside the general government agency hierarchy and (in principle, if not always in practice) do not operate under the instructions of any other bodies. The range of functions performed by SNHRIs varies widely according to local circumstances, but can include gathering information, publishing reports, monitoring human rights violations, conducting inquiries, proposing legislative or policy reforms, conducting awareness-raising campaigns, and, in many cases, receiving complaints from the general public and working toward the satisfactory resolution of those complaints. Within the broad SNHRI category are included a diverse range of institutions such as human rights commissions, ombudsmen, *personeros*, *defensores del pueblo*, *difensores civicos*, etc., as well as institutions that specialise in particular rights such as the rights of children or the rights of the disabled. SNHRIs exist at virtually all administrative levels, from cities and counties to provinces and vast autonomous regions.

SNHRIs may be far less well known than NHRIs in the human rights community, but they have become similarly abundant on the world stage. Anti-discrimination or human rights commissions in many common law countries have the longest history, dating back to the 1930s in the United States¹⁰ and 1960s in Canada.¹¹ Currently there are human rights commissions in all Australian states (and some territories), as well as in most US states, Indian states, and Canadian provinces.¹² In Europe, there are several hundred regional ombudsmen and almost 1,000 local ombudsmen in the forty-seven Council of Europe member states,¹³ all of which have

⁹ See eg, Address by Navanetham Pillay, High Commissioner for Human Rights, to the Annual Meeting of the Coordinating Council of Sub-national Ombudspersons of the Russian Federation, ‘National Human Rights Protection Systems: The First Ports of Call’ (18 February 2011) <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10798&LangID=E>> accessed 15 November 2014; Report by the Secretary General: National Institutions for the Protection and Promotion of Human Rights, A/66/274 (8 August 2011) para 95; Commonwealth Human Rights Initiative, ‘The Parliamentary Committee as Promoter of Human Rights: The UK’s Joint Committee on Human Rights’ (2007) 17.

¹⁰ Kenneth L. Saunders and Hyo Eun Bang, ‘A Historical Perspective on US Human Rights Commissions,’ in *Executive Sessions Papers: Human Rights Commissions and Criminal Justice* (June 2007) 7.

¹¹ R Brian Howe and David Johnson, *Restraining Equality: Human Rights Commissions in Canada* (U Toronto Press 2000) 9-12.

¹² Andrew Wolman, ‘The Relationship between National and Sub-National Human Rights Institutions in Federal States’ (2013) 17 Intl J Hum Rts 445, 448-451.

¹³ ‘Effective Protection of Human Rights in Europe: Enhanced Co-operation between Ombudsmen, National Human Rights Institutions, and the Council for Europe Commissioner for Human Rights,’ Background Paper for 10th Round Table of European Ombudsmen and the Council for Europe Commissioner for Human Rights, CommDH/Omb-NHRI(2007)1 Rev 3 (April 2007) para 16.

been established since the 1970s.¹⁴ While some of these are classic ombudsmen that address good governance issues with little attention to human rights, more and more European ombudsmen engage closely with human rights norms,¹⁵ and in central and eastern Europe most ombudsmen are explicitly required to do so (these are generally called human rights ombudsmen).¹⁶ In the last decades, sub-national human rights ombudsmen have also become widespread in Latin America. Currently there are at least 36 provincial and municipal *defensores del pueblo* in Argentina¹⁷ and 1,100 *personeros municipales* in Colombia.¹⁸ While SNHRIs are less common in Africa and Asia, their number has been growing recently; to give one example, South Korea now has sixteen SNHRIs, all established since 2011.¹⁹

3. Transgovernmental Networks: The Conceptual Framework

Government officials have long had formal and informal relationship with their peers in foreign countries. In the post-Cold War period, however, transgovernmental networks, defined as ‘pattern[s] of regular and purposive relations among like government units working across the borders that divide countries from one another’, have become more common.²⁰ These networks have involved a range of different types of officials, from judges to regulators to policy implementers, acting in many different issue areas, from human rights to financial regulation to antitrust enforcement. While attention has often focused on networks involving national government units, the increase in transgovernmental networks is also evident at the sub-national level, especially in areas of local interest such as environmental regulation.²¹ At the sub-national

¹⁴ Doris Ansari and Hans Martin Tschudi, ‘Regional Ombudspersons: An Institution in the Service of Citizens’ Rights,’ Council of Europe Congress of Local and Regional Authorities Explanatory Memorandum CPR (11) 7 Part II <<https://wcd.coe.int/ViewDoc.jsp?id=906233&Site=COE>> accessed 15 November 2014 (noting first local ombudsman was established in Zurich in 1971).

¹⁵ Helena Pihlajasaari and Halvdan Skard, ‘The Office of Ombudsman and Local and Regional Authorities’, *Report for Council of Europe Congress for Local and Regional Authorities* (2011) para 9.

¹⁶ Linda Reif, ‘Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman’ (2011) 31 Boston Coll Third World L J 269, 309.

¹⁷ There are currently 36 provincial and municipal *defensor del pueblo* members of the Asociación Defensores del Pueblo de la República Argentina. ADPRA, ‘Defensorias Integrante de ADPRA’ <<http://www.adpra.org.ar/integrantes-adpra>> accessed 15 November 2014.

¹⁸ The Federación Nacional de Personeros de Colombia includes 1,102 *personeros municipales* and *personeros distritales*. Federación Nacional de Personeros de Colombia, ‘Quienes Somos’ <<http://www.fenalper.org/web/index.php/institucional/quienes-somos>> accessed 15 November 2014.

¹⁹ These include thirteen human rights commissions, two human rights ombudsmen, and one human rights center. Korea Human Rights Foundation, ‘Report on Local Government and Human Rights’ (August 2014) 208-11.

²⁰ Anne-Marie Slaughter, *A New World Order* (Princeton U Press 2004) 14.

²¹ See, eg, Kristin Kern and Harriet Bulkeley, ‘Cities, Europeanization and Multilevel Governance: Governing Climate Change through Transnational Municipal Networks’ (2009) 47(2) J Common Market Stud 309. These networks have provided members with ‘a sense of collective purpose, political support, access to knowledge, and the sharing of best practices’. Harriet Bulkeley, ‘Transgovernmental Networks’, in Jean-Frédéric Morin and Amandine Orsini (eds) *Essential Concepts of Global Environmental Governance* (Routledge 2015) 221.

level, governmental units have also formed networks with their peers within a single country, which are sometimes called ‘translocal’ networks.²² While translocal networks would not be considered ‘transgovernmental’ under the definition given above, they may in some cases be functionally similar.

NHRI and SNHRI networks can be included among this broader category of transgovernmental networks (or translocal networks, if they involve entities within a single country).²³ While NHRIs and SNHRIs act independently, they nevertheless are state sponsored and funded, and are established by national or sub-national constitutions, legislation or decrees.²⁴ Although NHRIs and SNHRIs are sometimes deemed ‘quasi-governmental’ because of their functional independence,²⁵ such independence is relatively common for governmental participants in transgovernmental networks, and in fact earlier studies defined transgovernmental relations to require member sub-units to act autonomously from their governments.²⁶

Transgovernmental networks can be classified according to both the relationships that the networks establish and the functions that the networks perform. According to the typology developed by Anne-Marie Slaughter and Thomas Hale, the relationships that they establish can be either horizontal, vertical, or both.²⁷ Horizontal networks involve actors at the same administrative level, whether sub-national, national or supra-national. These are most common, and most commonly studied. Vertical networks include actors from different governmental levels. While SNHRI and NHRI networks are mainly horizontal in nature, some also include vertical elements by including both SNHRIs and NHRIs in the same network (or even by including the European Ombudsman, which operates at a supra-national level).

Functionally, transgovernmental networks have been divided into three types: information networks, enforcement networks, and harmonisation networks (although it should be noted that many networks exercise more than one function).²⁸ Information networks focus on exchanging information and collecting or distilling best practices through, for example, the use of conferences, training sessions and publication of reports. Recent research has stressed the

²² See Judith Resnik, ‘Foreign as Domestic Affairs: Rethinking Horizontal Federalism and Foreign Affairs Preemption in Light of Translocal Internationalism’ (2007) 57 *Emory L J* 31.

