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Abstract

In recent years, sub-national human rights institutions ('SNHRIs') – defined as independent non-judicial governmental institutions that possess a sub-national mandate, and whose mission includes the implementation of human rights norms – have proliferated in all regions of the world. Yet, the precise role of SNHRIs and the nature of their interactions with other international human rights actors and norms has received relatively little attention. The seven articles that comprise this thesis take a first step toward filling this gap by examining the emerging place of SNHRIs in the international human rights regime. The first article defines and typologises SNHRIs, allowing for a more systematic study of SNHRIs in the rest of the thesis and future research. The next five articles focus on answering three principal research questions. First, what role do SNHRIs occupy in the international human rights regime and how do they interact with other human rights actors? Second, what are the implications of SNHRIs' emergence as an increasingly relevant actor in the international human rights regime? Third, how can the participation of SNHRIs in the international human rights regime be managed optimally so as to maximize the added value that they can bring to the international human rights regime? As a secondary matter, these articles also engage in a comparative analysis between SNHRIs and National Human Rights Institutions ('NHRIs'), asking to what extent SNHRIs are similar to or different from NHRIs in their relationships with the international human rights regime.

Specifically, these five articles address the relationship between SNHRIs and NHRIs (chapter 3); the participation of SNHRIs in UN mechanisms (chapter 4); the relationship between SNHRIs and their international peers through networking (chapter 5); the implementation of international law by SNHRIs (chapter 6), and finish with a case study of the Seoul Human Rights Ombudsperson Office, focusing on its relationships with other human rights bodies and the sources of human rights norms utilised (chapter 7). The final article, in chapter 8, examines the advantages and disadvantages of establishing an SNHRI in a jurisdiction that already possesses an NHRI. These articles show that SNHRIs do not exist in isolation from the broader international human rights regime, but rather engage with national and international bodies and norms in a variety of interesting ways. SNHRI engagement with other elements of the international human rights system presents benefits for SNHRIs, as well as for other actors. However, there is room for improvement in the nature of SNHRI interaction with other elements of the international human rights regime, and several specific measures are proposed to ensure a more coherent and mutually beneficial relationship.

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I relied on the help of many other individuals over the years in order to complete the articles making up this thesis. I am particularly appreciative of my former students Guobin Li, Elizabeth Lee and Rebeca Paz for their translation and interpretation assistance. I also relied on helpful suggestions and advice from colleagues who listened to and commented on my presentations at conferences in Toulouse and at the National Human Rights Commission in Seoul, and at doctoral seminars in Montréal and Antwerp. I found the comments of Prof. Andrea Bjorklund and Prof. Frédéric Mégret at the 2014 Cohen Doctoral Seminar in International Law to be especially helpful. In addition, I am grateful to the staff of the Seoul Human Rights Office for their willingness to speak to me about their work, especially Ombudsperson Eun Sang Lee and Human Rights Division Director Dongsuk Park. The articles in this thesis all benefitted from the thoughtful criticism of the various peer reviewers at the journals to which I submitted my work, so I also thank them for their anonymous comments, which helped make each of my articles better.

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Chapter 1: Introduction

1.1 Thesis Introduction

The international human rights regime has long been loosely conceptualized as a three-level system, composed of global (UN), regional, and national-level institutions and norms.[1] Of course, this was never an entirely accurate conception: local governments have long been at the heart of human rights implementation,[2] and independent municipal commissions have been addressing human rights issues since the 1920s.[3] Today, it is even less so. In all regions of the world, sub-national actors have become increasingly involved in human rights promotion and protection. In many parts of the world, Sub-National Human Rights Institutions ('SNHRIs') – which I define in chapter 2 of this thesis as *independent non-judicial governmental institutions that possess a sub-national mandate, and whose mission includes the implementation of human rights norms* – have come to play important roles in human rights promotion and protection.

Despite their increasing prominence, SNHRIs have yet to be studied in any systematic manner. The articles making up this thesis are intended to take an initial step towards filling this gap by addressing three related research questions. First, how do NHRIs currently interact with other important actors in the international human rights regime? Second, what are the implications of SNHRI interaction or lack of interaction with other human rights actors? Third, how can the relationship between SNHRIs and other international human rights actors be improved?

1.2 SNHRIs: An Introduction

While the term 'sub-national human rights institution' has been employed on occasion in recent years by the UN and other actors, it has not yet entered wide circulation.[4] Thus, before

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[1] See Yash Ghai, 'Human Rights and Social Development: Toward Democratization and Social Justice', Democracy, Governance and Human Rights Programme Paper No. 5 (UN Research Institute for Social Development 2001) 6 ('The national, regional and international levels constitute the global system of rights.'); David Held, 'The Changing Structure of International Law: Sovereignty Transformed' in David Held and Anthony McGrew (eds) *Global Transformations* (Stanford U Press 1999) 167 ('The human rights regime consists of overlapping global, regional, and national institutions and conventions.'); Rainer Arnold, 'Introduction' in Rainer Arnold (ed) *The Universalism of Human Rights* (Springer 2013) xxi (book investigates 'the substantial reach of human rights on national, regional, and universal levels' and 'the convergence of the three levels of human rights protection'); Li-Ann Thio, 'Implementing Human Rights in ASEAN Countries: "Promises to Keep and Miles to Go Before I Sleep"' (1999) 2 Yale Hum Rts & Dev J 1, 7 (advocating 'a three-tier national/regional/international approach to advancing human rights protection').

[2] Conrad Mugoya Bosire, 'Local Governments 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, 149 ('local government functions are at the core of the realisation of certain basic and fundamental human rights obligations').

[3] See Kenneth Saunders and Hyo Eun Bang, 'A Historical Perspective on US Human Rights Commissions,' *Executive Sessions Papers: Human Rights Commissions and Criminal Justice* (June 2007) 7; Pamela Rice and Milton Greenberg, 'Municipal Protection of Human Rights' (1952) Wisc L Rev 679.

[4] For examples of public usage of the term 'sub-national human rights institution', see eg, Report by the Secretary General: National Institutions for the Protection and Promotion of Human Rights, A/66/274 (8 August 2011) para 95; Address by Navanetham Pillay, High Commissioner for Human Rights, to the

delving into my research questions in greater depth, a brief introduction to the concept is warranted.[5] As defined above, SNHRIs can be considered as the sub-national equivalent of national human rights institutions ('NHRIs'), and the two institutional types share many of the same characteristics. As is the case with NHRIs, SNHRIs are distinguished by their independence: they are governmental bodies, but do not operate under the direction of the executive.

Within the broad SNHRI category are included institutions such as human rights commissions, human rights ombudsmen, human rights boards, *personeros*, *defensores del pueblo*, *difensores civicos*, *médiateurs*, etc., as well as institutions that specialize in particular rights such as anti-discrimination, the rights of children, or the rights of the disabled. SNHRIs currently exist at virtually all administrative levels, from cities and counties to provinces and vast autonomous regions. The number of active SNHRIs today is unclear, but certainly there are many thousands, as measured by the broad definition used in this thesis. A non-comprehensive list of numbers of SNHRIs in selected countries and regions is provided in Annex I, based on data from published sources and association membership lists. As this list shows, SNHRIs are widespread in North America, Latin America and Europe, and have a significance presence in several Asian nations.

1.2.1 SNHRI Proliferation

SNHRIs around the world have considerably different institutional histories. While the emergence of NHRIs around the world was largely a product of normative diffusion and international pressure during the twenty years following the 1993 elaboration of the Paris Principles, SNHRIs have been established as a result of widely varying impulses over the course of a longer time period.[6] Many times the motives for SNHRI establishment have been more intertwined with local politics than global affairs. When looked at globally, however, at least four historical patterns are evident when looking at waves of SNHRI proliferation. First, many jurisdictions in the common law world established commissions to address local discrimination and inter-group harmony issues. In the US, such commissions were often established by cities and states in the wake of race riots and protests in the 1940s and 1950s, eventually being

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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?News ID=10798> accessed 18 July 2016; Leilani Farha, 'Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context', UN Doc A/HRC/28/62, para 76(j) (2014); Commonwealth Human Rights Initiative, 'The Parliamentary Committee as Promoter of Human Rights: The UK's Joint Committee on Human Rights' (2007) 17.

[5] A comprehensive definition and typology of the term is provided in chapter 2 of this thesis.

[6] Regarding NHRI proliferation, see Sonia Cardenas, 'Adaptive States: The Proliferation of National Human Rights Institutions', Carr Center for Human Rights Policy Working Paper T-01-04 (2001) 3; Dongwook Kim, 'International Nongovernmental Organizations and the Global Diffusion of Nationl Human Rights Institutions' (2013) 67 Int'l Org 505. The role of the UN in promoting NHRI establishment has been particularly important. Thomas Pegram, 'Global Human Rights Governance and Orchestration: National Human Rights Institutions as Intermediaries' (2015) 21(3) Eur J Int'l Rel 595, 603 ('The massive influx of OHCHR resources to NHRI promotion is well-documented … OHCHR engages in orthodox training and capacity-building programmes for NHRIs, alongside other UN agencies, UNCTs and NHRI regional partners').

promulgated more widely during the 1960s civil rights movement and as a result of later efforts to sustain social change.[7] Canadian provinces also developed anti-discrimination commissions during the 1960s and 1970s, prior to the establishment of any NHRI at the federal level, as did Australian states, starting in 1977.[8] In addition to the civil rights concerns of the day, the early emphasis on equality rights may also reflect federal divisions of labour in these countries, with classic fundamental freedoms (free speech, religion, due process, etc.) and social needs thought to be more effectively addressed through national-level legislation and constitutional adjudication. Over time, however, some of these common law bodies have expanded their mandates to cover a broader range of human rights issues, while others continue to focus solely on non-discrimination and equality rights.[9]

Second, over the course of the past several decades, the work of existing ombudsman and similar independent watchdog institutions have in many cases steadily shifted such that ombudspersons now commonly and explicitly implement human rights norms in ways that would have been unusual prior to the 1990s. Thus, according to Carlens and Verbeeck, the role and missions of ombudsman institutions in Europe can vary widely, but there is a 'noticeable shift in the position of the Ombudsman from a mere mediator towards a protector of fundamental rights'.[10] This shift in focus has not necessarily been accompanied by any change in formal mandate; rather, it is now normal for ombudsman institutions to explicitly cite human rights norms and work towards rights protection even if their organic laws do not mention human rights.[11] Today, at least in the European context, it is in fact possible to say that virtually all ombudsman institutions use human rights standards (among other normative sources).[12] It is less clear, however, whether the full range of civil, economic, social and cultural rights are commonly implemented by ombudsman institutions; perhaps because of their institutional histories, ombudsmen still tend to emphasise the enforcement of non-discrimination rights, as a requirement of 'fairness' in administration.

A third wave of SNHRIs has come as a result of the decentralization requirements (or pressures) of human rights implementation in federal states. In several countries, upon the establishment of an NHRI, it was clear that SNHRIs would need to be established as well,

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[7] Saunders and Bang (n 3) 5.

[8] Robert Bryan Howe &and David Johnson, *Restraining Equality: Human Rights Commissions in Canada* (U Toronto Press 2000) 9–12.

[9] Wolman, *Sub-National Human Rights Institutions and the Domestication of International Human Rights Law, supra* note 13, at 115.

[10] Ivo Carlens and Bengt Verbeeck, 'The Ombudsman: Master Bridge Builder or Quixotic Defender of Human Rights', Paper for EGPA Conference (2010) 19. One can see a similar shift over time for *Personeros* in the Colombian system. Winifred Tate, Colombian State Human Rights Policies 48(8) Anthropology News (Nov. 2007) 25, 25 ('Originally designed as part of local checks against corruption and other forms of official abuse, personeros were increasingly charged with "human rights" oversight in the mid-1980s').

[11] Linda Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (Brill 2004) 86; Anita Stuhmcke, 'Australian Ombudsmen and Human Rights' (2011) 66 AIAL Forum 43.

[12] See, e.g., Milan Remac, 'Standards of Ombudsman Assessment: A New Normative Concept?' (2013) 9 Utrecht L. Rev. 62, 66.

because federalism restrictions would not allow the NHRI to effectively watch over sub-national government entities. Thus, the laws establishing NHRIs in India and Russia authorize the establishment of SNHRIs by states,[13] while the Austrian constitutional provision establishing its ombudsman office requires that provinces set up an analogous ombudsman institution if they do not want to make use of the federal one.[14] In a few other countries, such as the UK, a true NHRI never emerged, with SNHRIs separately being established in the various devolved and autonomous regions. In many other federal or decentralized states, an NHRI was initially established at the national level, but over time local pressures led to municipal or provincial governments following suit, either to fill a gap for NHRIs unable to effectively influence sub-national entities, or in some cases to supplement or replace those NHRIs at the sub-national level.[15] An analogous decentralizing pressure for SNHRI establishment has at times been present at the sub-national level, where provincial-level authorities have urged (or required) municipalities to establish their own SNHRIs at the more local level.[16]

Finally, and most recently, a number of SNHRIs have been established as part of the 'human rights cities' movement over the past twenty years. The first so-called 'human rights cities' emerged from the work of the People's Movement for Human Rights Learning ('PDHRE'), an NGO engaged in trans-national grass-roots human rights activism that successfully led communities to work towards letting 'a human rights framework guide the development of the life of the community'.[17] Rosario, in Argentina, was the first human rights city established through PDHRE's work, in 1997.[18] Since that time, dozens of other cities have since followed suit, some using the PDHRE methodology and many other communities simply declaring themselves to be 'human rights cities' without PDHRE involvement.[19] Sometimes these declarations came as a result of civil society-driven initiative, like in Rosario, but in other places (such as Barcelona and Graz), local authorities were the driving forces for this

[13] The Protection of Human Rights Act of 1993, no 10 of 1994 [amended], ch 5 [India]; Federal Constitutional Law on the Commissioner for Human Rights in the Russian Federation, No. 1-FKZ (Feb. 26, 1997) (Russia).

[14] Austrian Federal Constitution, art 148(i).

[15] This has been the trend in Spain and Latin American countries such as Argentina, Colombia, Mexico, and Paraguay. See, Defensor del Pueblo de España, *The Book of the Ombudsman* 188 (Defensor del Pueblo de España 2003).

[16] 'Crear Oficinas de Derechos Humanos en los Municipios: López Badillo' *La Jornada de Oriente* (13 February 2013) <http://www.lajornadadeoriente.com.mx/2014/02/13/crear-oficinas-de-derechos-humanos-en-los-municipios-lopez-badillo/> accessed 28 October 2016 (urging that human rights commissions be set up in municipalities in the Mexican state of Puebla); Iowa Code sec 216.19 (2015) (mandating human rights commissions in municipalities with over 29,000 inhabitants).

[17] PDHRE, 'Human Rights Learning and Human Rights Cities: Achievements Report' (2007) 3 <http://www.pdhre.org/achievements-HR-cities-mar-07.pdf> accessed 31 October 2016.

[18] ibid, 7.

[19] One list presented by the organizers of the World Human Rights Cities Forum counted fifty cities and other sub-national jurisdictions as 'human rights cities'. 2014 World Human Rights Cities Forum, Guidance Document at Expert Workshop on Local Government and Human Rights (15 May 2014) 19.

movement.[20] Motivations for the human rights cities movement vary for each community; some officials may consider human rights to be a promising standard to base policies or a useful umbrella to unite various actors and interests, while others may desire to engage in city branding or access international networks and funding sources.[21] The influence of the human rights cities movement has been global in scope, and there are representative human rights cities on every continent, representing both the developing and developed world and coming from diverse political and legal systems.[22] These cities have over time organised in a number of overlapping networks,[23] and have ended up developing (or adopting) a variety of new norms and guiding principles.[24]

To date, there is no standard definition of a human rights city; according to Oomen, it can simply be defined as 'an urban entity or local government that explicitly bases its policies, or some of them, on human rights as laid down in international treaties, and, in doing so, distinguishes itself from other local authorities'.[25] Human rights cities go about implementing human rights in a range of different ways. Many have established SNHRIs; some examples include the Sakai (Japan) Human Rights Committee, the Barcelona (Spain) Human Rights Observatory, the Human Rights Commission of Kaohsiung City (Taiwan), the Graz (Austria) Human Rights Council, and the Human Rights Commission of Seongbuk-Gu (Korea).[26] The functions and make-up of these SNHRIs vary widely, but they tend to share a broad human rights focus (rather than simply concentrating on discrimination), inspiration from international rather than national sources, and strong connections with civil society. Not all human rights cities have involved the establishment of SNHRIs, though; some cities have concentrated on the elaboration of human rights charters, or have instituted policies of human rights budgeting or other types of monitoring.[27]

1.2.2 SNHRI Functions

As is the case with NHRIs, SNHRIs come in many different types and sizes, as shown in more detail in Chapter 2. In general, however, SNHRIs currently engage in all the different roles

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[20] Charlotte Berends et al (eds), *Human Rights Cities: Motivations, Mechanisms, Implications* (University College Roosevelt 2013) 11.

[21] Barbara Oomen, 'Rights and the City: Does the Localization of Human Rights Contribute to Equality?' in Marjolein van den Brink et al (eds), *Equality and human rights: nothing but trouble?, Liber amicorum Titia Loenen*, SIM Special no 38, SIM (2015) 404.

[22] 2014 World Human Rights Cities Forum (n 19) 19.

[23] Examples include the UNESCO International Coalition of Cities Against Racism, United Cities and Local Governments, and the UN Global Compact Cities Programme.

[24] Regional or global normative documents include the European Charter for the Safeguarding of Human Rights in the City, the World Charter for the Right to the City, the EUROCITIES Integrating Cities Charter, and the Global Charter-Agenda for Human Rights in the City.

[25] Barbara Oomen and Moritz Baumgärtel, 'Human Rights Cities', in A Mihr and M Gibney (eds), *The Sage Handbook of Human Rights* (Sage 2014) 710.

[26] 2014 World Human Rights Cities Forum (n 19) 20-28.

[27] Oomen (n 21) 404.

that are commonly seen in NHRIs.[28] This includes promotional functions, such as holding awareness campaigns, seminars and workshops, issuing reports and press releases, developing human rights curricula, training relevant government officials, and engaging with the community through various media. It also includes protective functions, such as conducting human rights investigations, engaging in alternative dispute resolution, human rights monitoring, conducting public inquiries, receiving individual complaints, and seeking remedies through the court system where warranted. NHRI and SNHRIs alike also provide advice to governments and parliaments, cooperate and coordinate with other actors, from civil society, government, and the international arena, and – in some cases – address the human rights needs of conflict and post-conflict societies.[29]

There are, however, certain major differences in the functioning of NHRIs and SNHRIs. Perhaps because of their (on average) smaller size and budgets, SNHRIs tend to be less likely to engage in expensive or time-consuming interventions such as filing or intervening in court cases.[30] While some SNHRIs are heavily involved in trans-national networking and participating in international human rights mechanisms, the level of international engagement is far less than that of NHRIs, for reasons that are discussed in greater depth in Chapters 4 and 5. Perhaps most importantly, SNHRIs are not subject to the Paris Principles on NHRIs, which incentivise a certain level of comprehensiveness in NHRI functioning.[31] It is, therefore, relatively common to see SNHRIs that only engage in certain tasks (and not others), such as monitoring, complaint-handling, or awareness-raising, while it is also quite common to see SNHRIs with a restrictive subject mandate, focusing on (for example) children's rights, racial discrimination, or the rights of women.[32]

1.2.3 SNHRI Effectiveness

SNHRIs have the potential to extend the reach of international human rights norms and institutions to local communities and improve the responsiveness of international bodies to local needs. Yet, in many cases it is difficult to know whether they are reaching that potential. In contrast to NHRIs, there has been little empirical research of SNHRI effectiveness, nor even

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[28] Regarding NHRI functions, see, United Nations Office of the High Commissioner of Human Rights, National Human Rights Institutions: History, Principles, Roles and Responsibilities (UN 2010) 22-28.