²³ For the use of transgovernmental networks as a conceptual framework for analysing NHRI networks, see Shawki, ‘A New Actor in Human Rights Politics?’ (n 7).

²⁴ Anne Smith, ‘The Unique Position of National Human Rights Institutions: A Mixed Blessing?’ (2006) 28 *Hum Rts Q* 909.

²⁵ Raj Kumar, ‘National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights’ (2003) 19 *Amer U Intl L Rev* 281. In a similar vein, Rachel Murray has called NHRIs ‘semi-official’ bodies. Rachel Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Hart 2007) 68.

²⁶ Robert Keohane and Joseph Nye, ‘Transgovernmental Relations and International Organizations’ (1974) 27 *World Pol* 43 (stating that transgovernmental relations involve ‘sub-units of different governments that are not controlled or closely guided by the policies of cabinets or chief executives of those governments’).

²⁷ Anne-Marie Slaughter and Thomas Hale, ‘Transgovernmental Networks and Multi-Level Governance’, in Henrik Enderlein, Sonia Wälti and Michael Zürn (eds) *Handbook on Multi-Level Governance* (Edward Elgar 2010) 360.

²⁸ *ibid.*

importance of networks to governmental learning and innovation because of evidence that officials tend to evaluate new information or policies based more on the subjective opinion of their peers rather than formal sources.²⁹ Enforcement networks involve cooperation with the goal of enforcing laws that cannot be easily enforced by a single country's enforcement apparatus. Harmonisation networks are aimed at promoting conformity with a single standard or set of rules. SNHRI and NHRI networks function in large part as information networks, however the ICC in particular also has a strong harmonisation function with respect to the Paris Principles.

Looking beyond a purely functional analysis, a large body of research has highlighted the fact that transgovernmental networking can have other important implications for their members. Three of these are of particular potential importance for SNHRIs. First, membership in transgovernmental networks can have a positive effect on the legitimacy of their member bodies. According to an empirical study of transgovernmental securities networks by David Bach and Abraham Newman, '[b]oth the statistical analysis and preliminary anecdotal evidence suggest that newly created regulators use membership in transgovernmental networks to bolster their legitimacy'.³⁰ In particular, new or insecure bodies see network membership as a pathway to improving their image through association with more established or respected bodies in the transgovernmental network setting. A similar legitimising motive has been noted in studies of NHRI membership in the ICC, as will be discussed in the following section.

Second, transgovernmental networks can promote their members' independence. In some cases this is accomplished through the promulgation of non-binding guidelines that encourage independence, such as the Basel Core Principles on Banking Supervision or the International Organization of Securities Commissions principles.³¹ Elsewhere, as is the case with NHRIs in the ICC, membership may be conditioned on structural independence, thereby providing an incentive for states to establish independent NHRIs. Even without explicit support for member independence, transgovernmental networks can provide forums for lower level officials to develop their professional agendas separately from and with outside of the supervision of their national (or sub-national) governments. According to Robert Keohane and Joseph Nye, transgovernmental relations can even lead to the emergence of 'coalitions with like-minded agencies from other governments against elements of their own administrative structures'.³²

Third, transgovernmental networks can also have a socializing effect on their members.³³ In the human right field, Ryan Goodman and Derek Jinks have applied their work on state socialisation to human rights networks. According to Goodman and Jinks, there are three distinct mechanisms of social influence driving state behavior: material inducement, persuasion, and

²⁹ Everett Rogers, *Diffusion of Innovations*. (Free Press 2003) 341; Harold Wolman and Edward Page 'Policy Transfer among Local Governments: An Information Theory Approach' (2002) 15(4) *Governance an Intl J of Policy and Admin* 497.

³⁰ David Bach and Abraham Newman, 'It's Time to Join: The Politics of Transgovernmental Network Participation', APSA 2009 Toronto Meeting Paper (2009) 4.

³¹ Lorenzo Casini, 'Domestic Public Authorities within Global Networks: Institutional and Procedural Design, Accountability, and Review' in Joost Pauwelyn, Ramses Wessel and Jan Wouters, *Informal International Lawmaking* (OUP 2012) 392.

³² Keohane and Nye (n 26) 44.

³³ Slaughter, 'New World Order' (n 20) 198.

acculturation.³⁴ Of these mechanisms, acculturation (meaning the ‘general process by which actors adopt the beliefs and behavioural patterns of the surrounding culture’) is of particular importance in explaining the impact of transgovernmental human rights networks.³⁵ Acculturation is based on the social desire to conform, a result of the socio-psychological costs of nonconformity (including dissonance from conduct inconsistent with an actor’s social role) and the socio-psychological benefits of conformity, based on ‘cognitive comfort’ from achieving high social status or membership in a perceived ‘in-group’.³⁶ According to Goodman and Jinks, acculturation can lead to isomorphism, meaning structural similarities in organisations, even when underlying conditions differ widely across states.³⁷ While Goodman and Jinks accept the thesis that membership in transgovernmental networks increases the likelihood of accepting international norms, they also see membership as increasing the likelihood of states being influenced by practices of other network members (whether or not those practices reflect international norms).³⁸ Goodman and Jinks also pay particular attention to the implications of network membership rules. In brief, they find that restrictive memberships can allow membership to be used to confer legitimacy or ostracism (when it is denied); can strengthen affinity among insiders, and, where the membership is small, can enhance social conformity.³⁹

The dominant strand of recent research on transgovernmental networks, most associated with the work of Anne-Marie Slaughter, has taken a positive view of the potential for these networks to contribute to contemporary global governance. In particular, they are seen as having advantages over traditional international organisations in their flexibility, speed, inclusiveness, and ability to devote sustained attention to complex regulatory issues.⁴⁰ According to Slaughter, transgovernmental networks are ‘the optimal form of organization for the Information Age’⁴¹ and ‘the blueprint for the international architecture of the 21st century.’⁴² Kal Raustiala similarly argues that the establishment of transgovernmental networks are likely to have synergistic effects

³⁴ Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights through International Law* (OUP 2013) 22.

³⁵ Ryan Goodman and Derek Jinks, ‘Incomplete Internalization and Compliance with Human Rights Law’ 19 EJIL 726. See generally T. Pegram, ‘Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions’ (2010) 32 Hum Rts Q 729.

³⁶ Goodman and Jinks, ‘Socializing States’ (n 34) 27.

³⁷ *ibid* 42-46.

³⁸ *ibid* 48.

³⁹ *ibid* 109.

⁴⁰ Slaughter, ‘New World Order’ (n 20) 167.

⁴¹ Anne-Marie Slaughter, ‘Governing the Global Economy through Government Networks’, in Michael Byers (ed) *The Role of Law in International Politics: Essays in International Relations and International Law* (OUP 2000) 204.

⁴² Anne-Marie Slaughter, ‘The Real New World Order’ (Sept-Oct 1997) *Foreign Affairs* 197.

with the functioning of classic international treaty regimes.⁴³ Much of the research on NHRI networks has been similarly positive.⁴⁴

There have, however, been notes of caution regarding the spread of transgovernmental networks.⁴⁵ Slaughter and Hale note that networks' flexibility may render them toothless when strong enforcement powers are needed to sustain member cooperation.⁴⁶ This is less relevant for NHRI and SNHRI networks, however, as they are not primarily intended to sustain international cooperation. Slaughter and Hale also highlight that transgovernmental networks can face legitimacy problems to the extent that they 'empower domestic officials to act without approval from their domestic superiors.'⁴⁷ This is sometimes characterized as a deficit of democratic accountability.⁴⁸ This would not normally be considered a drawback for NHRI and SNHRI networks, however, as NHRIs and SNHRIs are by definition supposed to act independently of their home governments, and in fact derive much of their credibility from that very independence.⁴⁹

4. NHRI Networking

Transgovernmental networks have played an undeniably prominent role in the establishment and development of NHRIs over the past two decades. NHRIs have joined two parallel sets of networks. First, there is a system of global and regional NHRI-specific networks with strong connections to the United Nations and other international actors. Second, there is a separate system of global and regional ombudsman networks which have weaker connections to other international actors and lack the legitimating qualities of a robust accreditation system. This section will give an overview of each of these networking systems and their implications.

4.1 NHRI Networks

The ICC was the first transgovernmental NHRI network to be established, in 1993.⁵⁰ The ICC accredits members through an interactive and rigorous peer-review process based on an evaluation of compliance with the Paris Principles, a set of standards adopted by the UN General Assembly that provides guidelines on the competence and responsibilities of NHRIs, NHRI

⁴³ Kal Raustiala, 'The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law' (2002) 43 *Virginia J Intl L* 1.

⁴⁴ See eg, Gauthier De Beco, 'Networks of European National Human Rights Institutions' (2008) 14 *Eur L J* 876-77.

⁴⁵ For more critical perspectives, see Pierre Verdier, 'Transnational Regulatory Networks and their Limits' (2009) 34 *Yale J Int'l L* 113; Mohamed Mansour Kadah, 'Trans-Governmental Networks: A Less than Convincing Vision of New World Order' (2011) *IPRIS Occasional Paper* No 3.

⁴⁶ Slaughter and Hale (n 27) 364.

⁴⁷ *ibid.*

⁴⁸ Francesca Bignami, 'Transgovernmental Networks vs Democracy: The Case of the European Information Privacy Network' (2005) 26 *Mich J Intl L* 807.

⁴⁹ International Council on Human Rights Policy, 'Performance and Legitimacy: National Human Rights Institutions' (2004) 58. See

⁵⁰ Sonia Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights* (U Penn Press 2014) 47.

independence and pluralism, and NHRI methods of operation.⁵¹ Although the application process is fundamentally based on submitted documentation, the UN, civil society groups and other stakeholders also can provide input to the ICC.⁵² Currently, the ICC has seventy NHRI members with A-status, signifying compliance with the Paris Principles.⁵³ It also has accredited twenty-five NHRIs with B status, signifying partial compliance with the Paris Principles, and ten NHRIs with C status, signifying non-compliance.⁵⁴ Reaccreditation is required every five years.⁵⁵ While B and C status NHRIs can participate in some ICC activities, they are not voting members and do not receive privileged treatment at the UN.⁵⁶ In addition to allowing for full participation with in the ICC and providing an entryway for participating in the UN, A-status is widely recognised as a sign of institutional legitimacy and credibility⁵⁷

Structurally, ICC decision-making is managed by a bureau consisting of sixteen voting members, four each from the Americas, Africa, Europe and the Asia-Pacific.⁵⁸ It also has working groups on governance and sustainable funding and a Sub-Committee on Accreditation ('SCA') made up of one voting member from each of the four regions, which reviews applications and makes recommendations on Paris Principles compliance to the managing Bureau.⁵⁹ The ICC maintains an extremely close relationship with the UN Office of the High Commissioner of Human Rights ('OHCHR'), which has been a strong advocate for the establishment and strengthening of NHRIs and coordination between NHRIs via the ICC.⁶⁰ Currently, the OHCHR in Geneva serves as the ICC secretariat and is a permanent observer to the SCA.⁶¹

⁵¹ Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, adopted 20 December 1993, GA Res 48/134, UN GAO R, 48th Sess, UN Doc A/RES/ 48/141 (1993) ('Paris Principles').

⁵² Silva Pesic, 'National Human Rights Institutions and the Accreditation Process' (2012) 16 Eurodialog 153, 158.

⁵³ ICC, 'Chart of the Status of National Institutions' (2014) <http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf> accessed 15 November 2014. The pluralism requirement has been interpreted to refer to commissioners for commission-form NHRIs, and staff members for ombudsman-form NHRIs. Linda Reif, 'Enhancing the Role of Ombudsman Institutions in the Protection and Promotion of the Rights of Persons with Disabilities', paper presented at International Ombudsman Institute Conference (Wellington, 2012) 15.

⁵⁴ ICC (n 53).

⁵⁵ Pesic (n 52) 157.

⁵⁶ *ibid* 156-57.

⁵⁷ *ibid* 156.

⁵⁸ *ibid* 155.

⁵⁹ *ibid* 156.

⁶⁰ Chris Sidoti, 'National Human Rights Institutions and the International Human Rights System' in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance, and Social Change* (CUP 2012): 109.

⁶¹ Pegram, 'Global Human Rights Governance and Orchestration' (n 7) 30.

Functionally, the ICC has five principal roles. First, as is common with transgovernmental networks, the ICC encourages cooperation and information sharing among its members, through the organisation of conferences and the promotion of regional forums.⁶² Second, the ICC assists in the establishment of new NHRIs and capacity building for existing NHRIs.⁶³ Third, the ICC promotes best practices, primarily by conditioning new membership on compliance with the Paris Principles (and suspending existing members that fall out of compliance).⁶⁴ Fourth, the ICC, along with its regional affiliates, acts as a collective mouthpiece for NHRIs at international fora.⁶⁵ In recent years, the ICC has helped NHRIs participate collectively in the negotiation of treaties and declarations through the UN system.⁶⁶ Fifth, by accrediting Paris Principles-compliant NHRIs, the ICC facilitates individual NHRI engagement in the international human rights system. This is accomplished because A-status accreditation has been viewed by the UN Human Rights Council as a sufficient signal of legitimacy to entitle an NHRI to privileged participation.⁶⁷ Specifically, A-accredited NHRIs (along with the ICC itself and its affiliated regional networks) are now permitted to make an oral statement for all Human Rights Council agenda items, submit documents to the Human Rights Council, and take separate seating in all Human Rights Council sessions.⁶⁸

The ICC is supplemented at the regional level by four formally affiliated regional NHRI networks: the European Group of National Human Rights Institutions; the Asia Pacific Forum of National Human Rights Institutions ('APF'); the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, and the Network of African National Human Rights Institutions ('NANHRI').⁶⁹ These four networks are comprehensive and exclusive, in the sense that they cover all areas of the globe without overlap. With the exception of the NANHRI, the regional networks do not conduct their own accreditation; rather, they accept as voting members any NHRI in their geographical area that has received A-status accreditation by the ICC SCA.⁷⁰ While the Asian, African and European networks possess permanent secretariats, the American group does not, despite efforts to establish one by the ICC

⁶² Pesic (n 52) 155.

⁶³ Ibid; Cardeas, 'Chains of Justice' (n 50) 46-48.

⁶⁴ When a member NHRI falls out of compliance with the Paris Principles, it may face temporary or permanent suspension, as has occurred with human rights commissions from Fiji, or demotion to 'B status', as occurred with commissions from Sri Lanka, Algeria, Cameroon, Madagascar, and Nigeria. Mertus, State Compliance at 78; Suraina Pasha, 'NHRIs and the Struggle against Torture in the Asia-Pacific Region' (2010) 6 Essex Hum Rts Rev 84, 88. Sidoti (n 60) 98.

⁶⁵ Sidoti (n 60) 108.

⁶⁶ Roberts (n 5) 230.

⁶⁷ Sidoti (n 60) 104-20.

⁶⁸ Human Rights Council resolution 5/1, 'VII. Rules of Procedure', Rule 7(b).

⁶⁹ Established in 1994, the European Group of NHRIs is the oldest of the regional affiliates, while the Network of African NHRIs (created in 2007) is the youngest. Cardenas, 'Chains of Justice' (n 50) 47.