[29] Some examples of SNHRIs established in the conflict or post-conflict context include the Northern Ireland Human Rights Commission, the Mindanao Regional Human Rights Commission, and the Independent Human Rights Commission of Kurdistan.

[30] There are certainly instances of very large or well-budgeted SNHRIs, some of which have litigation experience, this is far less common than with NHRIs, for many of which court interventions are regular occurrences. See, generally, Andrew Wolman, 'National Human Rights Institutions and the Courts in the Asia-Pacific Region' (2013) 19 Asia Pacific L Rev 237.

[31] Specifically, NHRIs (if they want to be accredited by the Global Alliance of National Human Rights Institutions) must engage in human rights promotion and protection (although not necessarily complaint-handling), encourage legislative incorporation of rights and ratification of human rights treaties, and do all this throughout the entirety of a country's territory and for all human rights subjects. Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights [Paris Principles], adopted 20 December 1993, UN GA Res 48/134, A/RES/48/141 (1993).

[32] See chapter 2 for examples of these various types of SNHRIs.

adequate conceptualisation of what effectiveness would necessarily entail, or how it would be measured. While existing research on effectiveness may be insufficient, it is still possible to give some examples of SNHRIs in different parts of the world that are reputed to be effective or ineffective, as a way of illustrating the potential of such offices to make a difference in human rights outcomes, but also the challenges that they face in order to do so.

In the US, the Los Angeles County Human Relations Commission has been cited for its contribution to human rights monitoring and promotion (at least, as measured by output, which is easier to measure than human rights outcomes).[33] Since 1980, the Commission has annually compiled reports on hate crimes in LA County, which it distributes to policy-makers, community groups and enforcement agencies. It partnered with the US State Department in the preparatory sessions to the 2001 World Conference on Racism, and ended up attending the conference, even in the absence of US national representation. It has recommended that the LA County Board of Supervisors support bills for a moratorium on the death penalty and the establishment of an investigatory commission on the internment of Latin Americans of Japanese descent during World War II. In the Latin American context, the Mexico City Human Rights Commission also has a reputation for being particularly ambitious and independent in its work.[34] According to its former president, the Commission has provided education and training to around 220,000 people per year and employs 110 lawyers to process claims 365 days a year, 24 % of which come from Mexico City's jails.[35]

On the other hand, there are a number of examples of SNHRIs that have been criticised for lacking independence or effectiveness, although there is a lack of research here too, regarding the precise reasons for their difficulties. For example, state human rights commissions in India have often been dismissed for their ineffectiveness, primarily due to a lack of adequate staffing.[36] Meanwhile, some of the regional human rights ombudspersons in the Russian Federation have been criticised for their low level of complaint resolution, for lacking independence, and for authoritarian tendencies in rights interpretations, as is perhaps unsurprising given the generally challenging environment for human rights implementation in Russia in recent years.[37] The

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[33] See, Columbia Law School Human Rights Institute, 'State and Local Human Rights Agencies: Recommendations for Advancing Opportunity and Equality Through an International Human Rights Framework' (2009) 10.

[34] Interview with OHCHR Staff Member, 13 Sep 2013.

[35] Emilio Alvarez Icaza Longoria, 'Address at the Executive Session on Human Rights Commissions and Criminal Justice' (12 May 2006) 19 <http://www.hrccj.org/pdfs/emilio_alvarez_transcript1.pdf> accessed 17 October 2016.

[36] See, National Human Rights Commission of India, 'NHRC-India Submission to the UN Human Rights Council for India's Second Universal Periodic Review' <http://www.nhrc.nic.in/disparchive.asp?fno=2523> accessed 17 October 2016 (stating that most of the Indian State Human Rights Commissions are still inchoate and need to be strengthened); Preeti Mehra, 'Commission and their Omissions' The Hindu (4 March 2014) <http://www.thehindu.com/opinion/op-ed/commissions-and-their-omissions/article5747146.ece> accessed 17 October 2016 (noting the absence of specialists in State Human Rights Commissions and that 'in most cases, the staff of the commissions comprised largely of peons, drivers and assistants.')

[37] Emma Gilligan, 'Human Rights Ombudsman in Russia: The Evolution of Horizontal Accountability' (2010) 32 Hum Rts Q 575, 597-598; Andreas Fogelklou, 'The Regional Ombudsman as a Western

human rights ombudsman of Kosovo is a post-conflict SNHRI that is seen to be weak due to a lack of political support and financial independence.[38]

1.3 Statement of Research

Pursuant to 2015 University of Antwerp Faculty of Law regulations on doctoral theses by bundle, this doctoral thesis is comprised of seven journal articles, in addition to the introduction and conclusion chapters. Five of the articles have already been published, while two others are forthcoming. The first of these articles (chapter 2 of this thesis) introduces the SNHRI concept and proposes an SNHRI definition and typology.[39] Specifically, I argue that independent governmental human rights bodies at the sub-national level comprise a meaningful group that can be understood as a sub-national counterpart to National Human Rights Institutions. In accordance with the term's growing usage among human rights practitioners, I label these bodies as SNHRIs. I then stipulate and justify a general SNHRI definition and a scientific typology of SNHRIs based on administrative level, institutional form, and breadth of mandate. This article is intended to accomplish three objectives. First, it provides an SNHRI operational definition and typology for this doctoral thesis and justifies the study of SNHRIs as a meaningful concept apart from other related institutional concepts. Second, by developing a generally applicable SNHRI definition and typology, it is intended to facilitate further research into SNHRIs. Third, by clarifying terminology related to SNHRIs, the article is intended to provide a vocabulary to practitioners for talking about the relatively new SNHRI concept in a way that can be more easily understood.

The next five chapters comprise articles that explore different aspects of the relationship between SNHRIs and other institutions and norms present in the international human rights regime. While each of these articles takes a somewhat different approach, they share a focus on one or more of the three research questions addressed in this thesis: the descriptive (typological) question of how SNHRIs currently interact with other elements of the human rights regime; the analytical question of what are the implications of these interactions, and the prescriptive question of how these interactions can be optimized from a human rights perspective. Chapter 3 presents an empirical comparison of how SNHRIs interact with NHRIs in federal states.[40] I conclude that there is so far a wide variety of methods for addressing federal division of power

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(Swedish) Legal Transplant: Experiences from the Legislative Process in St.Petersburg' (2003) 13 Transnat'l L & Contemp Probs 537, 549; Yulia Gradskova, 'Regional Ombudsmen, Human Rights and Women – Gender Aspects of the Social and Legal Transformation in North-West Russia (Based on Ombudsman Reports)' (2012) 39 Sov & Post-Sov Rev 84, 105.

[38] Sonia Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights* (U Penn Press 2014) 289; European Commission, 'Commission Staff Working Paper: Kosovo 2011 Progress Report Accompanying the Document Communication from the Commission to the European Parliament and the Council' (SEC[2011] 1207 final) (12 October 2011) 9-10. Per the elucidation of my definition in chapter 2, the Kosovo Human Rights Ombudsman would be considered an SNHRI because Kosovo is not a member of the UN. In any case, the criticism of the institution pre-dates Kosovo's declaration of independence in 2008.

[39] This chapter is available in advanced access as Andrew Wolman, 'Sub-National Human Rights Institutions: A Definition and Typology' (2016) Hum Rights Rev, doi:10.1007/s12142-016-0429-z.

[40] This chapter is published as Andrew Wolman, 'The Relationship between National and Sub-National Human Rights Institutions in Federal States' (2013) 17(4) Intl J Hum Rts, 445.

and responsibility concerns. Strict forms of dual federalism are rarely embraced however, and the relationship between national and sub-national institutions, where both exist, has been characterised by both episodic cooperation and significant tensions.

In chapter 4, I explore SNHRI participation in the UN human rights regime.[41] I show that while SNHRIs are often viewed as distinctly local bodies with little connection to global human rights procedures and mechanisms, in fact this conception is not entirely accurate. While some SNHRIs are purely focused on acting internally to their jurisdiction, many others can and do participate in the UN human rights regime through both the charter-based and treaty-based mechanisms. I argue that such participation is beneficial for the UN human rights system, and propose ways that the UN can encourage SNHRI engagement.

Chapter 5 explores the role that transgovernmental networks play for SNHRIs, and contrast that to the role that such networks have played for the development of NHRIs.[42] I argue that while some SNHRIs are able to derive benefits from their membership in ombudsman associations, SNHRIs are currently missing out on many of the other benefits that NHRIs derive from their membership in the Global Alliance of National Human Rights Institutions ('GANHRI', formerly known as the International Coordinating Committee of National Human Rights Institutions) and its affiliated networks. I therefore propose that GANHRI 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.

Chapter 6 turns to the question of how SNHRIs make use of international law norms in their work.[43] I argue that some (but not all) SNHRIs are increasingly involved in the domestication of international human rights law through their quasi-judicial resolution of disputes, promotion of governmental compliance with international norms; promotion of international norms in civil society; promotion of the use of international norms by the courts, and use of international norms as standards in human rights monitoring. I explore the implications of these actions, and conclude that the use of international law by SNHRIs is largely beneficial from a human rights perspective.

In chapter 7 I conduct a case study of the development of one SNHRI – the Seoul Human Rights Ombudsperson Office – and how this institution relates to the existing international human rights regime.[44] Specifically, the case study addresses three distinct issues, namely the degree to which the Seoul Human Rights Ombudsperson Office reflects local versus national or international influences, the types of institutional relationships it has with other human rights

[41] This chapter is published as Andrew Wolman, 'Welcoming a New International Human Rights Actor?: The Participation of Sub-National Human Rights Institutions at the United Nations' (2014) 20 Global Governance 437.

[42] This chapter is published as Andrew Wolman, 'Sub-National Human Rights Institutions and Transgovernmental Networks' (2015) 33(2) Nordic J Hum Rts 110.

[43] This chapter is published as Andrew Wolman, 'Sub-National Human Rights Institutions and the Domestication of International Human Rights Law' (2015) 33(2) Neth Q Hum Rts 224.

[44] This chapter is forthcoming as Andrew Wolman, 'Human Rights between the Local and Global: A Case Study of the Seoul Human Rights Ombudsperson' (2017) 18 Asia Pac J Hum Rts and the Law.

actors, and the degree to which it implements local versus national or international human rights norms.

Finally, chapter 8 applies conceptual findings from political science research on decentralisation, together with (where possible) empirical findings on local human rights implementation, to examine the advantages and disadvantages of establishing an SNHRI in a jurisdiction that already possesses an NHRI. This leads to conclusions on which types of jurisdictions are most likely to gain value from the establishment of an SNHRI. This chapter is followed by a brief conclusion, which sums up my findings from these articles, and their practical and theoretical implications, and proposes new directions for future SNHRI research.

1.4 Research Questions

This thesis explores the place of SNHRIs in the international human rights regime, using Keohane and Nye's broad definition of an international regime as the 'networks of rules, norms, and procedures that regularize behavior and control its effects,' in a particular issue-area, in this case human rights.[45] The thesis attempts to answer three broad questions. First: how do SNHRIs currently interact with other important actors in the international human rights regime? This element of the research is largely typological and structural in nature. I do not attempt to quantify the precise numbers of SNHRIs that participate in or engage with other elements of the international human rights regime in particular ways; rather I concentrate on fleshing out the types of interactions that currently are taking place, as well as touching upon the types of interactions that are not yet common but could potentially emerge in the future. While addressing this first question, a sub-question that is present throughout is how SNHRIs resemble and differ from NHRIs in their interactions with the broader human rights system. This injects an element of comparative analysis into the research, and leads to comparative findings that are analysed in the rest of the thesis.

The second research question addressed in this thesis is: what are the implications of SNHRI interaction or lack of interaction with other human rights actors? This section pays particular attention to the question of how SNHRIs can add value to the work of the existing range of human rights actors, and how existing actors can contribute to the success of SNHRIs. This element of my thesis employs a range of legal, political, and sociological frameworks to analyse the implications of SNHRI engagement. The particular type of analysis varies in each article; while analysis of the relationship between SNHRIs and NHRIs and the relationship between SNHRIs and the United Nations system largely relies on conceptual frameworks from theories of federalism and subsidiarity, the article on SNHRI use of international norms makes more use of the literature on norm diffusion and localization, and the article on SNHRI transnational networking engages with theories of trans-governmentalism from Slaughter and others.

The third research question that I address is: how can the relationship between SNHRIs and other international human rights actors be improved? Specifically, how can SNHRIs and the other elements of the human rights system develop a synergistic and coherent relationship that contributes to the shared goal of improving respect for human rights at the ground level? This element of the thesis will be more prescriptive. Building on the descriptive and analytical

[45] Robert Keohane and Joseph Nye, *Power and Interdependence: World Politics in Transition* (Little, Brown 1977) 19.

findings, I propose concrete measures that can be taken both by SNHRIs themselves and by other domestic and international actors. This exercise is responsive to a widely felt need for greater systemic coherence; as Thomas Hammarberg put is, '[t]he main challenge is now to enhance the interaction between international, national and local authorities, to promote systematic human rights planning, where local and national needs are matched coherently with agreed international norms.'[46]

It is important to note that while I attempt to provide a broad perspective on the relationship between SNHRIs and the international community, my research does not comprehensively cover all possible relationships between SNHRIs and other existing human rights actors or norms. Notably, it does not investigate how civil society organisations interact with SNHRIs, and whether such interactions are different in any meaningful way than how civil society organisations interact with NHRIs. Nor does it address whether and how regional human rights organisations are interacting with SNHRIs. In particular, research into the Council of Europe's relationship with SNHRIs would be interesting, given that organisation's prominent advocacy of local human rights implementation and principles of subsidiarity over the past three decades.[47] SNHRI engagement with particular types of international human rights norms such as economic and social rights could also be a subject of productive future research. In theory, one could expect economic and social rights to be of particular interest to SNHRIs, given that such rights are frequently impacted by local regulations.[48] The degree to which SNHRIs can effectively address corporate human rights responsibility or migrant rights issues provides similarly rich grounds for future study.

1.5 Significance of Study

The articles comprising this thesis are significant in three important respects. First, these articles find that the SNHRI concept is a relevant institutional type for analysis, and that SNHRIs exist as a global phenomenon (with many local variations), rather than as purely local or national

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[46] Speech by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Seminar on Systematic Work with Human Rights at the Local/Regional Level (Stockholm, 6 October 2008) <http://www.rattighetsfokus.se/archives/738> accessed 18 July 2016. See also Pegram, 'Global Human Rights Governance (n 6) 616 ('the international human rights system remains a key focal point for global human rights governance. Future effectiveness is likely to hinge on its ability to combine and connect with other organisations and actors at all levels in the construction of a legitimate and accountable global governance system'); Human Rights Council, 'Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee' (7 August 2015), UN Doc A/HRC/30/49, par 33 (noting that the 'the lack of adequate coordination between central and local governments' presents a challenge for human rights implementation).

[47] Normatively, the principle of subsidiarity is enshrined by the Council of Europe in the European Charter of Local Self-Government, which has been ratified by all Council of Europe member-states. See, Council of Europe, *European Charter of Local Self-Government*, European Treaty No 122 (1985), art 4(3). At an institutional level, subsidiarity and local human rights implementation have been promoted most prominently by the Council of Europe's Congress of Local and Regional Authorities.

[48] Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 'Local authorities could protect vulnerable people' CommDH/Speech(2006)8 (1 June 2006); Antoine Meyer, 'Local Governments & Human Rights Implementation: Taking Stock and a Closer Strategic Look' (2009) 3 Pace Diritti Humani 7, 7.

institutional types. This contrasts with previous research on the subject, which (as described below) has tended to concentrate on a single institution or institutional type in isolation from the broader human rights regime. While researchers have been reluctant to discuss SNHRIs as a global phenomenon, this thesis shows that global and regional governance institution, such as the UN, have been ahead of the curve in recognizing the distinctiveness of SNHRIs and struggling to make a place for them in their established structures. In this respect, my study most resembles the first generation of NHRI research, which helped establish NHRIs as a discrete and important institutional type.[49] Accordingly, the thesis is intended to provide a helpful point of departure for future SNHRI research (as was the case with the early NHRI studies).

Second, my thesis examines SNHRIs in the light of two decades of intensive research into NHRIs, and their evolution, impact, and effectiveness. This is not done uncritically; indeed, a running theme throughout this thesis will be whether SNHRIs should be thought of (and treated) as mini-NHRIs, or whether they are distinctive in meaningful ways beyond their sub-national mandate. Thus, in many respects, this thesis will compare the role of NHRIs and the role of SNHRIs, and where relevant will discuss whether (and how) research findings with respect to NHRIs might also be applicable to SNHRIs. While NHRI researchers have occasionally touched on sub-national institutions, especially in their comparative studies, this thesis will for the first time apply the wide body of NHRI knowledge specifically to sub-national institutions.

Third, this study applies a range of recent theoretical and conceptual findings from the political science, socio-legal and legal anthropology fields to SNHRIs in a manner which has not previously been attempted. In particular, this thesis will incorporate work on subsidiarity and localization of human rights (in chapter 6); federalism and decentralization (in chapter 3), and trans-governmental networks (in chapter 5). Past studies of SNHRIs, on the other hand, have tended to examine their significance from a federalism framework or according to the domestic legal concepts of their home countries. By incorporating a range of interdisciplinary research concepts and theoretical understandings, this thesis will provide a more nuanced and multidisciplinary perspective on the place of SNHRIs in the international human rights regime.

Concretely, the articles in this thesis contribute to our knowledge about the relationship of SNHRIs to NHRIs and the international human rights regime and also provide the basis for improving the management of that regime across all of its levels. My primary conclusion will be the following: such institutions are not currently – and should not in the future be – isolated, local bodies, acting apart from the broader international human rights regime. Rather, they often possess a variety of institutional and normative links with other important human rights actors, and such linkages must be managed appropriately in order to optimize the common end goal of human rights promotion and protection.

1.6 Research Methods

1.6.1 Research Approach

Broadly speaking, in these articles, I am engaged in an institutional analysis of the interactions of SNHRIs with different actors and norms in the international human rights regime, according to a variety of conceptual frameworks (expanded upon below) from political science,

[49] Cardenas, *Chains of Justice* (n 38) 312.

international law and socio-legal studies.[50] Consistent with the 'global governance' framework that informs much of this work, I do not analyse SNHRIs in isolation, but rather as constituent elements of a dynamic global human rights system, whose work has broader implications. As a result of my analyses in these articles, I come to conclusions that are both typological in nature (i.e., the types of engagement with the UN that are being undertaken by SNHRIs) and normative (i.e., the desirability of such engagement). While my studies analyse the types of international law used by SNHRIs and the frequency of such usage, it does not involve classic legal analysis, that is to say the analysis of the legality of particular facts under particular international law norms. Rather, it is focused on understanding the roles of SNHRIs as law-developing, law-implementing, and law-transforming institutions.