⁷⁰ Of the NANHRI's 43 members (as of September 2014), 18 also have A-status at the ICC, while 7 have B-status, 2 have C-status, and 16 are unaccredited by the ICC. See NANHRI, 'List of Members' (2014) <http://www.nanhri.org/index.php?option=com_content&view=article&id=107&Itemid=828&lang=en> accessed 15 November 2014.

and OHCHR.⁷¹ The basic functions of the regional networks are quite similar to those of the ICC, for example the APF ‘facilitates the exchange of information between its members, forges links between staff in different institutions, and disseminates technological expertise’.⁷² The ICC has strongly supported the establishment and growth of these regional networks.⁷³

Along with the ICC and its four affiliated regional networks, many NHRIs belong to one or more other transgovernmental NHRI networks, based on either cultural or geographic affinity. While not formally affiliated with the ICC, the Association of National Human Rights Institutions of EAC Partner States, the Arab Network for NHRIs, the Network of National Human Rights Institutions in West Africa, and the Southeast Asian National Human Rights Institutions Forum have acted as standing regional (or sub-regional) forums with regular meetings, exchanges, and other forms of coordination. The Southeast Asian National Human Rights Institutions Forum, which groups together six NHRIs from the ASEAN region, has been particularly active in pressuring ASEAN states to develop a robust regional human rights mechanism within the ASEAN system.⁷⁴ Meanwhile, NHRI networks from countries with historical or linguistic commonalities have been established through the British Commonwealth (the Commonwealth Forum of National Human Rights Institutions) and the Organisation de la Francophonie (the Francophone Association of National Human Rights Institutions). Finally, a range of less formalised transgovernmental networks have been forged between NHRIs from different countries. Multilateral examples include the Arab-Ibero American dialogue of National Human Rights Institutions and the Arab-European Human Rights Dialogue. These forms of inter-regional cooperation have been encouraged by the ICC.⁷⁵

In recent years, a number of researchers have highlighted the importance of the ICC for the development and operation of NHRIs. In part, this is because the ICC opens up the path for individual and collective participation at the international level.⁷⁶ Gauthier De Beco points out that the participation of NHRIs in international fora benefits NHRIs by increasing their visibility, thereby enhancing their status, and helps them to stay up to date on international developments.⁷⁷

⁷¹ Pegram, ‘Global Human Rights Governance and Orchestration’ (n 6) 33.

⁷² Renshaw, ‘The Role of Networks’ (n 2) 185.

⁷³ The NANHRI objectives, for example, are to ‘[e]ncourage the establishment of NHRIs, in conformity with the Paris Principles; [f]acilitate the coordination, strengthening and effectiveness of NHRIs in Africa [and e]ncourage cooperation among NHRIs and with intergovernmental organisations.’ NANHRI, ‘Mandate, Vision and Mission’ <http://www.nanhri.org/index.php?option=com_content&view=article&id=96&Itemid=542&lang=en> accessed 15 November 2014.

⁷⁴ Renshaw and Fitzpatrick 168. The network has also been lauded for its efforts to fight human trafficking. Ibid 169.

⁷⁵ ICC, ‘ICC Strategic Plan 2010-2013’ (2009) sec 5.5.

⁷⁶ According to Kirsten Roberts, the ICC provides an ‘important forum for NHRIs to have a collective voice at the regional and international level.’ Roberts (n 5) 230. She highlights as examples the European Group of NHRIs’ submission of an *amicus curiae* brief before the European Court of Human Rights and the role of the APF and ICC in lobbying the Commission on the Status of Women to permit NHRIs to participate independently in the Commission’s work. *ibid* 242-43

⁷⁷ De Beco ‘Networks of European NHRIs’ (n 44) 867.

In part, it is also due to the ICC's prominent role in promoting adherence to the Paris Principles. In particular, Meg Brodie claims that at the global level, the ICC has played a critical role in the international socialisation of Paris Principle norms through its accreditation process.⁷⁸ Brodie argues that by conditioning membership on compliance with the Paris Principles, the ICC has defined the boundaries of a collective identity and helped mobilise pressure for compliance from both above and below.⁷⁹ Brodie claims that ICC membership can in turn provide legitimacy by 'symbolic validation' of NHRIs.⁸⁰ Sonia Cardenas also notes that by publicly acknowledging Paris Principles compliance through awarding membership, the ICC helps legitimise NHRIs, both in the eyes of their domestic constituents and in the eyes of the international community.⁸¹

Other scholars have focused their research on the impact of regional NHRI networks. For example, Gauthier de Beco analysed European NHRI networks, finding that regional cooperation allows for greater information exchange on issues of common concern and helps strengthen NHRI relationship with regional bodies such as the Commissioner for Human Rights of the Council of Europe.⁸² Cardenas and others have shown that the regional networks have in some cases gone beyond the ICC in generating new standards, by issuing resolutions, commission reports, and developing region-specific jurisprudence.⁸³ At the regional level, the APF has been the subject of particularly thorough study. Andrea Durbach, Andrew Byrnes, and Catherine Renshaw showed that in many cases the APF has facilitated the establishment and development of NHRIs.⁸⁴ This was supplemented by further analysis by the same authors, demonstrating that the APF membership application and review procedures 'have been reasonably effective in moving NHRIs towards greater compliance with the Paris Principles norms— at least as a formal matter – and in reinforcing the role of existing members in enforcing those shared standards'.⁸⁵ Vitit Muntarbhorn has highlighted the norm-creation role of the APF through the Advisory Council of Jurists, as well as its role as a cooperative forum in the absence of other options for human rights regionalisation in the Asia-Pacific.⁸⁶ In issue-specific case studies, Suraina Pasha found the APF's provision of education and training to Asian NHRIs to be significant⁸⁷ and Renshaw found that the APF had advanced the acceptance by NHRIs of standards related to

⁷⁸ Brodie 'Progressing Norm Socialisation' (n 6).

⁷⁹ *ibid* 192.

⁸⁰ *ibid* 190-91.

⁸¹ Cardenas 'Chains of Justice' (n 50) 49.

⁸² De Beco 'Networks of European NHRIs' (n 44) 870-71.

⁸³ Cardenas 'Chains of Justice' (n 50) 48

⁸⁴ Andrea Durbach, Catherine Renshaw, and Andrew Byrnes, 'A Tongue but No Teeth: The Emergence of a Regional Human Rights Mechanism in the Asia Pacific Region' (2009) 31 *Sydney L Rev* 211.

⁸⁵ Byrnes et al (n 1) 91 (The APF has since relinquished an independent role in member accreditation, instead relying on ICC status for its own membership decisions.)

⁸⁶ Vitit Muntarbhorn, 'In Search of the Rights Track: Evolving a Regional Framework for the Promotion and Protection of Human Rights in the Asia-Pacific Region' (2007) 10 *Thailand L J* 1.

⁸⁷ Suraina Pasha, 'The Evolution of the Asia Pacific Forum of National Human Rights Institution's Regional Training Program' in Hurights Osaka (ed), *Human Rights Education in Asia-Pacific, Vol. II* (Asia-Pacific Human Rights Information Center 2011) 73.

human rights and sexual orientation, creating the expectation that NHRIs would then engage in a discourse with state actors on related issues.⁸⁸ According to Renshaw, networks like the APF ‘represent a significant, and already present, force for the implementation of human rights’.⁸⁹

Among NHRI researchers, there have also been notes of caution regarding the value of networks. Cardenas, for example, states that while NHRI networks seem to be relatively efficient and legitimate modes of human rights governance, their formation ‘signals a pooling of resources and power [and] potentially an entrenchment of state control over the human rights agenda’.⁹⁰ Peter Rosenblum has argued that there are profound limitations in the ability of the ICC to ensure that its NHRI members comply with a set of high standards.⁹¹ Despite these caveats, however, it is fair to conclude that the general tenor of research on NHRI networking has been quite positive regarding their contribution to NHRI development and Paris Principles compliance.