Although the methodology for each article is discussed in more detail in the articles themselves, the research for this thesis in broad terms relies on a case-oriented approached, which is supported by subsidiary comparative analysis. According to Pascal Vennesson, a case is a 'phenomenon, or an event, chosen, conceptualized and analysed empirically as a manifestation of a broader class of phenomena or events.'[51] Here, the SNHRI as an institutional form is the phenomenon that is studied. While this thesis concentrates on classifying types of SNHRIs (in chapter 2), it is possible to move up what Giovanni Sartori terms the 'ladder of abstraction' and conclude that SNHRIs are a type of the larger class of governmental human rights institution or, more broadly, a type of governmental administrative institution.[52] Thus, I apply the theoretical approaches devised from work on the operations of other governmental human rights institutions and (more broadly) administrative institutions to analyse the relationship of SNHRIs with the broader international human rights regime and the usage of international norms.

The articles in this thesis also take a comparative approach by comparing SNHRI engagement with the broader international human rights regime and NHRI engagement with the international human rights regime. In his classic work on social science methods, Sartori has argued that one can only compare within classes.[53] From this perspective, NHRIs and SNHRIs are appropriate entities for comparison because they are both members of the higher class of 'domestic human rights institutions', as mentioned above. The comparison will relate to both the institutional relationships undertaken by SNHRIs and NHRIs and also the usage of international law norms. This comparison will also involve explanation of why these two members of the same class have had different experiences with their engagement with the rest of the international

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[50] More precisely, the analytic elements of this research is based in empirical institutionalism, a term used by Guy Peters to describe the 'body of literature that asks the deceptively simple question of whether institutions make any difference in policy choices, or in political stability'. Guy Peters, 'Institutional Theory: Problems and Prospects', Reihe Politikwissenschaft / Institute für Höhere Studien, Abt Politikwissenschaft 69 (2000) 3. As is commonly the case in empirical institutionalist studies (but not necessarily in other forms of institutionalism), my research focusses on 'formal structures of government'. ibid.

[51] Pascal Vennesson, 'Case Studies and Process Tracing: Theories and Practices' in Dominique Della Porta and Michael Keating (eds), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (CUP 2008) 226.

[52] Giovanni Sartori, 'Concept Misformation in Comparative Politics' (1970) 64 Amer Poli Sci Rev 1033.

[53] ibid, 1038.

human rights regime, and whether the differences (or similarities) are justified by theories of human rights implementation.

1.6.2 Data Sources

Wherever possible, the articles in this thesis are based on materials published by SNHRIs themselves. This includes, most notably, the statutes and decrees that establish SNHRIs and define their mandates; annual and *ad hoc* reports produced by SNHRIs, and SNHRI press releases and awareness-raising documents. This information was largely available at the websites of SNHRIs, although the amount of information available varies quite significantly from institution to institution. The websites of trans-governmental associations of SNHRIs (such as the International Association of Official Human Rights Agencies or the Asociación Defensores del Pueblo de la República Argentina) also constituted an important source of information on SNHRIs and their activities. In addition, SNHRI recommendations in response to individual petitions provided an interesting data source in several cases, although only a relatively small percentage of SNHRIs comprehensively publish recommendations on their websites. It is rare for non-anglophone SNHRI documents or websites to be translated into English (in contrast with NHRI publications, which are often available in English, even in non-English speaking countries).[54] There is, therefore, somewhat of an emphasis on English, French, and Spanish language sources in this thesis, reflecting those languages in which I have reading proficiency. In some instances, however, I have had foreign language materials translated into English by a research assistant (for example, Korean-language material related to the Seoul Human Rights Ombudsperson Office). For my case study of the Seoul Human Rights Ombudsperson, published materials were supplemented by semi-structured interviews of relevant actors from the Seoul Human Rights Ombudsperson office and the associated Seoul Human Rights Center.

Secondary sources have also been used in many cases to gain more information about SNHRI practices. While there has not been a large amount of conceptual or comparative studies of SNHRIs, there have been a number of useful case studies on SNHRIs in particular countries (or, less often, of particular SNHRIs), generally produced by scholars from those countries and geared towards domestic practitioners more than international observers. These studies (which are discussed below) provided rich supplemental data sources in several cases, particularly regarding SNHRIs in the United States, Canada, Colombia, Mexico, and Spain.

1.7 Literature Review

1.7.1 Literature Focusing on SNHRIs

Compared to the abundant literature on NHRIs, there have been relatively few studies specifically focused on SNHRIs. In some countries, this may be a product of their relatively recent appearance. Elsewhere, it is perhaps more a reflection of the general reluctance to study local administrative organs, which are sometimes seen as less important than national or international actors.[55] In particular, there have been few studies that look at SNHRIs in multiple

[54] There are a few exceptions. The Catalan Sindic de Greuges, to give one example, has an English-language website with many documents translated into English. See <http://www.sindic.cat/en> accessed 18 July 2016.

[55] See Noha Shawki, 'Global Norms, Local Implementation-How are Global Norms Translated into Local Practice?' (2011) Globality Stud J <https://globality.cc.stonybrook.edu/?p=221> accessed 18 July 2016 ('our knowledge of local human rights initiatives is quite limited, and the available publications about

countries.[56] Rather, the existing literature is largely composed of single institution case studies and studies of particular forms of SNHRI in a single country.

Examples of SNHRI case studies include Melissa Crouch's case study of the Yogyakarta Local Ombudsman,[57] Joshua Stark's study of the Kerala Ombudsman,[58] Sung Soo Hong's case study of the Seoul Human Rights Commission,[59] and Rafael Torres Hinojosa's detailed institutional examination of the Tamaulipas Human Rights Commission.[60] Often these case studies conclude with an evaluation of the SNHRI's performance, although the SNHRI literature has not yet addressed the important question of how best to evaluate SNHRI performance to the same degree that has been done for NHRIs. Articles on SNHRI forms in particular countries have likewise generally been descriptive case studies, often starting with an overview of the historical evolution of the particular institutional type, followed by an overview of current practices and issues. Examples of this type of research include R. Bryan Howe and David Johnson's study of Canadian human rights commissions,[61] Marco A. Quiroz Vitale's article on Italian ombudspersons,[62] Zulima Sánchez Sánchez's article on local *defensores del pueblo* in Spain,[63] Lawrence Beer's early study of the local human rights commissioner system in Japan,[64]

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local human rights initiatives are descriptive and not theoretically informed'); Anita Stuhmcke, 'Australian Ombudsmen and Human Rights' (2011) 66 AIAL Forum 43, 43; International Council on Human Rights Policy, Local Rule: Decentralisation and Human Rights (2002) 42; Paul Chen, Federalism and Rights: A Neglected Relationship, (1999) 40 S Tex L Rev 845.

[56] One exceptional example is Felix Dünser, 'Regional ombudsmen: An institution to defend citizens´ rights' (2004) <http://www.landesvolksanwaeltin.at/information/veroffentlichungen/regional-ombudsmen> accessed 18 July 2016.

[57] Melissa Crouch, 'The Yogyakarta Local Ombudsman: Promoting Good Governance through Local Support' (2007) 2 Asian J Comp L 1.

[58] Joshua Stark, 'Kerala's Ombudsman: A Mismatch of Mission and Capabilities' (2011) 24(2) Governance 389.

[59] Sung Soo Hong, 'A Review of Human Rights Commissions in Local Authorities - A Case of the Seoul Human Rights Commission' (2015) 26(1) Chungnam L Rev 93.

[60] Rafael Torres Hinojosa, 'El *Ombudsman* en el Estado de Tamaulipas. Naturaleza y Competencia' in Germán Cisneros Farías, Jorge Fernández Ruiz and Miguel Alejandro López Rivera (eds) *Ombudsman Local* (UNAM 2007).

[61] R. Bryan Howe and David Johnson, *Restraining Equality: Human Rights Commissions in Canada* (U Toronto Press 2000).

[62] Marco Quiroz Vitale, 'The Ombudsman and the Protection of Human Rights in Europe: Case Study of Italian "Civic Defender"' (2014) 11 Us-China L Rev 951.

[63] Zulima Sánchez Sánchez, 'El Defensor del Pueblo Local en España: Infrautilización de la Figura' in Germán Cisneros Farías, Jorge Fernández Ruiz and Miguel Alejandro López Rivera (eds) *Ombudsman Local* (UNAM 2007).

[64] Lawrence Beer, 'Human Rights Commissioners (Jinken Yogoiin) and Lay Protection of Human Rights in Japan', IOI Occasional Paper 31 (1985). See also Osamu Koike, 'Reform of Human Rights Institutions in Japan' (2014) 22(3) Yokohama L Rev 77.

and a number of studies on local human rights commissions in the United States.[65] Some articles have been more policy-oriented, exploring particular problems facing SNHRIs or more broadly questioning whether SNHRIs are appropriate in a particular country.[66]

While these strands of the literature have mainly shied away from close examination of the relationships between SNHRIs and other aspects of the international human rights regime, there are a few notable exceptions. Two studies of *Personeros Municipales* in Colombia have discussed their use of international law.[67] In addition, Risa Kaufman and others have written in some detail on the relationship between US state and local human rights commissions and the international human rights regime.[68] While these studies were confined to single countries, they provided valuable data for my more globally oriented research.

1.7.2 Literature discussing SNHRIs in other contexts

In addition to the relatively few studies focusing solely on SNHRIs, there is a wider range of books and articles that discuss SNHRIs in the context of broader themes. These studies can be divided into three broad types. First, it is quite common for NHRI-focused research to also address SNHRIs (although often just tangentially). Second, there are studies of institutional types, such as the *defensor del pueblo* or ombudsman, that discuss the functioning or evolution of these institutions at both the national and sub-national levels. Third, there is a more recent research track that investigates how local areas can best promote and protect human rights; this research at times also explores the use of SNHRIs.

Within the NHRI-focused literature, SNHRIs are rarely addressed in great depth, although they are sometimes discussed in passing. In *Chains of Justice* by Sonia Cardenas, for example, the evolution of U.S. state and local human rights commissions is examined in the context of the historic precursors to NHRIs, while the rest of the book concentrates on national level institutions.[69] In some cases, SNHRIs from autonomous or devolved regions are given particular attention in NHRI studies, in part because they are sometimes categorized as NHRIs. Thus, in Julie Mertus' *Human Rights Matters: Local Politics and National Human Rights Institutions*, there are case studies of five domestic human rights institutions; four of which are NHRIs and one (the Northern Ireland Human Rights Commission) an SNHRI. [70] The Northern

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[65] See, eg, Saunders and Bang (n 3); Columbia Law School Human Rights Institute, 'State and Local Human Rights Agencies: Recommendations for Advancing Opportunity and Equality through an International Human Rights Framework' (Columbia Law School 2010).

[66] Predrag Dimitrijević, 'Do we Need Local Ombudsman – Protector of Human Rights' (2005) 3 Facta Universitatis 25.

[67] See, eg, Alfredo Manrique Reyes, *El Personero Municipal y los Derechos Humanos en Colombia* (Personería de Bogota 2012); Programa Presidencial de Derechos Humanos y DIH, Vicepresidencia de la República, 'El Personero Municipal y la Protección de los Derechos Humanos y de la Población Civil' (2009).

[68] See, eg, Risa Kaufman, 'State and Local Commissions as Sites for Domestic Human Rights Implementation' in Shareen Hertel and Kathryn Libal (eds), *Human Rights in the United States: Beyond Exceptionalism* (CUP 2011); Columbia Law School Human Rights Institute (n 34).

[69] Cardenas, *Chains of Justice* (n 38) 23-27.

[70] Julie Mertus, *Human Rights Matter: Local Politics and National Human Rights Institutions* (Stanford U Press 2009).

Ireland Human Rights Commission was also one of three SNHRIs that were compared with NHRIs in a recent study of institutional performance by Sarah Spencer and Colin Harvey.[71] This literature sometimes implicitly assumes that SNHRIs are functionally the same as NHRIs, an assumption that I question in this thesis.

A second group of studies are focused on studying aspects of human rights institutions in a particular country, addressing both national and sub-national institutions in this context. For example, Monica Beltrán Gaos, in her book on the National Human Rights Commission of Mexico, devotes a chapter to Mexican State Human Rights Commissions and another chapter to the relationship between State Commissions and the National Human Rights Commission.[72] In the US context, there have been numerous studies on state and local human rights policy dating back several decades; this work often analyzes state and local human rights commissions in a broader context.[73] These and similar studies constituted useful resources for understanding the institutional make-up of particular SNHRIs, as well as their relationships with other domestic actors, such as NHRIs or the court system.

The third research strand that has touched upon SNHRIs (although usually just in passing) has been a relatively recent set of articles and books focusing on the implementation of human rights at the local level. Much of this literature has been relatively advocacy-oriented, such as the evaluations of 'Human Rights Cities' produced by The People's Movement for Human Rights Learning.[74] While the 'Human Rights Cities' concept tends to focus more on civil society elements than governmental institutions, some of these cities have established municipal SNHRIs.[75] Particular mention should be made of research programs carried out by the International Council on Human Rights Policy ('ICHRP') and the Human Rights Institute at Columbia University that have produced groundbreaking work on local human rights implementation. ICHRP conducted a research project on the links between human rights and local governments, resulting in five working papers and a 2002 report.[76] Since 2010, the Human Rights Institute at Columbia University has been actively researching human rights at the local level through the ongoing Bringing Human Rights Home research and advocacy project, which has so far resulted in eight reports along with a book and several articles on state and local human rights implementation.[77] In 2013, the UN Human Rights Council also requested the Human Rights Council Advisory Committee to prepare 'a research-based report on the role

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[71] Sarah Spencer and Colin Harvey, 'Context, Institution or Accountability? Exploring the Factors that Shape the Performance of National Human Rights and Equality Bodies' (2014) 42 Policy & Politics 89.

[72] See Monica Beltrán Gaos, *La Comision Nacional de los Derechos Humanos de Mexico* (Universidad Politecnica de Valencia, 2005) 213-73.

[73] See, eg, Joseph Parker Witherspoon, *Administrative Implementation of Civil Rights* (U Tex Press 1968).

[74] See People's Movement for Human Rights Learning, 'Human Rights Learning and Human Rights Cities: Achievement Report' (March 2007) <http://www.pdhre.org/achievements-HR-cities-mar-07.pdf> accessed 18 July 2016.

[75] See Charlotte Berends et al (eds), *Human Rights Cities: Motivations, Mechanisms, Implications* (Univ Coll Roosevelt 2013).

[76] International Council on Human Rights Policy (n 55).

[77] See Columbia Law School Human Rights Institute <http://web.law.columbia.edu/human-rights-institute/publications> accessed 18 July 2016.

of local government in the promotion and protection of human rights'; this report was issued in 2015.[78] While these strands of local rights research sometimes only touch the surface of SNHRIs, they often bring up interesting conceptual justifications for human rights implementation at the local level and sometimes consider local human rights implementation as a global concern.

1.7.3 Literature on the Place of NHRIs in the International Human Rights Regime

While SNHRIs have so far mostly been studied in isolation from the broader human rights system, the same cannot be said for NHRIs. In fact, over the past decade there has been a wide range of research into the relationship between NHRIs and other elements of the international human rights regime. Many of these studies fall into the 'NHRI and…' category; that is to say that they analyse the relationship between NHRIs and another important actor in the human rights world. These would include books and articles on NHRI and the UN,[79] NHRIs and the African regional human rights system,[80] NHRIs and civil society organizations,[81] and NHRIs and the courts.[82] These empirical studies have established that NHRIs are a well-accepted part of the current human rights system and have over the past decade solidified their status as important actors at the global and regional levels. They have specifically demonstrated the increasingly prominent contribution of NHRIs to Human Rights Council discussions, both individually and through their regional and global networks.[83]

Another set of studies has focused more on the role of NHRIs in transmitting international human rights norms to the local level and (in some accounts) developing local issues into the language of human rights. This strand of the literature has produced valuable works from political science, legal, and sociological perspectives.[84] Among the most influential studies are those by Ryan Goodman and Thomas Pegram investigating the socio-legal

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[78] Human Rights Council, Report on Twenty-Fourth Session, A/HRC/24/2, 27 January 2014, 8; Human Rights Council, 'Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee' (7 August 2015), UN Doc A/HRC/30/49.

[79] Brian Burdekin and Anne Gallagher, 'The United Nations and National Human Rights Institutions' in Gudmundur Alfreddsson et al (eds), *International Human Rights Monitoring Mechanisms* (Kluwer 2001); Sonia Cardenas, 'Emerging Global Actors: The United Nations and National Human Rights Institutions' (2003) 9 Global Governance 23; Kirsten Roberts, 'National Human Rights Institutions as Diplomacy Actors' in Michael O'Flahety et al (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Martinus Nijhoff 2011).

[80] Rachel Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Hart 2007).

[81] Catherine Renshaw, 'National Human Rights Institutions and Civil Society Organizations: New Dynamics of Engagement at Domestic, Regional, and International Levels' (2012) 18 Global Governance 299.

[82] Wolman, 'National Human Rights Institutions and the Courts' (n 30).

[83] Roberts (n 79) 236-37.

[84] See, eg, Richard Carver, 'A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law' (2010) 10 Human Rights L Rev 1; Morten Kjaerum, *National Human Rights Institutions Implementing Human Rights* (Danish Institute for Human Rights 2003).

mechanisms by which NHRIs actually bring about social change.[85] The articles in my thesis owe much to the findings of both these research tracks, and in a sense can be interpreted as an investigation into whether those findings are also true for SNHRIs.

1.8 Conceptual Background

The articles in this thesis draw from a number of different theories and concepts in the international law and political science literature. The three most prominent research frameworks that are drawn upon are those of global governance, decentralisation, and localisation. Here, I will briefly introduce the concepts from these frameworks that are most relevant to this thesis. In the conclusion chapter, I will discuss in more depth precisely how these concepts have been employed and what the implications of my research are for their further development.

1.8.1 Global Governance

At the broadest level, the articles constituting this thesis draw from and build upon the global governance strand of political science literature. The term 'global governance' first emerged in the 1990s in the influential works of James Rosenau, who used the term to refer to 'systems of rule at all levels of human activity—from the family to the international organization—in which the pursuit of goals through the exercise of control has trans-national repercussions.' [86] In the following years, the concept of 'global governance' entered the mainstream of the international relations field, although it evolved to encompass multiple senses and meanings.[87] Thus, global governance has in recent years been characterized as a descriptive term, a theory, a framework, and a perspective or view.[88] In all of these senses, however, global governance signalled an increasing openness to viewing international politics as more than merely the domain of the Westphalian nation-state.[89]

While the global governance framework may have a range of senses in different contexts, one way in which it has been used (and that I will use here) is to refer to a set of analytical perspectives that differ from traditional international relations work. In this context, Dingwerth and Pattberg identify four particular traits of global governance research.[90] First, it is not primarily concerned with inter-state politics, but rather views states as one of many influential actors at the international level, including corporations, NGOs, and other non-state and quasi-state actors.[91] Second, it views the international political order as a multi-level system, where

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[85] Ryan Goodman and Thomas Pegram (eds) *Human Rights, State Compliance, and Social Change* (CUP 2012); Pegram, 'Global Human Rights Governance' (n 6).

[86] James N. Rosenau, 'Governance in the Twenty-first Century' (1995) 1(1) Global Governance 13.