4.2 Ombudsman Networks

In addition to NHRI-specific networks, most ombudsman-type NHRIs have also joined a separate set of ombudsman networks.⁹² These networks also exist at the global, regional, and sub-regional levels. At the global level, the International Ombudsman Institute (‘IOI’) has been the most prominent organisation bringing together independent ombudsman institutions since its founding in 1978.⁹³ The IOI focuses its work on training, research, and regional subsidies for projects, in addition to organising periodic conferences.⁹⁴ Since 2009, the Austrian Ombudsman Board has hosted the IOI Secretariat (which had previously been located at the University of Alberta).⁹⁵ The Austrian Ombudsman Board also provides the majority of the IOI’s funding.⁹⁶

As is the case with NHRI networks, there is also a relatively comprehensive set of regional ombudsman associations, comprised of the European Network of Ombudsmen, African Ombudsman and Mediators Association, Asian Ombudsman Association, Ibero-American Federation of Ombudsmen (which also has members from Spain and Portugal), and Pacific Ombudsman Alliance. As with NHRI associations, these ombudsman networks are

⁸⁸ Renshaw, ‘The Role of Networks’ (n 2) 205.

⁸⁹ *ibid* 185.

⁹⁰ Cardenas, ‘Chains of Justice’ (n 50) 49.

⁹¹ Peter Rosenblum, ‘Tainted Origins and Uncertain Outcomes: Evaluating NHRIs’ in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance, and Social Change* (CUP 2012): 314-20.

⁹² Currently, twenty-seven out of seventy A-status NHRIs are ombudsman (or human rights ombudsman) institutions.

⁹³ IOI, ‘Information Folder: About the IOI’ <<http://www.theioi.org/the-i-o-i/about-the-ioi>> accessed 15 November 2014.

⁹⁴ *ibid*.

⁹⁵ The Austrian Ombudsman Board, ‘International Ombudsman Institute’ <<http://volksanwaltschaft.gv.at/en/international-activities/international-ombudsman-institute>> accessed 15 November 2014.

⁹⁶ In 2012-13, the Austrian Ombudsman Board provided 365,000 Euros for ongoing operations, technical servicing, three employees and a trainee. The other pillar of IOI financing is membership fees, which amounted to 95,800 Euros in 2012-13. IOI, ‘Annual Report 2012/2013’ (2013) 50-51.

supplemented by additional associations based on cultural or sub-regional (and occasionally bilateral) groupings, including the Arab Ombudsman Association, the Association of Mediterranean Ombudsmen, the Association des Ombudsmans et des Médiateurs de la Francophonie, the Australia and New Zealand Ombudsman Association, and the Ombudsman Association (formerly the British and Irish Ombudsman Association). Of these regional and sub-regional groups, the Ibero-American Federation of Ombudsman has been particularly active, and according to some accounts has a history of tensions with the ‘competing’ Latin American NHRI network.⁹⁷

Ombudsman networks differ from NHRI networks in several ways. First, as their names suggest, ombudsman networks are focused on ombudsman-type institutions, with few if any commission-type members.⁹⁸ In contrast, NHRI networks include both ombudsman and commissions. Second, ombudsman networks are not solely focused on human rights issues, as ombudsman institutions have traditionally been more concerned with issues of maladministration and corruption (as many ombudsmen still are). In fact, with the exception of the Ibero-American Federation of Ombudsmen, ombudsman associations tend to be dominated by classical ombudsmen with little tradition of human rights implementation.⁹⁹ Third, the membership of ombudsman networks is not based on ICC accreditation or any other peer review process based on a set of best practices. While membership practices at the regional networks vary, IOI membership decisions are made by the IOI Executive Committee based on the recommendation of the Secretary General; voting membership is contingent on an ombudsman’s investigation of complaints, functional independence, and compliance with a set of IOI principles.¹⁰⁰ In practice, IOI membership is not seen as a signal of quality or independence that can lend ombudsman offices any meaningful legitimacy. Fourth, as will be discussed in further depth below, ombudsman associations commonly group together both NHRIs and SNHRIs (and in a few cases include a supra-national ombudsman – the European Ombudsman – for good measure). NHRI associations, on the other hand, generally exclude SNHRIs. Fifth, ombudsman networks tend to have far less interaction with international and regional organisations such as the UN,¹⁰¹ although the IOI Secretary General has in recent years worked to increase their international engagement.¹⁰² For example, the IOI applied to the UN Economic and Social Council in May 2013 for consultative status as an NGO.¹⁰³ However this would not lead to the privileged access

⁹⁷ Cardenas, ‘Chains of Justice’ (n 50) 48.

⁹⁸ While classic human rights commissions are largely absent from ombudsman associations, there are some cases of hybrid commission and ombudsman institutions (such as the Ghana Commission on Human Rights and Administrative Justice or the Korean Anti-Corruption and Civil Rights Commission) with membership in ombudsman associations. IOI, ‘IOI Directory 2014’ <<http://www.theioi.org/pdf/2>> accessed 15 November 2014.

⁹⁹ In Spain and Latin America, ombudsmen tend to have an explicit human rights implementation mandate.

¹⁰⁰ IOI Bylaws, art 6 (2012).

¹⁰¹ Members of the IOI have described its lack of regional and international visibility as a weakness. IOI ‘Annual Report 2012/13’ (n 96) 25.

¹⁰² IOI representatives have met with UN and European Commission staff and attended international conferences in recent years. *ibid* 45-48.

¹⁰³ *ibid* 45.

granted by the UN human rights system to the ICC (and regional NHRI associations such as the APF). Connected to this point, it is worth noting that, in contrast with membership in the ICC, membership in ombudsman networks does not convey any privileged status at the UN.

There has so far been little research directed at the implications of ombudsman associations on NHRI growth and development (or even, for that matter, on ombudsman growth and development), although their role in standard-setting and information sharing has been highlighted, at least in the European context.¹⁰⁴ In part, this relative lack of interest is no doubt due to the generally more limited ambitions of ombudsman networks: as discussed, they have not attempted to spread a particular code of best practices (like the Paris Principles) or promote member interests before international bodies. The paucity of research could also reflect academic research priorities, that tend to favor explicitly ‘human rights’ focused institutions, and underemphasise the role of administrative law bodies (such as classical ombudsmen) in implementing human rights, whether at the domestic or international levels.¹⁰⁵

5. SNHRIs and Transgovernmental Networks

Transgovernmental networks present tempting prospects to SNHRIs, for much the same reason that they have been embraced by NHRIs. These networks can promote best practices, provide capacity-building assistance, and facilitate inter-body cooperation, and access to the international system. These various benefits would be particularly important for SNHRIs given their typically small size and low budgets, which in many cases would make it difficult for SNHRIs to independently access training or develop norms, or to engage with international mechanisms. In theory, transgovernmental networks would also be able to help legitimise fragile institutions and socialise SNHRI into desired institutional norms, as has taken place with NHRIs in their networks. To date, however, SNHRIs have, with a few exceptions, not been made welcome at NHRI-specific networks. They have been accepted to a greater degree at ombudsman networks, however, and in many countries have initiated their own translocal networks that bring together multiple SNHRIs from a single country.

5.1 SNHRIs in NHRI-Specific Networks

Since its inception, the ICC and affiliated NHRI networks have struggled with the question of whether to accredit and allow membership to SNHRIs.¹⁰⁶ On the one hand, sub-national bodies are – perhaps by definition – not NHRIs. The Paris Principle repeatedly uses terms such as ‘national institution’ and ‘national legislation’ and states that NHRIs should pay attention to human rights violations in ‘any part of the country.’¹⁰⁷ Bearing in mind the strong influence of UNHCHR in setting up and operating the ICC, there may also have been reluctance

¹⁰⁴ See Carole Harlow and Richard Rawlings, ‘Promoting Accountability in Multi-Level Governance: A Network Approach’ European Governance Papers (EUROGOV) No C-06-02 (2006) 25-7.

¹⁰⁵ See Anita Stuhmcke, ‘Australian Ombudsmen and Human Rights’ (2009) 20-22.

¹⁰⁶ The ICC has faced similar questions with regards to the accreditation of issue-specific national institutions. In the past, multiple specialised Swedish ombudsmen shared accreditation, but currently there are no specialised institutions with A-status accreditation. Richard Carver, ‘One NHRI or Many? How Many Institutions does it Take to Protect Human Rights? – Lessons from the European Experience’ (2011) 3 J Hum Rts Prac 1, 4.