[87] Matthias Hofferberth, 'Mapping the Meanings of Global Governance: A Conceptual Reconstruction of a Floating Signifier' (2015) 43(2) Millennium J Intl Stud 598.

[88] ibid; Martin Hewson and Timothy Sinclair (eds), *Approaches to Global Governance Theory* (SUNY Press 1999).

[89] Martin Hewson and Timothy Sinclair, 'The Emergence of Global Governance Theory' in Martin Hewson and Timothy Sinclair (eds), *Approaches to Global Governance Theory* (SUNY Press 1999) 7.

[90] Klaus Dingwerth and Philipp Pattberg, 'Global Governance as a Perspective on World Politics' (2006) 12 Global Governance 185.

[91] ibid 191.

'local, national, regional, and global political processes are inseparably linked.'[92] Third, global governance research does not favour a particular form or mechanism of governance, such as power relations, inter-state bargaining, norms, or advocacy networks, but rather sees each of these governance forms existing alongside one another, without a set hierarchy or organizing principle.[93] Fourth, global governance research addresses the emergence of new forms of authority in world politics, apart from sovereign states.[94] Thus, according to Dingwerth and Pattberg, academic research that adopts a global governance perspective often asks questions such as: 'What dynamics characterize the two spheres [transnational and international]? What factors determine whether actors seek to achieve their goals through one sphere and not through the other? And what kind of interactions exist between the two spheres?'[95] Unlike mainstream international relations research, global governance research often takes on fundamental normative questions, as well, such as 'what forms of organization and governance should prevail, how scarce resources should be allocated, and what kind of policy ought to be put in place'.[96]

1.8.2 Decentralisation and Subsidiarity

While the analytic focus of this thesis is the relationship between SNHRIs and the rest of the international human rights regime, it also draws from a broader multi-disciplinary literature on sub-national human rights implementation, especially when exploring the ways in which SNHRIs can best contribute to human rights governance.

In the domestic legal context, many political science and law scholars have investigated local human rights implementation through the lenses of federalism and decentralisation theories. The broad question of whether (and when) federalism is good or bad for human rights implementation has been addressed quite intensely by lawyers and political scientists in the United States for many years.[97] More recently, this branch of research has delved more specifically into questions of how the federalist system effects US compliance with human rights treaties.[98] Similar literatures exist for other federal or decentralised countries, and there have also been a number of more conceptual studies on federalism and rights.[99] However, the real world helpfulness of these studies is not clear; federal systems tend to be idiosyncratic, with widely differing jurisprudences and traditions of inter-level relations in different countries, and general

[92] ibid 192.

[93] ibid 192-93.

[94] ibid 193.

[95] ibid 199.

[96] Thomas Weiss and Rordan Wilkinson, 'Global Governance to the Rescue: Saving International Relations?' (2014) 20(1) Global Governance 19, 22.

[97] See, eg, Richard Stewart, 'Federalism and Rights' (1984-85) 19 Georgia L Rev 917.

[98] Joanna Kalb, 'Dynamic Federalism in Human Rights Treaty Implementation' (2010) 84 Tulane L Rev 1025; Risa Kaufman, 'By Some Other Means; Considering the Executive's Role in Fostering Subnational Human Rights Compliance' (2012) 33 Cardozo L Rev 1971.

[99] Chen (n 55); Luke Lazarus Arnold, 'Acting Locally, Thinking Globally? The Relationship between Decentralization in Indonesia and International Human Rights' (2009) 2(1) J E Asia & Intl L 177.

rules may be difficult to find.[100] Federalism has also been seen by some as a useful lens for studying the international human rights regime.[101]

In the international law literature, the principle of subsidiarity has been of particular importance in justifying a robust role for local government in the human rights field.[102] Subsidiarity has been most prominently used in the European Union context, where it has been defined in the Lisbon Treaty to hold that for issue areas where the EU and member States share authority, the states should make decisions unless EU action would ensure higher comparative efficiency or more effectively achieve specific objectives.[103] The principle of subsidiarity has over the past decade been increasingly utilized outside of the European context as a way of framing questions of power and competency delegation at the international and domestic levels, oftentimes in such a way as to prioritize local governance.[104] Thus, according to Bosire, the subsidiarity principle 'calls on national governments to refrain from taking over functions that are best or most appropriately performed by local government [and] local government is best suited to fulfil fundamental human rights such as participation and involvement'.[105] Paolo Carozzo has been particularly influential in applying subsidiarity to human rights governance, claiming that subsidiarity should be recognized as a structural principle of human rights law that promotes respect for pluralism while remaining deeply consonant with the substantive vision of human dignity and the universal common good expressed by human rights norms.[106] While current interpretations of the principle of subsidiarity are heavily debated, the literature on subsidiarity does help shed light on some of the questions addressed in this thesis surrounding the appropriate role of SNHRIs in the broader international rights regime.

1.8.3 Human Rights Localisation

Meanwhile, in recent years a number of sociolegal studies of local rights implementation have investigated the means by which international human rights norms are transmitted to the local level, some of which have focused specifically on the role of national or sub-national

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[100] See José Woehrling, 'Federalism and the Protection of Rights and Freedoms: Affinities and Antagonism' in Ferran Requejo and Miquel Caminal (eds), *Political Liberalism and Plurinational Democracies* (Routledge 2011).

[101] Jamie Mayerfeld, 'A Madisonian Argument for Strengthening International Human Rights Instruments: Lessons from Europe' in Luis Cabrera (ed) *Global Governance, Global Government: Institutional Visions for an Evolving World System* (SUNY Press 2011).

[102] UN-Habitat, International Guidelines on Decentralisation and the Strengthening of Local Self-government (UN-Habitat 2007) 4 ('The principle of subsidiarity constitutes the rationale underlying the process of decentralization.')

[103] *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*. Official Journal of the European Union C306/1, 17 December 2007, art 5(3).

[104] Anne-Marie Slaughter, 'A liberal theory of international law' (2000) 94 Am Soc of Intl L Proc 240.

[105] Bosire (n 2) 153.

[106] Paulo Carozza, 'Subsidiarity as a structural principle of international human rights law' (2003) 97 Am J Intl L 38.

human rights institutions.[107] These studies often stress the importance of local human rights implementation for improving conditions on the ground.[108] They also tend to view the element of struggle as important for human rights vindication[109] and sometimes see local values as critical in opposing a globalisation that itself threatens human rights, and especially economic and social rights. These studies have introduced the concept of 'localisation', which was first defined by Amitav Acharya as 'the active construction [of new norms] through discourse, framing, grafting, and cultural selection of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices'.[110]

Localisation has since been reconceived by Koen De Feyter to imply 'taking the human rights needs as formulated by local people (in response to the impact of economic globalization on their lives) as the starting point both for the further interpretation and elaboration of human rights norms, and for the development of human rights action, at all levels ranging from the domestic to the global.'[111] This framework has been used to develop a methodology for investigating the relevance of human rights to contemporary issues of poverty, exclusion and marginalisation.[112] De Feyter stresses that localisation 'depends on cooperation between actors at different levels.'[113] Tom Zwart has similarly embraced a local implementation of human rights norms (in the developing world) with a model that he calls the 'receptor approach'[114] According to Zwart, the receptor approach identifies core elements of the global human rights regime and analogous phenomena in the societies of implementing states. Where possible, analogous social arrangements are then employed to comply with human rights obligations, without explicitly relying on legal rights norms.

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[107] See, eg, Andrew Wolman, 'National Human Rights Commissions and Asian Human Rights Norms' (2013) 3(1) Asian J Intl L 77; Ranita Ray and Badana Purkayastha, 'Challenges in Localizing Global Human Rights' (2012) 7(1) Societies Without Borders 29.

[108] Upendra Baxi stresses that 'the 'local,' not the 'global' remains the crucial locus of struggle for the enunciation, implementation, and enjoyment of human rights.' Upendra Baxi, 'Introduction' in William Twining (ed), *Human Rights, Southern Voices* (CUP 2009) 183–85; Koen De Feyter, 'Localizing Human Rights', University of Antwerp Institute of Development Policy and Management, Discussion Paper 2006/02, (2006) 12 ('It is at the local level that abuses occur, and where a first line of defense needs to be developed, first and foremost by those that are threatened').

[109] Upendra Baxi, 'Voices of the Suffering, Fragmented Universality and the future of Human Rights' in Burns Weston and Stephen Marks (eds), *The Future of International Human Rights* (Brill 1999) 116 ('[t]he real birthplaces of human rights are far removed from the ornate rooms of diplomatic conferences and are found, rather, in actual sites (acts and feats) of resistance and struggle.')

[110] Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58 Intl Org 245.

[111] Koen De Feyter, 'Globalisation and Human Rights' in Felipe Gómez Isa and Koen De Feyter (eds), *International Human Rights Law in a Global Context* (Univ Deusto 1999) 92.

[112] De Feyter, 'Localizing Human Rights' (n 108) 9.

[113] ibid 23.

[114] Tom Zwart, 'Using Local Culture to Further the Implementation of International Human Rights: The Receptor Approach' (2012) 34(2) Hum Rts Q 546.

Local human rights implementation (and its implications for the broader human rights regime) have also been analysed from a legal anthropology perspective, most prominently by Sally Merry. Through a series of detailed case studies, Merry proposed the concept of vernacularisation to characterise the process whereby international human rights norms are transmitted from the global sphere to local areas and the way in which local issues and problems become rephrased in human rights terms.[115] Through the vernacularisation process, new ideas are framed in ways that are resonant with pre-existing ideas of justice and order, while preserving their essential attributes and potential to transform unequal or unjust local social relations and circumstances.[116] Put simply, vernacularisers ''take the ideas and practices of one group and present them in terms that another group will accept''.[117] To Merry, this process should be encouraged, as vernacularisation is in fact necessary for human rights to be effective and seen as legitimate in new environments.[118] Merry sees the 'translators' who develop localized norms as the key actors in the vernacularisation process.[119] Translators must both translate up, reframing local grievances by portraying them as human rights violations, and translate down, reframing international norms in locally relevant terms.[120] Generally, they are individuals who ''straddle the global and the local and act as intermediaries between these two arenas''[121] and can include local activists, NGO staff, social movement activists, human rights lawyers, and academics.[122]

[115] Peggy Levitt and Sally Merry, 'Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India, and the United States' (2009) 9 Global Networks 441.

[116] Peggy Levitt and Sally Merry, 'Making Women's Human Rights in the Vernacular: Navigating the Culture/Rights Divide' in Dorothy Hodgson (ed), *Gender at the Limit of Rights* (U Penn Press 2010) 88.

[117] Levitt and Merry, 'Vernacularization on the Ground' (n 115) 446.

[118] Sally Engle Merry, 'Human Rights and Transnational Culture: Regulating Gender Violence Through Global Law' (2006) 44 Osgoode Hall L J 53, 55 ('In order for human rights ideas to be effective, they need to be translated into local terms and situated within local contexts of power and meaning.')

[119] Sally Engle Merry, *Human Rights and Gender Violence* (U Chicago Press 2006) 39.

[120] ibid 42.

[121] Shawki (n 55).

[122] Sally Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108 Amer Anthropologist 38, 42.

Annex I: Number of SNHRIs in selected countries and regions

Country	SNHRIs	Type(s)	Source
Argentina	At least 35	Regional and Local Human Rights Ombudsmen	Asociación Defensores del Pueblo de la República Argentina (2016)[123]
Australia	8	State and Territorial Human Rights and Anti-discrimination Commissions	Report to UN Human Rights Committee (2016)[124]
California	At least 52	Local (city and county) human rights commissions	California Association of Human Relations Organizations (2016)[125]
Canada	At least 11	Provincial and Territorial human rights commissions	Canadian Association of Statutory Human Rights Agencies (2016)[126]
Catalunya	40	Local human rights ombudsmen	Molin (2010)[127]
Colombia	At least 1,102	Local and regional human rights ombudsmen	Federación Nacional de Personeros de Colombia (2016)[128]
Council of Europe region	'close to 1,000'	Local human rights and classical ombudsmen	Council of Europe Background Paper (2007)[129]

[123] Asociación Defensores del Pueblo de la República Argentina, 'Integrantes' <http://www.adpra.org.ar/integrantes/> accessed 18 July 2016.

[124] Australia, Sixth Report to UN Human Rights Committee (2016), para 42.

[125] California Association of Human Relations Organizations, Human Relations Commissions (by City) <http://www.cahro.org/network/hrc-cities/> accessed 18 July 2016 and California Association of Human Relations Organizations, Human Relations Commissions (by County) <http://www.cahro.org/network/hrc-county/> accessed 18 July 2016.

[126] Canadian Association of Statutory Human Rights Agencies, Member Contacts <http://www.cashra.ca/contact.html> accessed 18 July 2016.

[127] Lars Molin, 'The Role of Local and Regional Authorities in the Implementation of Human Rights' Council of Europe, CG(18)G (10 March 2010) para 73.

[128] Federación Nacional de Personeros de Colombia, 'Quienes Somos' <http://www.fenalper.org/web/index.php/institucional/quienes-somos> accessed 18 July 2016.

[129] Council of Europe Commissioner for Human Rights, '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' CommDH/Omb-NHRI(2007)1 Rev 3 (April 2007) para 16 (some of these ombudsmen would address classic maladministration issues without implementing human rights, and thus would not be SNHRIs according to the definition proposed in chapter 2).

India	23	State human rights commissions	Minister of State in the Ministry of Home Affairs (2014)[130]
Japan	'about 14,000'	Local Human Rights Protectors	Koike (2014)[131]
Korea	15	Provincial and local human rights commissions and ombudsmen	Korea Human Rights Foundation (2014)[132]
Mexico	32	State (and DF) Human Rights Commissions	Rábago (2008)[133]
Minnesota	At least 44	Local (city and county) human rights commissions	League of Minnesota Human Rights Commissions (2016)[134]
Philippines	14,406	Local (Barangay) Human Rights Action Centres	Commission on Human Rights of the Philippines (2013)[135]
Russia	71	Regional human rights ombudsmen	European Commission against Racism and Intolerance (2013) [136]
Spain	11	Regional Human Rights Ombudsmen	Mora (2003)[137]
Turkey	'around 900'	Local human rights boards	Roberts & Adamson (2011)[138]

[130] Minister of State in the Ministry of Home Affairs, Response to Unstarred Question no 3963 (18 February 2014) <http://mha1.nic.in/par2013/par2014-pdfs/ls-180214/3963.pdf> accessed 18 July 2016.

[131] Koike (n 64) 80.

[132] Korea Human Rights Foundation, *Report on Local Government and Human Rights* (Gwangju Development Institute 2014) 218-19.

[133] Sergio Márquez Rábago, 'Estado de Derecho en México' in David Cienfuegos Salgado and Luis Gerardo Rodríguez Lozano, Estado, Derecho y Democracia en el Momento Actual (FEJ 2008), 228.

[134] League of Minnesota Human Rights Commissions, Member Commissions <http://www.leagueofmnhumanrights.org/member-commissions> accessed 18 July 2016.

[135] Commission on Human Rights of the Philippines, 'Barangay Human Rights Action Center Design Report' (2013) 1 <http://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2013/01/bhrac-program.pdf> accessed 18 July 2016.

[136] European Commission against Racism and Intolerance, 'ECRI Report on the Russian Federation' (2013) 18.

[137] Antonio Mora, *El Libro del Defensor del Pueblo* (Defensor del Pueblo 2003) 205.

[138] Kirsten Roberts and Bruce Adamson, 'Chapter 23 Peer-Review Mission: Human Rights Institutions', Delegation of the EU to Turkey (January 2011) 8.

Chapter 2

'Sub-National Human Rights Institutions: A Definition and Typology', (2017) 18(1) Human Rights Review, 87.

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Sub-national Human Rights Institutions: a Definition and Typology

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Abstract In this paper, I argue that independent governmental human rights bodies at the sub-national level now comprise a meaningful group that can be understood as a sub-national counterpart to National Human Rights Institutions. In accordance with the term's growing usage among human rights practitioners, I label these bodies as "Sub-national Human Rights Institutions" ("SNHRIs"). So far, however, SNHRIs (as a general concept) have been the subject of very little academic attention, although there have been many studies of individual SNHRIs or particular types of SNHRIs. With the objective of promoting coherent and generalizable research into this relatively new institutional concept, in this paper I therefore stipulate and justify a general SNHRI definition and a scientific typology of SNHRIs based on administrative level, institutional form, and breadth of mandate.

Keywords Ombudsman · Human Rights Commission · Federalism · Typology · National Human Rights Institution

Introduction

In this article, I undertake three tasks. First, I argue that there exists a meaningful group of governmental human rights bodies characterized principally by their independence and sub-national mandate. I label these bodies as "Sub-National Human Rights Institutions" ("SNHRIs"). Second, I stipulate a general definition for SNHRIs, namely that they are *independent non-judicial governmental institutions that possess a sub-national mandate, and whose mission includes the implementation of human rights*

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norms. This definition is then elucidated at a second level of specificity, with definitional choices justified and hard cases highlighted. Third, I propose a multi-variable typology of SNHRIs. This typology is crafted so as to be comprehensive and exclusive, and is based on three variables: administrative level. institutional type, and breadth of mandate.

My intent in this paper is to lay the groundwork for future research and analysis of SNHRIs. While definition and classification are often neglected undertakings in the human rights literature, they play fundamental roles in the scientific enterprise (Bailey 1994, p. 1; Frankfort-Nachmias and Nachmias 1996, p. 28; Sartori 2009, p. 170). When there are multiple definitions (or a lack of definitions) for a concept being studied, then the extent to which any particular research findings are generally applicable often remains unclear (Frankfort-Nachmias and Nachmias 1996, p. 27; Gerring and Barresi 2003, p. 202). Knowledge accumulation and productive argumentation remain difficult (Gerring and Barresi 2009, p. 241) and comparative studies suffer from the lack of a common framework to conduct research and present findings (Sartori 1970, p. 1039; Mair 2008, p. 177). As one researcher notes, "[a]rguably, the most fruitful research programs in social science—those that produce the most knowledge—are those in which the key concepts are agreed on and defined the same way by all" (Mueller 2003, p. 162). Typologies are likewise fundamental to academic research. Descriptive social science typologies contribute to "forming and refining concepts, drawing out underlying dimensions, creating categories for classification and measurement, and sorting cases" (Collier et al. 2012, p. 217). Typologies also allow researchers to understand relationships among related phenomena, and can help highlight under-explored areas (Eppler and Mengis 2011, p. 7).

It is particularly important to establish an accepted general definition and typology for a concept at an early stage of research into that concept, in order to avoid the evolution of multiple divergent definitions as a research program develops (Mueller 2003, p. 162; Sartori 2009, p. 172). National Human Rights Institutions ("NHRIs") may in this respect provide something of a cautionary tale: over the past two decades, a large number of (sometime wildly) different NHRI definitions and typologies have been proposed in different situations, with the result being that it is difficult to generalize conclusions from studies that utilize a range of definitions and typologies.[1] In addition, the first generation of NHRI research largely focused on descriptive analyses of institutional design and effectiveness, with little of the systematic social scientific investigation that one might have expected to see, given the large number of NHRIs and the diversity among them (Cardenas 2012, p. 32). While there are various possible reasons for this, the lack of an accepted definition and typology that could be used for structured comparisons or the construction of a large-*n* dataset has arguably contributed to this research underdevelopment, and by extension to the widely held view that NHRIs are still "undertheorized and not well understood" (Goodman and Pegram 2012, p. 3).[2]

With regards to the SNHRI concept however, academic research is indeed in its earliest stages. With a few exceptions, academic books and articles have only in passing

[1] According to one report, "there are as many typologies of NHRIs as papers written about them" (International Council on Human Rights Policy 2005, p. 6).

[2] Since 2012, new research into NHRIs has embraced more sophisticated social science approaches, and at least one NHRI data collection project is currently underway (Conrad et al. 2012).

mentioned SNHRIs (Cardenas 2001, p. 8; Reif 2014, p. 223) or related terms such as "sub-national human rights bodies" (Petersen 2011, p. 205), "human rights institutions at a sub-national level" (Carver 2011, p. 5), or "subnational NHRIs" (Reif 2012, p. 70). By setting forth a general SNHRI definition and typology, this article will thus allow for a more coherent and helpful research agenda to develop moving forward. While the precise details of a future SNHRI research agenda are impossible to know, some likely directions can be predicted based on existing strands of NHRI research. For example one might expect to see research into the reasons for SNHRI proliferation in the past few decades, just as studies have addressed the analogous question for NHRIs (Cardenas 2014; Koo and Ramirez 2009; Pegram 2010). An accepted SNHRI definition and typology would allow researchers to measure the extent of such proliferation (or compare the degree of proliferation in different jurisdictions) and to explore whether the reasons for proliferation are the same for different types. One might also expect to see research on the conditions leading to SNHRI effectiveness, just as researchers have analyzed the conditions under which NHRIs can be effective (Goodman and Pegram 2012, p. 2; International Council on Human Rights Policy 2005). An accepted SNHRI typology, however, would help scholars to more clearly delineate the scope of generalizability of their (and other authors') conclusions on conditions for SNHRI effectiveness in a more precise and nuanced manner.

SNHRIs as a Meaningful Concept

Over the past three decades, human rights institutions have proliferated at the sub-national level, just as they have done at the national level. To illustrate with a few numbers, there are reported to now be 71 regional human rights ombudsmen in Russia (ECRI 2013, p. 40),[3] 32 state human rights commissions in Mexico (Acosta 2012, p. 433), and 23 state human rights commissions in India (Dobhal et al. 2014, p. 11). At the local level, there are at least 1000 *personeros municipales* in Colombia (Wolman 2015a, p. 227) and over 40 local human rights ombudsmen in Catalonia (Molin 2010), to pick just two parts of the world.

Like NHRIS, these SNHRIs vary significantly in their power and effectiveness. In at least some cases, however, they appear to have made a meaningful impact in local human rights promotion and prevention. The Hong Kong Equal Opportunities Commission, to give one example, has been called "arguably one of the more effective human rights bodies in the region"; one of its most significant successes was its use of strategic litigation to challenge the system for allocating students to different secondary schools (Petersen 2011, p. 205). At the municipal level, one example of a human rights friendly policy informed and inspired by an SNHRI is the York (UK) Equality Scheme, which was in part based upon a report by the York Fairness Commission's (Berends et al. 2013, p. 153).

Until very recently, however, these various bodies were seldom conceptualized as exemplars of a general institutional type. Rather, such institutions were simply seen by

[3] The term "ombudsman" is gender-neutral in the Swedish language from which it originates, and this formulation remains in common usage, although some localities have switched to the term "ombudsperson." In this article, I use the term "ombudsman" in a gender-neutral sense.

observers as examples of city human rights commissions or provincial anti-discrimination commissions and the like, as usually defined by administrative level, institutional character, and geography. Research on them has accordingly been generally confined to case studies of specific institutions or of particular institutional types within a given country or region (see, e.g., Dünser 2004; Saunders and Bang 2007; Vitale 2014; Hong 2015). This perspective is now inadequate, however: there is a need for research into SNHRIs as a general institutional type (in addition, of course, to research into specific institutions or institutional sub-types). This is the case for three primary reasons.

First, the human rights community has, over the past two decades, thoroughly embraced the NHRI concept as a significant institutional category for both research and practical purposes at the national level. At the global level, the UN increasingly encourages NHRI participation and establishment, while the Global Alliance of National Human Rights Institutions ("GANHRI") accredits and NHRIs and builds NHRI capacity.[4] Dozens of political science and law scholars now focus on NHRIs as relevant analytical categories. This focus on NHRIs inevitably brings up questions related to NHRIs' subnational counterparts. Just as two decades ago, one might reasonably have asked whether findings from ombudsman research conducted at the national level also applies to local ombudsmen, so must scholars ask today whether the voluminous quantity of NHRI research findings accrued over the past 20 years also applies to SNHRIs, how SNHRIs relate to NHRIs, the advantages and disadvantages of SNHRIs compared to NHRIs, and similar questions.

Second, the lines dividing traditional categories of sub-national human rights institutions are in many cases becoming blurred. As has happened at the national level, many sub-national classical ombudsman institutions have started to see human rights implementation as part of their mission, despite human rights not being part of their mandate. In many Mexican states, human rights commissions have been established that resemble traditional *defensores del pueblo* more than classic common law commissions (Gaos 2004, p. 147). US commissions that formerly concentrated solely on racial discrimination are now being given mandates that encompass the entire human rights corpus (Kaufman 2011, p. 89). In short, while one can still distinguish between different SNHRI types (which is why a typology is useful), the dividing lines are no longer as distinct as they once were, and the commonalities are greater. There are various reasons for these shifts, but one consequence is that for many purposes it makes sense to study SNHRIs as a general type, because members of different traditional subtypes increasingly share common traits.

Third, SNHRIs are becoming more active at the international level by, for example, participating in UN forums, filing reports on local human rights conditions, and applying for membership at the GANHRI (Wolman 2014). International actors must therefore develop rules and guidelines for this participation, and decide when and how to encourage and support the work of SNHRIs. To a certain extent, this is a work in progress: the UN Human Rights Council is currently engaged in a research project on local governments and human rights (which includes surveys of SNHRIs and other actors), while the GANHRI has struggled with the question of SNHRI membership

[4] GANHRI was formerly known as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights ("ICC").

(Wolman 2015b). But from a conceptual standpoint, it is clear that both these organizations are in the process of developing policy with respect to SNHRIs as a group. Thus, while SNHRIs may still be domestically viewed primarily as local institutional types, at the international level they are increasingly seen as members of a broader global group. As evidence of this shift, one can note the growing contemporary usage of the term "sub-national human rights institution" by important international actors such as the UN Secretary General (2011, para. 95), the High Commissioner of Human Rights (Pillay 2011; UNHCHR 2011), the UN Special Rapporteur on Adequate Housing (Farha 2014, para. 76(j)), and UNICEF (2013, p. 105). Other prominent human rights actors have used (presumably) similar phrases such as "regional and local human rights institutions" (Hammarberg 2009, para. 7.2), "local human rights institutions" (Kang 2012), "sub-national statutory human rights institutions" (ICC 2013, p. 25; APF 2015, p. 23), and "independent and autonomous ombudsman, mediator and other national human rights institutions at…the local level" (UNGA 2013). To put it simply, SNHRIs may not yet be the focus of academic research, but the SNHRI is already a concept that is used by human rights practitioners.

In addition to justifying a focus on SNHRIs as a meaningful concept, it is worth briefly justifying the usage of the term "SNHRI" as a label for this concept. As a starting point, the term strives for familiarity. As Gerring (1999, pp. 368–369) notes, finding a term in the existing lexicon that covers a concept is generally a better option than coining a neologism. As noted, the term "SNHRI" has been used by important actors. However, other similar terms have also been used. The term "SNHRI" has a particular resonance and clarity that these other potential terms lack, though. It is resonant because it mirrors the terminology commonly used at the national level ("NHRI") and to a lesser extent the international level ("regional human rights institution"). It is clear because the term "sub-national" can immediately be understood as covering the entire administrative space below the nation-state (and only that space), while the term "local" is sometimes used to denote solely municipal (and not higher level sub-national) space, and the term "regional" can be used both for sub-national and supra-national space.

Definition

Despite the fact that the SNHRI concept is meaningful and it (along with similar terms) has been used by practitioners in recent years, there is no accepted definition for the term. This section stipulates a general definition for the term "SNHRI." As a "general" definition, it should be usable for any research purposes involving SNHRIs. It should also be usable by practitioners, although influencing the public discourse is not the primary focus of this article.[5] This proposed definition will be "minimal" in the sense that it seeks to "identify the bare essentials of a concept, sufficient to differentiate it extensionally without excluding any of the phenomena generally understood as part of the extension" (Gerring 2011, p. 135). In the context of this article, that means that my

[5] For example, without a general "SNHRI" definition, listeners will not know what institutions the UN Secretary General was referring to, when he stated that "[i]nteraction by subnational human rights institutions with the international human rights system [are] strongly encouraged." (UNSG 2011, para. 95).

stipulated definition will apply to all SNHRIs and will not apply to any entities that are not SNHRIs. This is appropriate for facilitating academic research, which is this article's objective. It is worth noting, however, that ideal-type definitions may be better suited for other purposes, such as promoting best practices (one example being the use of the Paris Principles to define the universe of NHRIs).[6]

The SNHRI definition is intended to fulfill four objectives. First, it is intended to approximate a general understanding of the SNHRI concept as constituting the sub-national equivalent of NHRIs. This understanding, which is stipulated in this article, is in line with existing usage of the concept (and term), which usually takes place in the context of discussion or research on NHRIs. This approximation does not lead to a neat end point, however, as the term "NHRI" itself has itself been notoriously hard to define (Reif 2012). Second, it is intended to facilitate further academic research into the subject. This largely means stipulating a definition that allows researchers to feasibly identify whether an entity is or is not an SNHRI (i.e., is easily operationalizable) and promoting group stability, so that entities will only rarely transition from SNHRI status to non-SNHRI status. Third, it strives for parsimony. As Gerring (2011, p. 34) notes, "good concepts do not have endless definitions." Fourth, the definition is intended to be as precise as possible. This goal is consistent with the objective of facilitating academic research; as Rowe and Frewer (2005, p. 252) state, "[t]he more precise our definitions, the better (more reliably, validly) we can conduct research, the easier it is to interpret findings, and the greater the confidence we can have in our conclusions." A precise definition does not end debate as to whether a particular entity possesses all the criteria of an SNHRI; however, it can at least reduce or eliminate uncertainty as to what those criteria actually mean.

Pursuant to the first of these objectives, it makes sense to use common NHRI definitions as a starting point for an SNHRI definition. Many have been proposed. NHRIs have been defined, *inter alia*, as: "independent bod[ies] established by a national government for the specific purpose of advancing and defending human rights at the domestic level" (Pohjolainen 2006, p. 1), "independent bodies that promote and monitor states' implementation of and compliance with their obligations to protect human rights" (Dam 2007, p. 1), "[s]tate bodies with a constitutional and/or legislative mandate to protect and promote human rights … [that] are not under the direct authority of the executive, legislature or judiciary" (UNHCHR 2010, p. 13), and "official independent legal institutions established by the State by law for the promotion and protection of human rights" (APF 2015, p. 15). Oftentimes, NHRIs are simply defined as those entities that comply with the Paris Principles, as fleshed out by the General Recommendations of the GANHRI (Reif 2012, p. 53). However, while this may be satisfactory for defining the universe of NHRIs in some instances, it is unworkable for SNHRIs. The Paris Principles by their terms only apply to national-level institutions, and the GANHRI (with an exception for the Scottish and Northern Ireland Human Rights Commissions) has not accepted sub-national bodies for full membership.[7]

[6] The Paris Principles are a set of guidelines for national institutions promulgated by the UN in 1993, which have been used to assess the mandate, autonomy, independence, pluralism, resources, and investigative powers of NHRIs (UNGA 1993).

[7] The Paris Principle 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" (UNGA 1993).

At their core, however, most NHRI definitions seem to contain three elements: independence; a link to the state (governmentality); and a focus on implementation of human rights norms. These three concepts—along with the sub-national level of operation—thus also form the core of my proposed definition, which is that an SNHRI is an *independent non-judicial governmental institution that possess a sub-national mandate, and whose mission includes the implementation of human rights norms*. While this definition should be adequate for a shorthand understanding of the SNHRI concept, it is intentionally parsimonious, and in the remainder of this section, I will elucidate the different elements of this definition. Specifically, I will focus on four tasks. First, I will justify the use of each term that is contained in my definition. Second, I will draw out the relevant terms at a second level of specificity, by proposing and justifying criteria that can be used to empirically establish whether the given term does or does not apply to a particular entity. Third, I will discuss the real-world definitional implications of certain terms with respect to particular entities' inclusion or exclusion from the SNHRI definition. And fourth, I will where relevant acknowledge hard cases or limitations of the term's usage.

Independent

Perhaps the most important distinguishing characteristic of NHRIs is their independence (Reif 2012, p. 52). Independence represents one of the fundamental aspirational values of the Paris Principles and has been made explicit in multiple NHRI definitions (Pohjolainen 2006, p. 1; Dam 2007, p. 1; APF 2015, p. 15). The precise meaning of independence is not clear, however. At a minimum, it means that an SNHRI should not operate under the direct authority of other governmental entities. In the case of NHRIs, however, some would go further to require a *de facto* absence of governmental influence into an institution's actions. For SNHRIs, however, a definition that relies on *de facto* independence would not benefit group research. For one thing, there is no outside body such as the GANHRI to judge whether SNHRIs are *de facto* independent or not. Thus, a researcher would be forced to individually evaluate each entities *de facto* independence, a herculean task given the thousands of SNHRIs in the world and difficulty in evaluating the level of governmental influence in their actions. In addition, the reliance on *de jure* rather than *de facto* independence leads to a more stable group. This is generally a benefit to research analysis; without such stability, one would have to recalibrate group membership constantly.

Among the implications of the independence requirement is that a state or local governmental agency should not be considered an SNHRI (as, indeed, a national governmental agency would not be considered an NHRI). Several US States possess human rights "divisions" or "agencies" that for this reason would for this reason not be considered SNHRIs. Another implication is that the local branch offices of NHRIs would not be considered SNHRIs, because they are not independent institutional entities. SNHRIs that are appointed by the executive but operate autonomously present a tricky classification, with actual independence depending on local administrative culture, length of term, and ease of dismissal, among other factors. However, these factors are hard to measure, and in line with the emphasis on *de jure* rather than *de facto* independence, I would argue that it makes sense to consider executive-appointed

autonomous bodies to be independent as they are not normally intended to take instructions from government officials.

Non-judicial

It is undisputed that courts are not NHRIs, although the two types of institutions share some similarities, such as independence, and courts often address human rights issues. This distinction is omitted in some NHRI definitions, perhaps because it would be considered an obvious point. Other scholars make this provision explicit, however (Reif 2004, p. 7), or specify that NHRIs are "administrative" bodies, which can be taken to mean non-judicial (Cardenas 2014, p. 2). This same distinction should also apply at the sub-national level. This means that sub-national human rights courts, as exist in India, Ontario, and elsewhere, would not be considered SNHRIs. On the other hand, where sub-national institutions issue non-binding rulings on human rights complaints outside of the judicial context, then they would be considered SNHRIs. Operationally, the distinction between courts and SNHRIs will usually be quite easy for the researcher to make based on institutional title: entities called courts and tribunals will generally be judicial in nature. Similarly, judicial officers will generally be called judges, tribunal officers, or the like, while these terms will not normally be used for SNHRI workers.

Governmental Institutions

NHRIs are widely accepted to be "governmental," in the sense that they are established by government (whether through statute, constitution, or executive decree), funded through the governmental budget, and staffed wholly or partially by civil servants (UNHCHR 2010, p. 13). SNHRIs, thus, should also share this "governmental" status. This means that local NGOs or community organizations, even those that attempt to be representative in nature, would not be considered SNHRIs (just as their national counterparts would not be considered NHRIs). In the sub-national context, measuring governmentality may be more complex than at the national level, however, because one would be more likely to find government-formed or sponsored institutions that are operated solely by non-civil servants, examples being Japan's Human Rights Protectors and many US municipal human rights commissions. It may also be possible to find human rights institutions that are entirely lacking in government funding, especially at the very local level. Given these peculiarities and this definition's emphasis on parsimony, it makes sense to distinguish governmentality in the SNHRI context based solely on whether or not a human rights institution is governmentally established (whether by constitution, statute or decree). From an operational perspective, these criteria facilitate research because information on whether an institution is governmentally established or not can usually be located relatively easily by looking for the existence of an organic law, which is often posted on the institution's website.

That Possess a Sub-national Mandate

The term "sub-national" is understood here to encompass "entities that are *smaller* than the nation (and not *under* or *below* it), such as regions, provinces, municipalities,

member states of a federation, or cantons" (Homem de Siqueira 2010, p. 4, italics in original). Thus, although SNHRIs may sometimes be established by national-level legislation or decree, they in all cases focus their domestic human rights work in a jurisdictional sphere that is narrower geographically than the entire nation. SNHRIs may occasionally participate in international mechanisms or issue statements on overseas human rights abuses, just as some NHRIs do, but their domestic mandate must be restricted to a sub-national administrative space; this is evidently the most significant distinction between SNHRIs and NHRIs.

While in most cases, it will be relatively simple to distinguish whether a human rights institution should be considered "national" or "sub-national," there will occasionally be difficult cases. For example, in some cases there will be human rights institutions in entities that are not universally recognized as nations, such as the Kosovo Ombudsman or Palestine's Independent Commission for Human Rights. There may also be institutions operating on entities that are universally unrecognized as states, but arguably possess the necessary attributes of statehood; examples include the Taiwanese Control Yuan and Somaliland Human Rights Commission. Finally, there are institutions located in entities that are sometimes called "nations," even though they are clearly not nation-states under international law (such as Quebec, Scotland, or Native American nations). From an operational perspective, the easiest and most acceptable way of distinguishing nation-state status (and by extension sub-nationality) would be through an examination of UN membership status. If an entity is a member state or non-member observer state of the UN, then it should be considered a nation, and its human rights institution (if it has one) should be considered an NHRI. If, on the other hand, an entity is not a UN member or non-member observer state, and is not supranational in scope (i.e., composed of more than one nation), then its human rights institution should be considered a SNHRI.

Another difficult question of classification arises with centralized human rights institutions that cover most of a nation's territory, but not all of it. One example of this is the Equality and Human Rights Commission, which operates in England, Wales, and (for some issues) Scotland, but not in Northern Ireland (or, for that matter, in the UK's Overseas Territories and Crown Dependencies). In practice, it seems appropriate to classify such institutions as NHRIs rather than SNHRIs, as long as they have been established by the national-level government (as with the Equality and Human Rights Commission, established by the UK Parliament's Equality Act 2006) and have a mandate that covers the majority of a nation's population. This choice is justified by the prerogative of avoiding overlap between the class of institutions normally recognized as NHRIs (such as the Equality and Human Rights Commission) and the class recognized as SNHRIs.