¹⁰⁷ Paris Principles (n 51).

to deal with sub-national entities, which have traditionally been absent from the halls of New York and Geneva.¹⁰⁸ On the other hand, decentralisation and self-government considerations have in many countries led to the establishment of strong and internationally active SNHRIs in systems where it is politically difficult or impossible for an NHRI to oversee government actions throughout the country.

In recent years, the ICC has dealt with applications from SNHRIs in a haphazard and inconsistent manner, leaving a lack of clarity as to underlying policy. The ICC's first reaction to SNHRI membership applications was to grant SNHRIs non-voting status. Thus, in 2000 the Hong Kong Equal Opportunities Commission was given C-status accreditation, despite being fairly well respected by observers.¹⁰⁹ A year later, the Northern Ireland Human Rights Commission was granted B-status, while in 2007 the Oficina del Procurador del Ciudadano del Estado Libre Asociado de Puerto Rico was given C-status. These outcomes have been criticised by some; from the outside C-status suggests a lack of independence or effectiveness (as with, for example, the Iran Human Rights Commission), but in fact these SNHRIs were basically being denied voting membership solely due to their subnational mandates.¹¹⁰

While the Hong Kong Equal Opportunities Commission and Oficina del Procurador del Ciudadano del Estado Libre Asociado de Puerto Rico have maintained their C-status, the Northern Ireland Human Rights Commission was upgraded to A-status upon re-accreditation in 2006. A few years later, the British Equality and Human Rights Commission (which is mandated to address English issues and limited Scottish matters, but does not cover Northern Ireland) was given A-status, and finally the Scottish Human Rights Commission was given A-status in 2010, although all three bodies were asked to share a single vote.¹¹¹ In 2008 this result was justified in section 6.6 of the ICC's General Observations, which stated that '[i]n very exceptional circumstances' multiple national institutions could seek ICC accreditation, provided that they had the written consent of the state government and a written agreement regarding rights and duties as an ICC member, which included arrangements for participation in the international human rights system.¹¹² In addition, the state must be a UN member.¹¹³ In these circumstances the institution would have only one speaking right, one voting right, and one ICC Bureau member, if elected.¹¹⁴

The issue of SNHRI accreditation was once again brought to the fore in 2011-2012 with the application by the Office of the Bermuda Ombudsman, which was eventually declined by the

¹⁰⁸ Conrad Mugoya Bosire, 'Local Government and Human Rights: Building Institutional Links for the Effective Protection and Realisation of Human Rights in Africa' (2011) 11 Afr Hum Rts L J 147, 159-60.

¹⁰⁹ See Carole Petersen, 'Bridging the Gap? The Role of Regional and National Human Rights Institutions in the Asia Pacific' (2011) 13 Asian-Pacific L Pol J 174, 204-5.

¹¹⁰ *ibid.* In fact, many doubt the usefulness of C-status accreditation in general, and the SCA has not granted C-status to any applicants since 2007.

¹¹¹ ICC, 'Chart of the Status of National Institutions' (2010) <http://www2.ohchr.org/SPdocs/NHRI/Chart_Status_NIs.doc> accessed 15 November 2014.

¹¹² ICC, Sub-Committee on Accreditation, 'General Observations' (2008) para 6.6.

¹¹³ *ibid.*

¹¹⁴ *ibid.*

SCA. The SCA at this time took a strict attitude against SNHRIs, stating that ‘Article 10 of the ICC statute clearly refers to applications for accreditation from “national” human rights institutions...a “national” institution is an institution established by a nation state of the United Nations.’¹¹⁵ While this denial was perhaps not surprising, the justification used only complicated the issue: rather than analyzing compliance with the section 6.6 conditions elaborated earlier, the SCA seemed to be introducing a separate threshold test of whether an institution was established by a UN member nation-state or not (bringing into question the UK exception). More recently, both the Mexico City Human Rights Commission and the City of Buenos Aires Human Rights Commission have inquired about ICC membership eligibility, but were informed that they would not be allowed to seek accreditation.¹¹⁶

Finally, although it would not normally be considered sub-national, it is worth noting that the Palestinian Independent Commission for Citizens’ Rights received A-status accreditation (with reservations) in 2005 and A-status (without reservation) in 2009 despite Palestine not being a UN member state at either time.¹¹⁷ This may be a *sui generis* situation, but it nevertheless seems to bring into question the emphasis on UN membership in both the SCA’s Bermuda decision and section 6.6 of the ICC’s General Recommendations. The issue of UN membership may arise again in the near future, as some officials in both Kosovo and Taiwan are reportedly eager to establish ICC-accredited NHRIs.¹¹⁸

Similar SNHRI membership issues were (inconsistently) addressed in the past by the regional networks, but this is no longer a significant issue, since the regional NHRI networks now simply accept as voting members those NHRIs that have been given A-status by the ICC (with the exception of the NANHRI).¹¹⁹ The Francophone Association of National Human Rights Institutions is the one other NHRI network to currently struggle with SNHRI membership; while its general policy is to only admit NHRIs with A-level accreditation from the ICC as voting members, the Association made an exception for Quebec’s Commission des droits de la personne et des droits de la jeunesse, giving it full membership, even though it is not accredited by the ICC.¹²⁰ Two other Canadian SNHRIs (the Yukon Human Rights Commission and the New Brunswick Human Rights Commission) were granted non-voting associated member status.¹²¹

5.2 SNHRIs in Ombudsman Networks

¹¹⁵ ICC, ‘Report and Recommendations of the Session of the Sub-Committee on Accreditation’ (Geneva, 19-23 Nov 2012) s 2.1.

¹¹⁶ Interview with OHCHR Staff Member, 13 Sep 2013.

¹¹⁷ Since November 2012, Palestine has possessed non-member observer status at the UN General Assembly.

¹¹⁸ Pegram, ‘Global Human Rights Governance and Orchestration’ (n 6) 14.

¹¹⁹ Given the paucity of SNHRIs in Africa, SNHRI membership is unlikely to become a significant issue for the NANHRI.

¹²⁰ Association Francophone des Commissions Nationales des Droits de l’Homme, ‘Les Membres Votants’ <<http://afcnhdh.org/membres/les-membres-votants/>> accessed 15 November 2014.

¹²¹ Association Francophone des Commissions Nationales des Droits de l’Homme, ‘Les Membres Associés’ <<http://afcnhdh.org/membres/les-membres-associes/>> accessed 15 November 2014.

While SNHRIs have – with a few exceptions – not been fully accepted in NHRI-specific networks, they have been made much more welcome in the existing system of ombudsman networks, which generally accept SNHRIs alongside national-level ombudsman institutions.¹²² At the global level, for example, the IOI has 63 subnational-level members out of a total of 164 member institutions.¹²³ At the regional level, the percent of sub-national members varies widely. Sub-national institutions make up the majority at the European Network of Ombudsmen and Ibero-American Federation of Ombudsmen, where, respectively, 60 out of 89¹²⁴ and 84 out of 103¹²⁵ member institutions have sub-national mandates. In both cases, all or nearly all member SNHRIs are from autonomous regions or provinces (and their equivalent such as cantons and länder), rather than municipalities. On the other hand, the Asian Ombudsman Association has only nine subnational-level members out of twenty-nine institutions.¹²⁶ The Pacific Ombudsman Alliance has one sub-national member (the New South Wales Ombudsman) out of a total of nine member institutions.¹²⁷ The Association of Mediterranean Ombudsman has a membership restricted to national institutions.¹²⁸

5.3 SNHRIs in Other Transgovernmental Networks

While many SNHRIs have ombudsman (or human rights ombudsman) forms, there are also SNHRIs with a range of other institutional types. In common law countries, equality or human rights commissions predominate, while other localities have more idiosyncratic or local forms. There are far fewer transgovernmental networking opportunities for these other institutional types, but some exceptions exist. In North America, for example, the International Association of Official Human Rights Agencies is mostly made up of human rights commission-type members from sub-national jurisdictions in the United States, Canada and Bermuda.¹²⁹ Meanwhile, in Europe the European Network of Ombudspersons for Children includes children's

¹²² The Ibero-American Federation of Ombudsmen, for example, explicitly welcomes member institutions from the national, state, regional, autonomy and provincial levels. Federación Iberoamericana del Ombudsman, 'Qué es la FIO' <<http://www.portalfio.org/inicio/pagina-principal/que-es-la-fio.html>> accessed 15 November 2014.