Mission Includes

By stating that human rights implementation must be "included" in the institution's mission, this formulation implies that an SNHRI may have other missions besides human rights implementation. Thus, under this definition, those ombudsman offices that have a mission that includes human rights implementation (as well as addressing maladministration, corruption, etc.) would be considered SNHRIs. This is consistent with certain statements of the UN General Assembly, Committee on Economic and

Social Cultural Rights, Committee on the Rights of the Child and many European actors that classical ombudsman institutions at the national and sub-national level can be considered NHRIs, despite the fact that their work is not confined to solely human rights issues (Reif 2012, pp. 55, 71–72). It does, however, run counter to the GANHRI's practice of refusing to fully accredit classical ombudsman institutions or refer to them as NHRIs (Reif 2012, p. 71). A separate question is whether the human rights missions must be explicit in the institution's mandate. I would argue that an explicit human rights mission should be considered unnecessary. From a functional perspective, it seems illogical for an SNHRI definition to exclude those institutions that have evolved a practice of human rights implementation, simply because their organic legislation does not explicitly refer to human rights. The downside of this choice, however, is that it complicates classification, as it is more difficult to examine an institution's practice than simply review its organic statute or decree, and it forces a somewhat arbitrary decision of how much human rights implementation is required to turn a classical ombudsman institution into an SNHRI. In practice, however, the large majority of classical ombudsman institutions are likely to be involved in human rights protection (broadly understood), even if this is often confined to implementation of administrative procedure rights (Remac 2013, p. 66).

Implementation

The term "implementation" has been used to cover broadly the different ways in which sub-national institutions use human rights in their work, including protective tasks, such as complaint-handling, promotional tasks such as education, advocacy, and awareness-raising, along with human rights monitoring and advising. This is consistent with the Sepulveda et al. (2004, p. 67) definition of "implementation" as "all initiatives taken…to enhance respect for human rights and prevent violations," as well as the broad scope given to the phrase "human rights implementation" by some scholars writing about NHRIs (De Beco 2010, Baik 2012).[8] I consciously avoid the phrase "promotion and protection," which has occasionally been used in NHRI definitions (APF 2015, p. 15). First, the term "promotion and protection" has always been a rather confusing formulation that leaves uncertainties as to what activities actually fall under each rubric. Second, the conjunctive term "promotion and protection" is often used to encompass both awareness-raising activities and complaint-handling activities. In practice, however, SNHRIs tend to be smaller than NHRIs in budgetary and staffing terms, and therefore it is more common for SNHRIs to focus solely on one or the other types of tasks (while still being widely seen as human rights institutions).

Human Rights Norms

The proposed definition concludes by noting that implementation can involve "human rights norms." By not specifying that "all" human rights norms must be implemented,

[8] Other scholars, however, use the term "implementation" more narrowly, to refer to legislative actions or programmatic initiatives to facilitate the enjoyment of human rights in a community, which are undertaken alongside human rights "protection" (complaint handling) or "promotion" (training or awareness-raising).

this clause thus implicitly includes within the SNHRI definition those bodies that focus on a subset of the human rights corpus, such as anti-discrimination, women's rights, administrative rights, or children's rights. One difficult issue is whether bodies that implement "civil right" or "constitutional right" norms should be considered human rights institutions. In practice, it will likely be very rare for such organizations to entirely ignore human rights language in today's world, but from a functional perspective, the language used seems of little importance; the important thing is that human rights norms are being implemented, regardless of their specific legal source or the name used.

On the other hand, it does seem logical (and consistent with NHRI definitions and general usage) to require that entities explicitly implement human rights of some sort (whether from international, national, or local sources) in order to qualify as an SNHRI. Thus, while an electoral commission clearly furthers the implementation of political rights, it normally would not explicitly rely on human rights norms or rights discourse in its day to day work. It would therefore not be an SNHRI. Similarly, an anti-corruption commission that relies on administrative law, but not "human rights" as such, would not be considered an SNHRI, even though anti-corruption work can reasonably be formulated as the promotion of a right to good governance.

Typology

While SNHRIs present a useful concept for study, they also vary in significant ways. Academic research should take into account these different types where relevant. This section therefore proposes a general typology of SNHRIs with the objective of facilitating research into SNHRIs.[9] As with the proposed definition, this proposed typology will comply with the basic rules for social science classifications. Thus, this typology is constructed so as to be comprehensive and non-exclusive, meaning that all possible SNHRIs can be categorized in one (and only one) of the possible types and the typology will aim for the minimization of within-group variance and maximization of between-group variance (Kluge 2000, para. 2).

Within those parameters, this typology is also constructed so as to be relevant, parsimonious, and feasible. Relevance means that the divisions resulting from this typology should correspond to divisions that are most likely to be studied by researchers. Parsimony means that the divisions created by this typology are kept at a minimum, so as to avoid overwhelming the researcher with relatively insignificant distinctions. Feasibility means that researchers should be able to categorize SNHRIs within one of the possible types using readily accessible information.

Pursuant to these objectives, this article proposes a SNHRI typology based on three dimensions, namely administrative level, institutional form, and breadth of mandate. These dimensions were chosen for four reasons. First, they correspond to common ways of classifying NHRIs and other human rights institutions (thus facilitating comparative research). Second, they correspond to common categories of existing

[9] As with my proposed definition, a secondary objective of this typology is to promote greater clarity in the public discourse surrounding SNHRIs. Typologies can assist communication by allowing for greater linguistic precision when referring to specific subsets of the broader concept.

sub-national research, allowing for a better understanding of the applicability of existing research to particular types of SNHRIs. Third, these dimensions to a certain extent describe distinct institutional histories, functions, and mandates, thus promoting the goal of minimizing within-group variance. And fourth, these dimensions can be relatively easily measured by researchers, unlike, for example, capacity, effectiveness, or *de facto* independence, all of which are important attributes but very difficult to measure. The typology presented will be a nominal taxonomy, with three administrative level categories, two institutional form categories (which are sub-divided into a total of five sub-categories), and three breadth of mandate categories. This allows for 18 possible first-level institutional types or 45 possible types when the second-level institutional form categories are used.

Each of these proposed categories will be delineated with precision below, while providing illustrative examples. I will then note if there are any commonalities or typical characteristics of each type. This is important as a means of justifying the choice of categories: good typological categories will highlight similarities among types in a category that go beyond those distinctions stipulated in the typology itself (Kaplan 1964, p. 51). The proposed typology differs from common NHRI typologies in two important ways. First, it is a multi-variable typology. This contrasts with NHRI typologies, which generally classify NHRIs based on one variable, often labeled as institutional type (see, e.g., Kjearum 2003, pp. 8–9; Pohjolainen 2006, p. 16). Second, it is logically exclusive. Typical NHRI typologies denote a selection of established institutional types (such as "human rights ombudsman" or "human rights commission"), while neglecting to categorize logically conceivable institutions that fall outside these categories.

Administrative Level

SNHRIs have been established at many different sub-national levels, including villages, towns, counties, states, oblasts, provinces, cantons, and regions. As will be discussed below, SNHRIs tend to have somewhat different histories, functions, and characteristics, depending on the administrative level at which they operate, so administrative level presents an obvious dimension to distinguish SNHRI types. It is difficult to neatly delineate categories, however, because the names, powers, sizes, and governmental structures of sub-national administrative levels vary quite widely by country (and in some cases, even within a country). For the purposes of SNHRI classification, this typology proposes three relevant administrative levels, labeled as provincial, local, and autonomous regional levels. Each of these are defined and described below.

Provincial SNHRI

The first category encompasses SNHRIs established at the highest standard sub-national governmental level, labeled here as "provincial SNHRIs." Of course, different countries have very different terminology for administrative divisions, and US States, French *départements*, German *Länder*, etc. are all considered "provinces" for the purpose of this typology.[10] Examples of provincial SNHRIs include the Karnataka

[10] Conversely, the *Provincias* in Spain or *Provinces* in Belgium would not be considered "provinces" for the purpose of this typology, because in each case there exist a higher sub-national administrative level.

State Human Rights Commission (India), the Victoria Ombudsman (Australia), and the *Sindic de Greuges de Catalunya* (Spain).

While provincial SNHRIs exist in a variety of locations, they are particularly common in two types of countries. First, provincial SNHRIs are often found in countries where the highest sub-national administrative subdivisions possess significant policy-making powers and administrative autonomy, as is the case with federal or devolved systems of government. This is unsurprising, as division of powers reasons would suggest that such communities would be likely to favor autonomy in human rights implementation. Thus, for example, all or most provinces (or their equivalent) in Mexico, Russia, Argentina, the USA, Australia, and Spain possess SNHRIs.

Provincial SNHRIs also tend to show certain common characteristics. In most nations with provincial SNHRIs, the SNHRIs are of the same institutional form at the provincial level as the NHRI at the national level (i.e., commissions or ombudsmen) and interact with the NHRI in a variety of ways (Wolman 2013). In some cases (most notably Russia, India, and Mexico), the NHRI establishing legislation also authorizes the establishment of SNHRIs at the provincial level. SNHRIs at the provincial level tend to be larger than local SNHRIs, and, relative to local SNHRIs, it is more common for provincial SNHRIs to actively engage in international human rights mechanisms (Wolman 2014).

Local SNHRIs

The label "local SNHRIs" refers to SNHRIs established at a standard sub-provincial administrative subdivision (i.e., at the second or lower level of sub-national administration). This can include SNHRIs in counties, cities, towns, villages, and other similar administrative designations. Examples include the Boston Commission for Persons with Disabilities (USA), the *Personería Municipal de Santiago de Cali* (Colombia), and the Barcelona Human Rights Observatory (Spain). Local SNHRIs are quite common in cities big and small in the USA, Colombia, Argentina, and Italy. Elsewhere, local SNHRIs have tended to be established in larger cities (such as Montreal or Seoul), and in certain municipalities that want to promote their connection to human rights in a visible way, such as Gwangju (Korea) or Graz (Austria). Local SNHRIs can also be established at the village or neighborhood level; this is quite common in Japan and the Philippines.

In the USA, municipal race relations commissions (many of which eventually evolved into human rights commissions) existed prior to World War II (Saunders and Bang 2007), but in other countries, local SNHRIs tend to be more recently established. The first local classical ombudsman was established in 1967 in Jerusalem, and it is only in the post-Cold War era that local ombudsmen with an explicit human rights mandate have become common (Danet 1989, p. 16). Local SNHRIs are frequently of a different institutional type than the home country's NHRI; for example, Gwangju and Yogyakarta have ombudsmen, while Korea and Indonesia have human rights commissions. While there are certain exceptions (such as Colombia, where each municipality is required to have a *Personero Local* (Program Presidencial de Derechos Humanos y DIH 2009, p. 20)), in general, local SNHRIs are unlikely to be required by legislation at higher administrative levels and are more likely to emerge from local initiatives.

Autonomous Region SNHRIs

Finally, there are a number of SNHRIs established in sub-national regions that can be qualified as non-standard because they possess a significantly higher degree of autonomy than similarly situated administrative units in a particular country. These are here termed "autonomous region SNHRIs." One sees a relatively high frequency of SNHRIs in autonomous regions. Examples include the Hong Kong Equal Opportunities Commission (China), the Northern Ireland Human Rights Commission (UK), and the land Discrimination Ombudsman (Finland). This frequency is unsurprising; in these places, the NHRI (if there is one) might be distant, mistrusted, or lacking in authority to influence regional actors.

SNHRIs in autonomous regions tend to be similar to NHRIs in their function and mandate, as one would expect given the greater regulatory powers of autonomous entities. Autonomous region SNHRIs are not generally relegated to a level hierarchically below the NHRI, as is sometimes the case with other NHRIs at the provincial level (Wolman 2013). They also tend to be relatively active internationally, and, in a few instances, have applied for accreditation by the GANHRI (Wolman 2015b, pp. 124–125).

Institutional Form

Institutional form is the variable that is most commonly used to typologize NHRIs, although the number of institutional forms that are specified varies widely. Some scholars note two types: national commissions and national ombudsmen (Steinerte and Murray 2009, pp. 54–56; Cardenas 2014, p. 9). Others have broken down NHRIs into three categories (Centre for Human Rights 1995, pp. 7–8), four categories (Pohjolainen 2006, p. 16), or even five or six (International Council on Human Rights Policy 2000, p. 4; Kjearum 2003, pp. 8–9), by including other institutional forms such as advisory committees on human rights, human rights ombudsmen, and specialized institutions. These typologies are generally non-comprehensive, however, because it is logically possible for an NHRI to exist that does not fall into any of these types as normally defined.

For the sake of feasibility and comprehensiveness, this typology opts for a somewhat different strategy, by dividing SNHRIs into monocratic institutions and multi-person institutions. For many research purposes, this distinction will be sufficient. One might, for example, be interested in comparing whether multi-person institutions are more effective than monocratic institutions or receive greater support from the local population.[11] In some instances, however, more precision will be helpful when dealing with institutional forms. For example, one might want to explore whether certain research findings related to national classical ombudsmen are also true for sub-national classical ombudsmen. Therefore, these two higher level categories are divided into five subcategories, namely classical ombudsmen, human rights ombudsmen, and idiosyncratic institutions (which are all monocratic), and human rights commissions and human rights councils (which are multi-person). These are detailed below.

[11] At the national level, this monocratic/multi-person typology is utilized by Conrad et al. (2012, p. 10) in their NHRI dataset (although labeled as ombudsman/human rights commissions).

Monocratic Institutions

For the purposes of this typology, monocratic SNHRIs (defined as single-person SNHRIs or SNHRI offices managed by a single person) are categorized as one institutional form. There is a high degree of within-group similarity among monocratic SNHRIs. While there is some variation in their functions, powers, mandates, and appointment procedures, the vast majority of these institutions would self-identify as ombudsman institutions, or some variants thereof (although they go by many different names, such as *Defensores del Pueblo*, *Provedores de Justiça*, *Difensori Civici*, and *Médiateurs*). Conversely, virtually all self-identified ombudsman institutions would be contained within this category, as ombudsman institutions are almost always monocratic (Cardenas 2014, p. 9) and are occasionally defined as such (Colín and Colín 2007, p. 190). The individual ombudsman may head an institutional entity or be given resources to appoint a staff, but this is not always the case, especially at the local level.

As (in large part) ombudsman variants, most monocratic SNHRIs share a common heritage. Ombudsman institutions originated in Sweden in 1809 and spread throughout Scandinavia over the next 150 years before spreading to other regions of the world in the 1960s (Reif 2004, p. 1). At the sub-national level, municipal ombudsman first emerged in Europe in the 1970s,[12] and while sub-national ombudsmen may not have engaged with human rights to a significant extent at that time, over the last two decades many have begun to explicitly implement human rights norms, not only in Europe (Pihlajassari and Skard 2011, pp. 9–10), but also in Latin America (Van Leeuwen and Merino 2008, pp. 11, 15) and, increasingly, Asia.[13] At their most basic level, ombudsmen are independent governmentally appointed actors tasked with supervising the executive's administrative activities, through receiving and investigating complaints from the public and making non-binding recommendations on the resolution of those complaints (Reif 2004, pp. 1–2).

Beyond that very basic level, ombudsman institutions have evolved considerably from their Swedish roots, such that the broad institutional form now encompasses many different variants. While traditionally ombudsmen were selected by the legislature, contemporary ombudsmen are sometimes appointed by the executive or (rarely) directly elected (Reif 2004, pp. 30–31). In addition to sub-national and national ombudsmen, there are now ombudsmen at the supra-national level (UN and EU), as well as in private sector organizations and individual departments or ministries of larger organizations (Reif 2004, pp. 26–28). There are ombudsmen with general competencies, as well as those that focus on specific subject areas. Most importantly for present purposes, there are ombudsmen who are mandated to protect human rights and those that are not. This is highlighted below as a distinguishing factor for second-level categories.

Classical Ombudsman Institutions

Classical ombudsman institutions can be defined as monocratic SNHRIs that are ombudsman institutions, and whose mandate does not explicitly mention human rights.

[12] Europe's first local ombudsman institution was established in Zürich in 1971 (Dünser 2004).

[13] For example, Korea now has 13 local human rights ombudsmen (Korea Human Rights Foundation 2014, pp. 208–211).

The existence or non-existence of an explicit human rights mandate mirrors definitions sometimes given to classic ombudsman institutions at the national level, which is important in order to promote comparative research that deals with both national and sub-national entities (Saari 2010, p. 33). These criteria have also been previously used to distinguish between classical and human rights ombudsmen at the sub-national level (Stuhmcke 2011, p. 43).

Consistent with their institutional heritage, classical ombudsmen are focused on resolving complaints of administrative wrongs, most notably governmental acts of administrative unfairness, noncompliance with the law, and maladministration (Tai 2010, p. 2). Of course, in doing so, classical ombudsmen may simultaneously be addressing human rights violations (Reif 2004, p. 2). Despite this fact, some classical ombudsmen avoid using human rights in their work altogether, especially in the Asia-Pacific region and areas with common law legal systems (Burdekin 2007, p. 86). Many other classical ombudsmen do implement human rights norms in their work, despite the lack of an explicit mandate, especially in continental Europe (Dünser 2004). Some examples of classical ombudsman SNHRIs include the Hong Kong Ombdusman, the Saskatchewan Ombudsman, and the *Québec Protecteur du Citoyen* (Reif 2004, p. 393).

Human Right Ombudsman Institutions

Human rights ombudsman institutions have been defined as ombudsman institutions that have an explicit human rights implementation mandate (Byrnes and Renshaw 2014, p. 472). In addition to the resolution of human rights violation complaints, human rights ombudsmen may also engage in human rights documentation, policy research, government advising, and educational activities. This human rights mandate usually is present in addition to (and not instead of) the administrative fairness and legality mandate common in classical ombudsmen (Pegram 2010, p. 736). In terms of composition, appointment procedures, and basic functions, there is little to separate human rights ombudsmen and classical ombudsmen (Pegram 2010, p. 736).

At the national level, human rights ombudsmen date back to the 1970s democratization movements of Southern Europe and the establishment of the Portuguese *Provedor de Justiça* and the Spanish *Defensor del Pueblo* (Reif 2004, p. 8). Since that time, human rights ombudsmen have been established with particular frequency throughout Latin America and Central and Eastern Europe, both at the national and sub-national levels (Reif 2004, p. 9). To a lesser extent, there has been some movement of sub-national institutions from the classical ombudsman institution category to the human rights ombudsman category due to legislative revision of their mandates (Reif 2011, pp. 271–272). With a few exceptions, human rights ombudsmen are found today in civil law jurisdictions (Reif 2011, p. 272). Examples include the Ombudsman for Children of the Republic of Srpska (Bosnia and Herzegovina), the *Defensor del Pueblo de la Ciudad de Buenos Aires* (Argentina), and the Puerto Rican *Oficina del Procurador del Ciudadano* (USA).

Idiosyncratic Types

While it is true that the vast majority of self-identified ombudsman institutions are monocratic, it is not necessarily the case that all monocratic SNHRIs are ombudsmen.

Thus, in order to maintain its logical comprehensiveness, this typology must allow for the possibility of non-ombudsman monocratic SNHRIs through the creation of a catch-all category, labeled here as idiosyncratic types. In practice, however, non-ombudsman monocratic SNHRIs are rare or non-existent in most parts of the world. Two exceptions are Japan and the Philippines, where Local Human Rights Protectors (in Japan) and Barangay Human Rights Action Officers (in the Philippines) are widespread. In each country, there are in fact several thousand such institutions at the neighborhood level, with office-holders explicitly mandated to engage in human rights promotion and education as well as handling complaints from the public (Koike 2014, p. 80; Commission on Human Rights of the Philippines 2009, p. 60).

Multi-person SNHRIs

Multi-person SNHRIs are the logical counterpart to monocratic institutions. Given the wide diversity in multi-person SNHRIs, they can perhaps most easily be characterized in reference to their contrasts with monocratic ombudsmen. For one thing, they do not all handle complaints from the public (although some do). In addition, they are more likely to focus on other civil society actors as well as governmental human rights abuse (Centre for Human Rights 1995, p. 9; Tai 2010, p. 7) and they are more likely to address economic and social rights issues than are ombudsmen. Multi-person SNHRIs are also by their nature more able to be pluralistic in their make-up, including in many cases through the appointment of non-governmental members. While this broad category will suffice for most research purposes, multi-person SNHRIs can also be divided into two sub-types, based on function, here labeled as human rights commissions and human rights councils.

Human Rights Commissions

Multi-person SNHRIs that are primarily concerned with human rights protection (complaint handling) or promotion (including awareness-raising and the provision of education or training) can be classified as "human rights commissions." Examples would include the Eugene (Oregon) Human Rights Commission (USA), the Kerala State Commission for Protection of Child Rights (India), and the Cayman Islands Human Rights Commission (UK). Human rights commissions are most common at the national level in countries with a common law tradition, and the same is true at the sub-national level. At the state or provincial level, human rights commissions have existed for at least 20 years in the USA, Canada, India, and Australia. Outside of the USA, commission forms tend to be less common at the local level.

Human Rights Councils

On the other hand, multi-person SNHRIs that are primarily concerned with human rights monitoring or advising the government on human rights issues (which are often two sides of the same coin) can be classified as "human rights councils." Examples include the Advisory Council on Human Rights of the City of Graz (Austria), the *Observatorio de Equidad de Género de Buenos Aires* (Argentina), and the *Conselho Permanente dos Direitos Humanos do Estado do Paraná* (Brazil). Human rights

councils are usually relatively new creations, and some have emerged as a result of transnational initiatives such as the Human Rights Cities movement (Oomen and Baumgärtel 2014). In Argentina and Brazil, issue-specific sub-national human rights monitors have also been formed to monitor the treatment of prisoners in detention facilities. These institutions were established in order to comply with the Optional Protocol for the Convention Against Torture, which requires that state parties designate or establish one or several independent national preventive mechanisms.

Breadth of Mandate

The third dimension that is measured in this SNHRI typology is the breadth of the institution's human rights mandate. This is broken down into three categories, namely broad-based SNHRIs, anti-discrimination SNHRIs, and single-issue SNHRIs. Breadth of mandate is an important dimension for functional reasons, as it relates to the types of issues an SNHRI addresses, the sources of law that it uses, and in some cases even the peers that an SNHRI networks with, as there exist separate trans-governmental networks for children's ombudsmen or anti-discrimination commissions.

Broad-Based SNHRIs

Broad-based SNHRIs can be defined as SNHRIs that implement a broad range of different types of human rights. In most cases, their mandate will include both civil and political rights and economic and social rights. Sometimes the scope of the mandate is explicitly calibrated to international instruments such as the Universal Declaration of Human Rights and/or human rights treaties ratified at the national level (Wolman 2015a, pp. 229–231). In many other circumstances, however, the sources of human rights are not specified, but rather the commission is left to self-define the exact types of rights included in its mandate (Wolman 2015a, pp. 233–234). Broad-based SNHRIs tend to be relatively recently established and are particularly common in Europe and Latin America. In some cases, they exist alongside more specialized SNHRIs (often dealing with women's or children's rights) or may have sub-offices that specialize in particular types of rights. Examples of broad-based SNHRIs include the Seattle Human Rights Commission (USA), the Independent Commission for Human Rights in the Kurdistan Region (Iraq), and the *Conseil Lyonnais pour le Respect des Droits* (France).

Equality SNHRIs

The second category proposed is equality SNHRIs, defined here as SNHRIs that implement general equality or non-discrimination rights, but not other types of human rights. Examples include the Anti-Discrimination Commission of Queensland (Australia), the Humboldt County (CA) Human Rights Commission (USA), and the Espoo Equality Committee (Finland). In most cases, equality SNHRIs are commission-form institutions, although there are some ombudsman examples. Equality SNHRIs are most prevalent in common law countries, where they tend to have a relatively long history (Dam 2007, p. 2). However, there is a trend in common law countries towards the broadening of mandates,

and some former equality commissions in the USA and Canada now deal with the full range of human rights norms (Wolman 2015a, p. 230).

Issue-Specific SNHRIs

There are other SNHRIs that have mandates that are confined to one particular substantive issue or protected group, labeled here as issue-specific SNHRIs. Examples include the Alexandria (VA) Commission on Persons with Disabilities (USA), the Shizuoka City Gender Equality Advisory Committee (Japan), and the Madrid *Defensor del Menor* (Spain). The most common issue that SNHRIs focus on is children's rights. Sub-national commissions and ombudsmen specializing in children's rights have become increasing common all around the world in recent years, following their earlier establishment at the national level (Ruggiera 2013, p. 71). Many of these Commissions are guided by international norms, especially the CRC (Wolman 2015a, pp. 230–231). As is the case on the national level, there are many cases of single issue SNHRIs existing alongside broad-based or equality SNHRIs.

Conclusion

Whenever a new concept emerges, defining and typologizing the concept are important steps towards understanding and researching it. This article has contributed to that objective by defining and classifying SNHRIs. It is worth noting that the choices made in conceptualizing and typologizing SNHRIs (or indeed any concept) have real consequences (Coppedge 2012, p. 33). They influence research agendas, datasets, and comparisons, and impact the generalizability of case studies. To the extent that these choices are accepted in the broader community, they also influence how institutions are thought about and think about themselves (Eppler and Mengis 2011, p. 7). For example, once human rights actors started to think of national ombudsmen and human rights commissions as "NHRIs," one saw a gradual isomorphism (or trend towards similarity), as pressure mounted to adapt to the NHRI ideal espoused in the Paris Principles (Cardenas 2014, p. 352). Similar processes could occur if institutions view themselves as SNHRIs rather than municipal human rights commissions or other traditional types.

Developing a new concept also inevitably has an effect on our understanding of neighboring concepts (Gerring 2011, p. 128). In this case, a definition and typology of SNHRIs could have an effect on our understanding of NHRIs as well. To give one example, the Scottish Human Rights Commission is often referred to as an NHRI (and often refers to itself as such). It has also been fully accredited as a national institution by the GANHRI. If, however, the SNHRI definition proposed here is accepted, then the Scottish Human Rights Commission would clearly be considered an SNHRI. To the extent that SNHRIs are viewed as a non-overlapping counterpart set to NHRIs, this could lead other actors to rethink whether the Scottish Human Rights Commission should really be treated as an NHRI.

The fact that defining and typologizing SNHRIs leads to real-world effects does not, of course, mean that they are unwarranted tasks. On the contrary, they are necessary for the promotion of high quality research. The importance of definition

and classification means that they should be undertaken explicitly and scientifically, with choices justified and reasoning made clear. That is what I have attempted to accomplish in this article.

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Chapter 3

‘The Relationship between National and Sub-National Human Rights Institutions in Federal States’ (2013) 17(4) International Journal of Human Rights, 445.

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The relationship between national and sub-national human rights institutions in federal states

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The rapid spread of national human rights institutions represents one of the most important developments in the human rights movement in recent years. Many federal states have joined this global trend by creating national human rights institutions, state human rights institutions, or both. This article presents an empirical comparison of how such states have addressed the federal division of power and responsibility concerns that have arisen in such an enterprise. So far, no single strategy has emerged to address federalism concerns. Some countries have established unitary but deconcentrated national human rights institutions, while others have multiple sub-national human rights institutions but no internationally recognised national human rights institution. The most common response has been the establishment of both a national human rights institution and a network of sub-national human rights institutions. Strict forms of dual federalism are rarely embraced however, and the relationship between national and sub-national institutions, where both exist, has been characterised by both episodic cooperation and significant tensions.

Keywords: national human rights institutions; ombudsmen; national human rights commissions; federalism; decentralisation

Introduction

During the past two decades, national human rights institutions (NHRIs) have emerged in every region of the world, and among countries with widely varying political systems. According to the United Nations Office of the High Commission for Human Rights (UNHCHR), NHRIs are now crucial partners that 'have a central place in the national human rights protection system'.[1] Although NHRIs differ from one another in many ways, they are all fundamentally focused on the protection and promotion of human rights[2]; promotional tasks generally focus on human rights education and training, while common protective tasks include investigating human rights complaints, consulting with governmental and non-governmental actors, and cooperating with international actors.[3] While located firmly within the state apparatus, NHRIs are integral in implementing international human rights norms.[4]

Federal countries have not been immune to this widespread trend. As of May 2012, 19 out of 27 federal countries have established either NHRIs or their sub-national counterpart, which this article shall term a Sub-National Human Rights Institution (SHRI), or both. To date, however, there has been little comprehensive analysis of how these countries

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have approached the complex questions of institutional competency inherent to systems that divide powers and responsibilities between different levels of government. To the extent that these issues have been highlighted by commentators, the dominant theme has been to caution federal countries to ensure full coverage so that individuals are not denied a remedy. Thus Brian Burdekin has emphasised that in countries with both an NHRI and SHRIs there should be 'clarity and coordination to ensure that individuals are not deprived of a remedy by jurisdictional conflicts'.[5] Likewise, a recent report on NHRIs by the UN Secretary General stated that '[i]t is recommended that subnational human rights institutions work together with the federal national human rights institution to ensure that all human rights are equally protected across the country'.[6] In terms of case studies, the Columbia Law School Human Rights Institute has discussed the implications of federalism to the establishment of NHRIs and SHRIs, but its analysis was confined to Canada and Australia,[7] while there have been a number of analyses of the federal relationships of NHRIs and SHRIs in Spain and Mexico (including one which took a comparative approach).[8] There have not been any larger scale empirical studies, however.

This article will attempt to fill this gap by examining the strategies used by the different federal countries to establish a system of NHRIs and/or SHRIs. It will illustrate the fact that there is no standard institutional manner in which federal countries have chosen to divvy up responsibilities for human rights issues at the federal and sub-national levels. On the contrary, there are a wide variety of strategies, ranging from unitary federal NHRIs to multiple SHRIs (but no NHRI) to the establishment of both NHRIs and SHRIs. Interestingly, the commonality among these systems is a rejection of mutually exclusive dual federalism, that is to say a system where a particular type of issue or claim can be dealt with by the SHRI or the NHRI, but not both. Rather, among the states that have both an NHRI and SHRIs, different forms of shared authority appear to be the norm.

Countries and institutions examined

There has long been conceptual debate as to which states should be classified as 'federal'. Perhaps the most well-known early definition is Riker's statement that a constitution is federal if '(1) two levels of government rule the same land and people, (2) each level has at least one area of action in which it is autonomous, and (3) there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere'.[9] Hueglin and Fenna provide more simply that a federal system is one where 'sovereignty is shared and powers divided between two or more levels of government, each of which enjoys a direct relationship with the people'.[10] This article embraces the latter definition, or, to put it more precisely, will accept as federal the list of nations that are considered federal by Hueglin and Fenna, with a few updates to reflect developments since 2005.[11] The updates include the removal of Serbia and Montenegro from the list of federal countries due to Montenegro's independence, and the inclusion of Iraq, Sudan and Nepal due to recent constitutional developments in those countries.[12] Thus, the list of federal countries examined here are: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Canada, the Comoros, Ethiopia, Germany, India, Iraq, Malaysia, Mexico, Micronesia, Nepal, Nigeria, Pakistan, Russia, St Kitts and Nevis, South Africa, Spain, Sudan, Switzerland, the United Arab Emirates, the United States and Venezuela. It is worth noting that the core 24 countries taken from Hueglin and Fenna are all likewise classified as 'federal' by Ann Lynn Griffiths and Karl Nerenberg, in their *Handbook of Federal Countries*.[13] Of course, federalism is in practice a relative concept, and some of these states – Argentina, Austria, Nigeria and Malaysia, for example – are clearly more centralised than others.[14]

This article's analysis of the relationship between NHRIs and SHRIs also requires a decision as to which institutions qualify as NHRIs and SHRIs. Unfortunately there is no single generally accepted definition of NHRI. Human rights commissions are always recognised as NHRIs, while human rights ombudsmen (sometimes called *defensores del pueblo* in Spanish-speaking countries) generally are; however there is less agreement as to whether specialised institutions (for example, those that focus on discrimination rather than all human rights) or classical ombudsman institutions that lack an express mandate to protect or promote human rights should also be considered NHRIs.[15] Rather than adopting one of the many NHRI definitions and independently evaluating which institutions in federal countries comply with its terms, this article will instead consider as NHRIs the set of institutions that are members of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), which is the most prominent body that accredits NHRIs at the global level. The ICC itself has never provided a definition of what an NHRI is; instead it accredits institutions based on the degree to which such institutions comply with the 1993 Paris Principles Relating to the Status of National Institutions (Paris Principles), a non-binding guidance document adopted by the UN General Assembly that sets forth standards for the competencies and responsibilities of NHRIs, their composition and their methods of operation.[16] Specifically, the ICC gives institutes that are compliant an 'A' level (voting) membership; those that are not fully in compliance receive a 'B' level (non-voting) membership, and non-compliant institutions receive a 'C', and are not considered members.[17] As of May 2012, the ICC includes 91 member institutions (including both voting and non-voting members).[18] The vast majority of these are human rights commissions (either general or specific to discrimination) or human rights ombudsmen, although the ICC has a few members that could better be classified as human rights institutes or classical ombudsmen.[19]

While there is at least a widely accepted way of classifying a body as an NHRI, no such ready classification system exists for SHRIs, in part because there is no global international association of SHRIs that would be required to define the concept in order to establish its membership criteria. In this article, independent human rights commission or human rights ombudsman-type institutions that are active at the highest sub-national level (i.e., state, province, Länder, etc.) will be classified as SHRIs. This operational definition will thus exclude local (city or county) human rights institutions although clearly they are 'sub-national' in the literal sense. Classic ombudsman institutions at the sub-national level are quite common, but will generally not be reviewed in this article except where – as is the case in Austria – the country possesses a classic ombudsman institution at the national level that also has ICC membership.

Federal countries without an ICC-member NHRI or SHRI

Among the 27 federal nations that are considered in this article, there are eight countries that do not currently possess either an ICC-member NHRI or any SHRIs at the sub-federal level. Three of these are small island nations: the Comoros; St Kitts and Nevis, and Micronesia.[20] The other five are countries that are widely considered to have relatively poor human rights records, namely Ethiopia, Iraq, Pakistan, Sudan and the United Arab Emirates.[21] Legislators in the United Arab Emirates have been working with UNHCHR on establishing an NHRI,[22] however; while the Pakistani National Assembly has passed a National Human Rights Commission Act, which as of the drafting of this article has not yet received the necessary presidential assent.[23] Meanwhile Sudan and Iraq are in the very early stages of establishing functioning NHRIs, but neither country has submitted their commission for

accreditation with the ICC.[24] Pursuant to the Doha Document for Peace in Darfur, the Sudanese Commission must in turn establish 'decentralised, independent, autonomous and resourced Human Rights Sub-Committees for Darfur'.[25]

Finally, it is worth noting that Ethiopia has in fact possessed a functioning human rights commission since 2000. Although not accredited at the global level, the Ethiopian Human Rights Commission is a member of the Network of African Human Rights Institutions.[26] It is still in the process of establishing a regional presence, and has currently opened up six branch offices in Ethiopia's nine regions.[27] Each regional office is headed up by a Regional Commissioner who reports to the Chief Commissioner in Addis Adaba.[28] Ethiopia also has an ombudsman office, which has been characterised as a 'human rights ombudsman', but this office has not been accredited by the ICC, either.[29]

Federal countries with SHRIs but no ICC-member NHRI

There are three federal countries that do not possess ICC-member NHRIs, but do have SHRIs in at least some states: Brazil, the United States and Switzerland. In Brazil, there are human rights ombudsman institutions in all 26 states and the Federal District of Brasilia.[30] These institutions have a mandate to provide legal assistance to individuals interacting with state administrative authorities (or the authorities of the federal district).[31] The state of São Paulo has a general human rights commission in addition to an ombudsman. The commission, called the Conselho Estadual de Defesa dos Direitos da Pessoa Humana, can hear complaints of violations of rights contained in either the federal or São Paulo state constitutions.[32] Many states also have human rights commissions with more narrow competencies, most commonly focusing on the rights of the child, but also including a State Council on the Rights of Black People (Rio de Janeiro), State Council on the Rights of the Elderly (Ceará), and a State Council on the Defense of Diffuse Rights (Minas Gerais). At the federal level, Brazil has an ombudsman institution that is 'responsible for receiving, examining and forwarding complaints, praise and suggestions referring to procedures and actions of Federal Executive agents, units and entities',[33] along with an Ombudsman-General of Citizenship (sometimes called a human rights ombudsman) that 'receives opinions, claims, denouncements and suggestions in respect to facts and actions that violate the rights of children, teenagers, the disabled, the elderly, and other more vulnerable social groups'.[34] Neither of these is accredited by the ICC.