¹²³ IOI, 'IOI Directory 2014' (n 98).

¹²⁴ European Network of Ombudsmen, 'Regional Ombudsmen' <<http://www.ombudsman.europa.eu/en/atyourservice/regionalombudsmen.faces>> accessed 15 November 2014.

¹²⁵ Federación Iberoamericana del Ombudsman, 'Miembros de la FIO' <<http://www.portalfio.org/inicio/ombudsman-pais.html>> accessed 15 November 2014.

¹²⁶ Asian Ombudsman Association, 'Heads of Member Institutions' <http://asianombudsman.com/index.php?option=com_content&view=article&id=182&Itemid=147> accessed 15 November 2014.

¹²⁷ Pacific Ombudsman Alliance, 'About the Pacific Ombudsman Alliance,' <<http://www.pacificombudsman.org/about/index.html>> accessed 15 November 2014.

¹²⁸ Association of Mediterranean Ombudsmen, 'Members' List' <http://www.ombudsman-med.org/admin/ang/download_ang/upload/MembersAOM.pdf> accessed 15 November 2014.

¹²⁹ International Association of Official Human Rights Agencies, 'Human/Civil Rights Organizations' <<http://www.iaohra.org/members/>> accessed 15 November 2014.

rights ombudspersons and commissions from mostly national jurisdictions from across the continent, along with a handful of sub-national members.¹³⁰

5.4 SNHRIs in Translocal Networks

While NHRI networks necessarily involve multiple countries, this need not be the case with SNHRI networking. In many countries, domestic translocal networks have been established, and constitute the most important networking fora. Examples include the Australian Council of Human Rights Agencies, the Canadian Association of Statutory Human Rights Agencies, the Associação Brasileira de Ouvidores / Ombudsmen, the Federación Nacional de Personeros de Colombia, the Associazione Nazionale dei Difensori Civici (Italy), and the Asociación Defensores del Pueblo de la República Argentina. In a number of cases, NHRIs have taken the lead in establishing formal networks or periodic meetings with the various SNHRIs in their home country.¹³¹ In addition, domestic SNHRI networking associations have also been established at the sub-national level; examples from the United States include the Massachusetts Association of Human Rights Commissions, the League of Minnesota Human Rights Commissions, and the California Association of Human Relations Organisations.

6. Implications

As the previous sections indicate, there are significant differences in the degree of networking opportunities available to NHRIs and SNHRIs. NHRIs have access to the ICC, as long as they are found to be compliant with the Paris Principles. NHRIs also have access to regional NHRI networks and in some cases subregional or inter-regional NHRI networks. Many NHRIs also are members of global and regional networks of ombudsmen. SNHRIs, on the other hand, have – with a few significant exceptions – been denied access to the ICC and regional NHRI networks. Ombudsman-form SNHRIs often have access to ombudsman networks, however the level of their participation varies significantly by region and participation is very rare for municipal ombudsmen. Commission-form SNHRIs, on the other hand, usually lack any transgovernmental networking opportunities. In some countries, SNHRIs have access to domestic networking opportunities.

There are tangible implications to these conclusion. First of all, SNHRIs have fewer options than NHRIs (and in the case of non-ombudsman types, sometimes no options) to receive the information-sharing, cooperation, and standard-setting benefits of networking. According to Slaughter, this will, all else being equal, lead to reduced convergence with international standards and lesser international cooperation.¹³² Second, SNHRIs do not have an effective group voice at the UN or other international bodies, because the IOI has only minimal engagement with international organisations, while the ICC and regional NHRI associations participate much more fully in international and regional organisations. Third, individual SNHRIs have less of an external incentive to adopt best practices, because their membership in international networks (and concomitant international legitimation) does not depend on them

¹³⁰ Sub-national members include the Flemish Children's Rights Commissioner, the Ombudsman for Children of Republika Srpska, and the Children's Commissioner for Wales. European Network for Ombudspersons of Children, 'ENOC Members' <http://enoc.eu/?page_id=210 > accessed 30 March 2015.

¹³¹ Wolman, 'Relationship between National and Sub-National Human Rights Institutions' (n 12) 456.

¹³² Slaughter, 'New World Order' (n 20) 24.

doing so. Fourth, network-based acculturation forces that have been leading to isomorphism around a Paris Principle-based model in NHRIs will be more likely to lead to isomorphism around a classical ombudsman-based model for those SNHRIs that participate in ombudsman networks. Fifth, individual SNHRIs will in many cases be unable to robustly participate in international mechanisms or the UN, because the UN only awards privileged status to bodies that have been accredited by the ICC, and the ICC does not award A-status to SNHRIs (with the exception of UK bodies).

These implications are, I would argue, largely negative for SNHRIs. SNHRIs are often weak bodies, in need of the legitimation that transgovernmental networks can provide, and that the ICC has, according to Brodie and Cardenas, provided to NHRIs through the accreditation process.¹³³ SNHRIs also tend to have small staffs and budgets, making it difficult for them to access best practice information, training, and capacity-building assistance without membership in a network dedicated to the provision of those services. In short, SNHRIs would be stronger and more capable if they had access to appropriate networks. In addition, SNHRIs sometimes (but certainly not always) desire to directly participate in international mechanisms, and would be able to provide helpful perspectives beyond those already contributed by NHRIs and other institutional types.¹³⁴ Without networks facilitating this participation, these perspectives are lost. Finally, SNHRIs would be able to more effectively promote and protect human rights if their networking environment socialised them into a human rights culture (as is the case in NHRI networks) rather than the good administration culture more evident in ombudsman associations. The following section will argue that SNHRIs can most effectively attain the full positive effects of networking if the ICC were to inaugurate a separate institutional category for SNHRIs, with membership based on accreditation under a set of standards based upon (but not identical to) the Paris Principles.

7. ICC and SNHRI Membership

There are a range of possible avenues for SNHRIs to access greater benefits of networking. One solution would be to create one or more new SNHRI networks not based on traditional ombudsman associations. Another option would be to transform existing ombudsman associations into explicitly human rights-focused networks. Neither of these developments seem likely. The formation of new transgovernmental SNHRI networks would be costly, time-consuming, and extremely unlikely to convey legitimacy or achieve access to the UN. Efforts to transform ombudsman networks into SNHRI networks would require complete shifts in their mandates, and current members who are not SNHRIs would presumably object to such a shift.¹³⁵ In any case, these networks would not provide legitimacy or UN access in the way that the ICC does for NHRIs.

¹³³ Brodie (n 6); Cardenas ‘Chains of Justice’ (n 50) 49.

¹³⁴ See Andrew Wolman, ‘Welcoming a New International Human Rights Actor? The Participation of Subnational Human Rights Institutions at the UN’ (2014) 20 *Global Governance* 437.

¹³⁵ While some ombudsman networks such as the IOI actively encourage the use of human rights norms and engagement with other human rights institutions, their main focus remains on administrative justice and good governance. See IOI Bylaws, art 2(1) (2012) (citing ‘respect for human rights and fundamental freedoms’ as one of seven purposes for the IOI). See also IOI, ‘Wellington Declaration’ (13 Nov 2012) (stating that the ombudsman concept includes the promotion and protection of human rights).

Other options would promote greater opportunities for SNHRIs to indirectly access networking benefits. One possibility would be for the ICC and other influential actors to encourage NHRIs to coordinate more closely with SNHRIs in their jurisdictions by, for example, conveying SNHRI concerns in those international forums that NHRIs have access to because of their ICC accreditation. This has been attempted in a few countries, with limited success, and in any case would only in small part allow SNHRIs to benefit from existing networks.¹³⁶ Another indirect option would be to increase coordination and cooperation between the IOI and ICC, and in fact this is already occurring, with the IOI, for example, engaging with the ICC in order to address perceived difficulties that ombudsman institutions face in the ICC accreditation process.¹³⁷ However, this type of indirect relationship between SNHRIs and the ICC (mediated by the IOI) would likewise convey few of the networking benefits discussed above.

I would argue, therefore, that the only practical way for SNHRIs to attain the same level of networking benefits as NHRIs would be through membership in the ICC, given that the ICC has a long-standing focus on human rights capacity-building, an unparalleled ability to convey legitimacy through the accreditation process, a respected voice in international forums, and the ability to provide a privileged status at the UN through membership. Unfortunately, however, efforts to integrate SNHRIs into the existing ICC system to date have been haphazard and inconsistent, hobbled by the undeniable fact that the Paris Principles were not drafted with SNHRIs in mind. I would propose a solution that has yet to be tried; namely, the establishment of a separate membership category for SNHRIs at the ICC. This membership category would admit accredited SNHRIs based on their conformance with a set of standards derived from the Paris Principles, but revised so as to assure their applicability to sub-national institutions.

It would of course be challenging to work out all the details necessary for this proposal to be successful. While it is not possible to anticipate all the logistical and substantive issues of SNHRI membership in the scope of this paper, it is clear that questions regarding SNHRI voting power and representation at the ICC Bureau would have to be resolved, and the ICC Statute would have to be revised so as to incorporate SNHRIs as a new membership category.¹³⁸ Similar regulatory and administrative changes would be required of the affiliated regional NHRI networks, assuming that they followed suit in the recognition of a new class of SNHRI members (as would be likely, given that the regional networks have to date tended to follow the ICC's lead on membership issues). Opposition could be expected from certain quarters, potentially including the established ombudsman networks (which would risk losing some of their relevance) and certain states that are not used to allowing sub-national entities a voice at the international level.

Perhaps the most contentious aspect of this proposal would be the necessity of drafting a new set of principles (based on the Paris Principles) to apply to SNHRIs. The drafting process would have to be appropriately inclusive and transparent, incorporating the input of SNHRIs

¹³⁶ Wolman, 'Relationship between National and Sub-National Human Rights Institutions' (n 12) 456.

¹³⁷ IOI, 'IOI Attends ICC's 27th Annual Meeting' (21 Mar 2014) <<http://www.theioi.org/news/ioi-ioi-attends-icc-s-27th-annual-meeting>> accessed 15 November 2014. IOI, 'Annual Report 2012/13' (n 96) 45; IOI, 'Annual Report 2011/2012' (2012) 38.

¹³⁸ Revisions of the ICC Statute are only possible at a General Meeting of the ICC. ICC Statute, art. 58 (2008, as amended in 2012).

themselves, as well as civil society organisations, NHRIs, and UNHCHR. While the substance of these new principles would emerge from stakeholder discussions, they would ideally differ only slightly from the existing Paris Principles. For example, they should not be phrased in language that refers to the ‘country’, the ‘nation’ or ‘national’ institutions. In addition, the new set of principles should probably omit the requirement to promote new treaty ratification, which is arguably more appropriate for NHRIs, given that sub-national entities cannot ratify treaties. The new principles should also provide guidance for coordination between SNHRIs and NHRIs, where applicable. For the most part, however, the guidelines from the Paris Principles can simply be integrated into the new set of principles; minimising changes would be the best strategy to preserve the high degree of legitimacy and credibility that has accumulated around the Paris Principles over the years.

There would be several advantages to a proposed new membership category for SNHRIs. SNHRIs would be incentivised to comply with a set of best practice principles in order to receive accreditation by a respected body (with the legitimisation which that implies). Those SNHRIs that successfully attained membership would receive acculturation in a human rights-focused environment, would have a respected group voice in the UN, and would potentially be eligible for greater participation in regional and global fora, as is currently the case for accredited NHRIs. In addition, the creation of a new avenue for ICC membership for SNHRIs would reduce the pressure on strongly federal states to adopt NHRIs that are ill-suited to their political system, merely to conform with Paris Principle guidelines that presume that a unitary NHRI is necessary, regardless of the particularities of a country’s internal system.

There would also, of course, be certain dangers inherent in establishing a separate ICC membership category for SNHRIs. Some might fear that adding a new membership category would incrementally decrease the prestige or legitimacy associated with membership. There might also be a danger that opening up the Paris Principles for review – even in the narrow context of SNHRIs – might lead to a weakening of standards, especially if sovereign state representatives played the major role in the renegotiation process. This has indeed been a common fear whenever advocates have suggested renegotiating the Paris Principles in the NHRI context.¹³⁹ In this case, however, the Paris Principles would remain the same for NHRIs with no possibility of being watered down (or strengthened). While it is conceivable that the new set of principles applicable to SNHRIs would end up with provisions that are weaker than those in the Paris Principles, most stakeholders (namely SNHRIs, NHRIs, and OHCHR) would be unlikely to favor such an outcome.

A potentially more serious issue would be the prospect that if SNHRIs became more prominent actors at the international level through the influence of the ICC (ie, by gaining a voice at UN proceedings), it would result in incrementally less time and attention for other actors such as NHRIs and NGOs.¹⁴⁰ This may occur, if one assumes that international bodies such as the UN Human Rights Council have only a limited amount of time to spend on analyzing country practices, and that this time is currently fully occupied by other actors. However, if one believes

¹³⁹ Sidoti (n 60) 96.

¹⁴⁰ Similar arguments have been made in favor of limiting NHRI involvement at international fora. See Gauthier de Beco, *Non-Judicial Mechanisms for the Implementation of Human Rights in European States* (Bruylant, 2009) 150.

that SNHRI have a valuable perspective that can add to what is already being discussed, then this would not necessarily be a negative outcome.

Others might object that even if this proposal was workable, most SNHRIs would be unlikely to apply for ICC membership. In fact, this is a possibility. Many SNHRIs are lightly staffed, with small budgets and little interest or capability of effectively engaging with the UN or peers in other countries. Other SNHRIs, however, have already demonstrated a desire to join the ICC, or otherwise to engage with their peers at the international level.¹⁴¹ A number of SNHRIs have already expressed a desire to attain the standards laid out in the Paris Principles, despite the principles not being drafted with SNHRIs in mind.¹⁴² In any case, a small or selective membership is not necessarily a negative; after all, even at the national level, some NHRIs have not applied for membership in the ICC.

8. Conclusion

As this article has shown, while some ombudsman-type SNHRIs actively participate in transgovernmental networks, there are many other SNHRIs that do not engage with their peers in other countries. Even those SNHRIs that have joined ombudsman networks do not have access to the same benefits of transgovernmental networks that NHRIs enjoy through the ICC and its affiliated networks. This article proposes the establishment of a new form of membership for the ICC, which would be accessible to SNHRIs. This would open up new avenues of international participation for SNHRIs, allow them to interact and learn from their peers, and provide them with greater legitimacy. In order to credibly join NHRIs at the ICC, however, SNHRIs would have to comply with a set of guidelines similar (although not identical) to the Paris Principles. This article therefore proposes the drafting of a new set of principles that can effectively provide guidance for SNHRIs while remaining true to the spirit of the Paris Principles.

¹⁴¹ See, generally, Wolman ‘Welcoming a New International Human Rights Actor?’ (n 134).

¹⁴² See, eg, Bermuda Human Rights Commission, ‘2010 Annual Report’ 22 <<http://parliament.bm/uploadedFiles/Content/Home/HRC%20Annual%20Report%20%202010.pdf>> accessed 15 November 2014; Ontario Human Rights Commission, ‘Guiding Principles’ <<http://www.ohrc.on.ca/zh-hant/node/9767>> accessed 15 November 2014; Estado de Chiapas, Decreto no 233, Ley de la Comisión Estatal de los Derechos Humanos (19 Aug 2013).