In the United States, many (but not all) states have their own state human rights or human relations commissions.[35] The mandates of these commissions generally focus on anti-discrimination issues, often relating particularly to employment, housing, credit and financial practices, public accommodation, education and community relations.[36] In all cases, these state commissions are products of state law and mandated to enforce state anti-discrimination ordinances (which may at times substantively overlap with federal law). At the federal level, the United States has no NHRI, but since 1957 the US Commission on Civil Rights has acted as an independent body whose mission is 'to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws'.[37] The United States also has an Equal Employment Opportunity Commission (EEOC), which (among other tasks) investigates charges of employment discrimination in violation of federal law.[38] In some cases a complaint to the EEOC may also be covered by a state law implemented by a SHRI, and vice versa. Where the complaint is filed first with the EEOC, then the EEOC will dual file with the SHRI to preserve rights there and generally retain the case for handling, while if the complaint is filed first with the SHRI, then the SHRI will handle the case, but dual file with the EEOC.[39]

In Switzerland, human rights ombudsman institutions have been established by the cantons of Baselland, Basel-Stadt, Vaud, Zug and Zurich.[40] At the federal level, the Federal Commission against Racism and the Federal Commission on Women's Issues were each given 'C' accreditation (non-member status) by the ICC.[41] The Federal Commission on Women's Issues provides recommendations to lawmakers and writes reports, but does not receive individual complaints.[42] The Federal Commission against Racism, on the other hand, has a complaint handling function, receiving one or two complaints from the public per day.[43] These complaints can allege racial discrimination perpetuated by private individuals or public officials, whether at the cantonal or federal level. However, while the Federal Commission against Racism mediates some complaints itself, it often directs complainants to a more appropriate actor, whether inside of outside of government, that can address the complainants concerns.[44] While both commissions focus most of their attention on federal governmental policies and federal laws, the Federal Commission against Racism also specifies that it 'stands at the disposal of cantonal and municipal authorities for support and advice'[45] and has held meetings on an annual basis with cantonal representatives.[46]

Federal countries with NHRIs

There are 16 federal countries with NHRIS that are member institutions of the ICC. These are: Argentina (Defensoría del Pueblo de la Nación Argentina); Austria (Austrian Ombudsman Board); Australia (Human Rights and Equal Opportunity Commission); Belgium (Centre for Equal Opportunities and Opposition to Racism); Bosnia and Herzegovina (The Human Rights Ombudsman of Bosnia and Herzegovina); Canada (Canadian Human Rights Commission); Germany (The German Institute for Human Rights); India (National Human Rights Commission); Malaysia (Human Rights Commission of Malaysia (SUHAKAM)); Mexico (National Human Rights Commission); Nepal (National Human Rights Commission of Nepal); Nigeria (Nigerian Human Rights Commission); Russia (Commissioner on Human Rights in the Russian Federation); South Africa (South African Human Rights Commission); Spain (Office of the Ombudsman), and Venezuela (Ombudsman Institution of the Bolivarian Republic of Venezuela).[47]

The NHRIs from federal countries show significant diversity, including ombudsman, commission, human rights institute and human rights ombudsman (*defensor del pueblo*) models. Some of their mandates encompass all types of human rights, while others have a more narrow focus. This wide range of NHRI varieties in federal states is perhaps unsurprising, as the countries with federal governmental systems are themselves quite diverse, representing every continent and many different legal traditions. Fourteen of the 16 NHRIs in federal countries have received 'A' accreditation from the ICC, indicating their compliance with the Paris Principles. However, the Austrian Ombudsman Board and Belgian Centre for Equal Opportunities and Opposition to Racism have received 'B' accreditation, signifying incomplete adherence to the Paris Principles.[48]

Countries with an NHRI but no SHRI

Seven of these 16 countries – Belgium, Bosnia and Herzegovina,[49] Malaysia, Nepal, Nigeria, South Africa and Venezuela – lack separate SHRIs. Rather, the NHRIs in all of these countries have chosen to engage in deconcentration, or the geographic dispersion of agents of central government control. In South Africa, the South African Human Rights Commission has precisely aligned its branch offices with the existing federal

structure, so each South African province possesses one office in the provincial capital.[50] Similarly, the National Human Rights Commission of Nepal has established regional branches in each of that nation's five development regions, along with three sub-regional offices.[51] Venezuela's Defensoría del Pueblo has opened 33 branch offices, including at least one office in all 23 states and the capital district.[52] On the other hand, the Human Rights Commission of Malaysia (SUHAKAM) has branches in Sabah and Sarawak but none in Malaysia's 11 peninsular states, while the National Human Rights Commission of Nigeria has offices in six of that country's 36 states and the Abuja Federal Territory, although it is planning to open offices in all remaining state capitals.[53] In Bosnia and Herzegovina, the Human Rights Ombudsmen's office is headquartered in Banja Luka, in Republika Srpska, and has two regional offices and a field office in the Federation of Bosnia and Herzegovina, and one regional office in the Brčko District.[54]

While deconcentration does not address federalism division of power concerns it can still accomplish other important goals, such as increasing access to human rights services outside of the capital and providing better monitoring of conditions in local regions. For these reasons, deconcentration is advocated in the Paris Principles, which state that an NHRI shall 'set up local or regional sections to assist it in discharging its functions'.[55] This advice is also echoed in Amnesty International's recommendations for NHRIs, which state that 'local and regional offices are vitally important to the effective functioning of NHRIs in a large country, or a country with isolated and inaccessible centres of population, or where transportation is difficult'.[56] Interestingly, the Commonwealth Best Practice Guidelines for NHRIs do not explicitly recommend the establishment of local offices (although they note the importance of geographic accessibility), but they do caution that 'NHRIs should carefully monitor and supervise local offices or "out-post" representatives to ensure that high-quality services are provided'.[57]

Deconcentration is sometimes at the discretion of the NHRI itself.[58] However, it can also be mandated by the NHRI's organic legislation, as is the case in Nigeria[59] and Bosnia and Herzegovina.[60] While deconcentration may not be a politically feasible (or desirable) alternative to decentralisation in strongly federal systems, it can have certain advantages over the establishment of separate SHRIs. For example, NHRIs tend to have a greater prominence and visibility than SHRIs, economies of scale could favour the establishment of one rather than multiple bodies and it may be easier for a single body to establish a uniform jurisprudence.[61] In practice, SHRIs may also be more susceptible to outside pressure or simply lack the institutional expertise and competency of longer-established NHRIs. There is some general theoretical and empirical evidence that decentralised political systems are more corruptible than centralised systems (although this conclusion is not clear-cut), but to the best of this author's knowledge there have been no such studies that have focused specifically on SHRIs and NHRIs.[62]

One important question in those countries that have NHRIs but no SHRIs is whether the NHRI is mandated to hear complaints relating to human rights violations perpetrated at the state level and provide recommendations to state governments. When Amnesty International issued recommendations for NHRIs in 2001, it noted that some NHRIs in federal countries have difficulties in addressing violations by state governments.[63] In fact, the NHRIs do have the explicit or implicit authorisation to hear complaints relating to human rights violations perpetrated by government at the state level in Bosnia and Herzegovina,[64] Malaysia,[65] Nepal,[66] Nigeria,[67] South Africa[68] and Venezuela.[69]

In Belgium, the scope of NHRI jurisdiction is in a state of flux. Currently, the Centre for Equal Opportunities and Opposition to Racism is only legally mandated to investigate complaints based on federal anti-discrimination legislation, which is quite expansive,

prohibiting a wide range of discrimination with the notable exceptions of gender and language-based discrimination.[70] However, it can also investigate complaints based on anti-discrimination decrees from the Walloon Region and the French-speaking community pursuant to protocols between those two entities and the federal centre.[71] Advanced discussions are currently underway to change the centre into an inter-federal institution, however, which would allow the centre to address complaints based on either federal or sub-federal legislation.[72] These reforms are in part due to pressure to improve the chances of the centre receiving an 'A' accreditation from the ICC rather than the 'B' that it most recently received.[73]

Countries with both an NHRI and SHRIs

The nine other federal states reviewed in this article have established both an NHRI and multiple SHRIs. In four of those countries (Argentina,[74] Australia,[75] Canada[76] and Mexico[77]), SHRIs have been established in all states in the federal system. In the other five countries, SHRIs have been established in some but not all of the sub-national entities. There are two state ombudsman institutions in Austria, in Tyrol and Vorarlberg.[78] Germany has ombudsman institutions that handle complaints in Rhineland Palatinate, Mecklenburg-West Pomerania and Schleswig-Holstein.[79] As of April 2012, there were State Human Rights Commissions in 20 out of 28 Indian states, although the Indian Law Ministry and National Human Rights Commission recently requested those states lacking commissions to establish them.[80] Meanwhile, by April 2011 there were 60 human rights ombudsman offices at the sub-federal level in Russia, with laws approved (but no commissioners yet assigned) for SHRIs in eight other regional subjects.[81] Thirteen out of 17 Spanish Autonomous Communities have established their own *defensor del pueblo* or equivalent institution.[82] In some cases – Russia and Argentina, most notably – deconcentration of the federal NHRI has occurred alongside the establishment of SHRIs, while in most other countries SHRIs are seen as more of an alternative, with the NHRI located solely in the capital city.

Complaints jurisdiction

The ability to handle individual complaints is discussed but not explicitly required by the Paris Principles, and the ICC therefore does not require such capabilities as part of its accreditation process.[83] Among the 10 federal countries that have both accredited NHRIs and SHRIs, only in Germany does the NHRI lack a complaint handling mandate. Rather, the German Institute for Human Rights is an institute-type NHRI, which focuses on 'research, human rights education, and documentation, and also provision of advice to the government'.[84] In all other examples, both NHRI and SHRI can hear and rule on complaints, although it should be stressed that these rulings are generally not binding.

Ombudsman-type NHRIs. NHRIs from the ombudsman (or human rights ombudsman) tradition have tended to focus their attention on human rights and maladministration perpetrated by government agencies, rather than rights violations in the private sector. The Spanish, Argentine, Austrian, Russian and Mexican NHRIs reflect this tradition, and their complaint handling mandate therefore tends to focus on complaints against government officials or government bodies.[85]

While one might expect that ombudsman-type NHRIs would only have jurisdiction over federal government actions, and ombudsman-type SHRIs would only have jurisdiction over state government actions, in fact only the latter is generally true. In all five of these countries (as well as Germany), the state-level human rights ombudsman is not authorised to resolve complaints involving federal government officials, although there may be some room for informal mediation or emergency investigation[86] and, at least in Spain, autonomous community ombudsmen have on occasion attempted to investigate federal actions, leading to backlash from federal authorities.[87] On the other hand, in all five countries the federal ombudsman is nevertheless empowered in various ways to hear complaints relating to state government actions, as discussed below.

Of these countries, Austria maintains the closest affinity to exclusive federal divisions of power. According to the federal ombudsman law, the federal ombudsman only has authority to investigate complaints against a Länder government where the Länder has designated it with that authority.[88] Currently, seven Länder have made such a designation, while Tyrol and Vorarlberg – the two Länder farthest geographically from Vienna – have chosen instead to establish their own ombudsmen.[89] Länder also have the option of choosing neither to establish an ombudsman nor grant oversight authority to the federal ombudsman, but none have chosen this course.

Among the other countries, Spain and Argentina have similar federal *defensor del pueblo* offices, supplemented by state human rights ombudsman institutions.[90] In Spain, these state institutions are in some cases based on traditional regional bodies.[91] The Spanish human rights ombudsman may assert its jurisdiction over complaints of rights violations perpetrated by the government of the autonomous region, whether or not a state-level ombudsman has been established.[92] This overlap has been tempered to some degree by an informal agreement by the federal human rights ombudsman to allow autonomic ombudsmen exclusive jurisdiction to hear complaints dealing with local administration.[93] The overlap has also led to tension between the two tiers of government and was challenged legislatively in Catalonia when the Catalan Parliament passed a revised Statute of Autonomy which stated in article 78.1 that the Sindic de Greuges (state human rights ombudsman) exclusively oversees the administration of the Generalitat. Upon legal challenge in 2010, this clause was deemed unconstitutional and was voided by the Spanish Constitutional Court.[94] The episode demonstrates that human rights institutions are not immune from the political power struggles that sometimes occur in federal nations, especially in places like Catalonia where regional autonomy can be a prominent political force.

In Argentina, the constitutional authorisation and organic legislation for the national *defensor del pueblo* are less explicit as to jurisdictional scope, which has led to disputes over whether acts of provincial administrations can be investigated. According to Máximo Borzi de Lucia, the national *defensor del pueblo* lacks power to investigate provincial government actions because the article authorising the national *defensor del pueblo* is located in the part of the constitution dealing with national authorities and there is a general assumption that the provinces reserve all powers not explicitly delegated to national authorities.[95] This argument has been countered by Jorge Luis Maiorano, a former national *defensor del pueblo*, who asserts that the constitution gives the national *defensor del pueblo* competency over public administrative functions without any exclusion of provincial or municipal administrative functions, thus implying that those functions are also part of the mandate.[96] In practice, Maiorano's position of expansive national authority has been accepted by the courts, and the national *defensor del pueblo* regularly asserts jurisdiction over acts of provincial governments.[97]

In Russia, the federal ombudsman also has authority to investigate sub-national government actions, as explicitly granted in Article 16 of the law establishing the position of Human Rights Commissioner.[98] Here, the law clarifies that the federal human rights ombudsman shall still accept a complaint even if it has been submitted previously to a regional ombudsman, thus creating the possibility of a de facto review process at the federal level.[99] This possibility is important in the Russian context because of the perception that some of the sub-federal ombudsmen offices do not function effectively or lack independence.[100] The federal human rights commissioner has attempted to encourage uniformity across the offices, but lacks any formal regulatory or oversight role over the different SHRIs.[101]

Mexico differs from the other ombudsman institutions discussed above by generally restricting the National Human Rights Commission's competency to national government actions.[102] There are, however, some important exceptions to this rule. First, according to Article 60 of the National Human Rights Commission Act, the federal commission can hear cases where the state commission is inactive regarding a complaint or the issue is important and the state commission is delaying significantly in reaching a recommendation.[103] This provision ensures recourse in cases where the state commission may be unwilling to confront powerful local interests, and also builds in an incentive for a state commission to act promptly if it wants to maintain its institutional relevance. Also, when a complaint involves both federal and state government personnel, or personnel from multiple state governments, then the National Human Rights Commission can hear the case.[104]

Finally, the National Human Rights Commission can act as a kind of court of second instance regarding state-level complaints. Thus, although the National Human Rights Commission cannot hear a case that is pending at a State Human Rights Commission after a decision has been entered either party may file an appeal from the State Human Rights Commission to the National Human Rights Commission, which will then issue its own decision.[105] This creates a more hierarchical type of relationship between the NHRI and SHRIs. This appellate-type system may help ensure justice where the NHRI is well-respected and independent but the SHRIs have a reputation as being less competent or more susceptible to outside pressure. It may also assist in the development of a nationally uniform human rights jurisprudence, at least on important issues that are likely to lead to appeals. On the other hand, states' rights advocates bristle at the preservation of final authority at the national level, and this provision has perhaps unsurprisingly been criticised by a number of Mexican commentators. According to Gaos, the system is undesirable because the Mexican National Human Rights Commission does not have as much knowledge as the state commissions of local conditions; because the existence of an appellate policy weakens the autonomy and moral force of state commission recommendations, and because the human rights petition procedure is fundamentally non-judicial and should therefore not copy the structure of an appellate court system.[106]

Commission-type NHRIs. Australia, Canada and India, on the other hand, have NHRIs that are in the form of multi-person commissions. In India, the National Human Rights Commission deals with all types of human rights abuses, while the NHRIs in Australia and Canada have a complaints mandate limited to acts of discrimination. These NHRIs accept complaints involving both public and private sector actors; the major federalism-related jurisdictional question is thus not whether the NHRI can investigate state government action, but rather whether there is substantive overlap between the mandates of NHRI and SHRI, and if so how this is dealt with.

In India, the National Human Rights Commission Act provides that state human rights commissions generally have the power to address complaints involving entities enumerated in Lists II and III of the Seventh Schedule of the Indian Constitution, unless the matter is already pending before the National Human Rights Commission or another duly constituted commission.[107] In the broader Indian division of federal powers, List II enumerates matters under the exclusive authority of state governments (such as public order, the police and officers and servants of the High Court) while List III enumerates matters under the concurrent jurisdiction of both state and federal governments (such as criminal law, preventive detention and marriage).[108] The National Human Rights Commission of India, on the other hand, can respond to complaints involving any human rights violation, unless the matter is pending before a state human rights commission or other duly constituted national commission.[109] Thus, the petitioner will in many instances have a choice of state or federal forum to launch his or her complaint. Oftentimes, the National Human Rights Commission will have the advantage of greater independence and competency, but there may be countervailing considerations of convenience, given India's enormous size, or a greater familiarity with local issues at the state level.

As is the case in some of the countries described above, this system of overlapping jurisdiction has not been without its tensions. Many observers – including the National Human Rights Commission itself – have denigrated the effectiveness of the state commissions, and there have in fact been claims of complaints related to state government actions purposefully being filed before an ineffective state commission in order to preempt the jurisdiction of the national commission.[110]

On the other hand, in Australia the federal human rights commission is solely mandated to enforce federal anti-discrimination law, and state commissions are solely mandated to enforce state human rights law (which is usually but not always related to discrimination). This divide does not necessarily mean that a particular case can only be filed in one commission, however, because in practice there is quite considerable (but not total) substantive overlap between state and federal anti-discrimination laws in Australia. For example, complaints of discrimination can in most instances be filed to either the South Australian Equal Opportunity Commission or the federal Australian Human Rights Commission; however, complaints alleging discrimination based on social origin or political opinion can only be made at the federal level, because these types of discrimination are not prohibited under the state laws of South Australia.[111] As is the case in India, complaints cannot be handled by both the state and federal level at the same time.[112]

In Canada, the Canadian Human Rights Commission enforces the Canadian Human Rights Act, which regulates discrimination perpetrated by federal government entities as well as private organisations and businesses under the authority of the federal government such as banks and airlines. Meanwhile each provincial human rights commission may pursuant to provincial laws hear complaints of discrimination (and other human rights abuses, in certain provinces) by entities regulated at the provincial level.[113] Thus, unlike the case in Australia or India, a complaint can generally only be filed at the state level or federal level, but not both, as there is no concurrent list of entities regulated by both federal and state law. When there is uncertainty among the public as to which commission is the appropriate place to direct a complaint, the national and provincial commissions provide advice to petitioners regarding where to file.[114]

Cooperation between NHRIs and SHRIs

While jurisdictional disputes have sometimes arisen in the complaint handling functions of NHRIs and SHRIS, there is often greater room for cooperation in the promotional,

educational and monitoring functions of NHRIS and their state counterparts, and in fact different forms of collaboration have been prioritised in many of the countries discussed here. For example, in Australia the Australian Human Rights Commission has arranged to display its publications in several state human rights commission offices.[115] In Canada, one of the focal points for collaboration has been issues related to indigenous peoples, which has included cooperation between provincial and national bodies to improve awareness of human and treaty rights.[116] In India, the National Human Rights Commission held consultations with the state commissions during the preparation of its Universal Periodic Review submission (although the National Human Rights Commission complained that the state commissions 'contributed almost nothing' to the process).[117] One interesting aspect of the cooperative relationship in some cases is the provision of training or capacity building assistance by the NHRI to SHRIs. For example, the Australian Human Rights Commission has provided professional development and conciliation training to the state commissions,[118] while in India, the National Human Rights Commission has assisted state human rights commissions in strengthening their complaint handling systems, as well as other capacity building.[119]

A number of formal mechanisms for encouraging cooperation have been developed. In several countries an association of ombudsman or human rights commissioner that includes national, state and local officers functions as a mechanism to bring together different actors and foster either horizontal (i.e., state–state) or vertical (i.e., national–state or state–local) cooperation. Examples include the Australian Council of Human Rights Agencies, the Canadian Association of Statutory Human Rights Agencies and the Asociación Defensores del Pueblo de la República Argentina. In some countries the NHRI has also tried to enourage cooperation by holding regular meetings or conferences with the SHRIs. Spain, for example, has tried to encourage cooperation through annual conferences focusing on coordinating promotional activities.[120] The Mexican National Human Rights Commission has also held a number of semi-annual meetings with SHRIs,[121] as has the Indian National Human Rights Commission.[122] In Russia such meetings take place under the aegis of the Coordination Council of the Ombudsman of the Russian Federation.

Some NHRIs have signed formal agreements or memorandums of understanding to promote cooperation with their state counterparts and delineate specific areas of responsibility. In Argentina there are now collaboration agreements between the Defensor del Pueblo de la Nación and all provincial and municipal *defensores del pueblo*.[123] In Mexico there are agreements between the national ombudsman and the local ombudsmen of Tabasco, Yucatán, Zacatecas and Nayarit.[124] In Spain there are agreements between the office of the federal Defensor del Pueblo and its counterparts in Catalonia, Andalucia, the Islas Canarias, Castilla y León and Galicia, although these agreements have reportedly not been effective in actually controlling jurisdictional disputes.[125]

Concluding observations

Certain concluding observations can be drawn from this comparison of how federal systems accommodate the increasing pressures to establish human rights institutions. Perhaps the clearest of these conclusions is that there is so far no dominant solution to the question of how to arrange the competencies of state and national human rights institutions in federal nations: countries have rather adopted a wide range of responses, ranging from the establishment of a deconcentrated NHRI and no SHRIs, to the establishment of SHRIs at the sub-federal level without an NHRI, to the establishment of both an NHRI and SHRIs. This diversity of approaches is unsurprising. If there is one axiomatic principle

of comparative federalism it is that federal countries vary widely in how they address division of competency issues.[126] The diversity of approaches could also in part be a product of the relatively low level of international guidance regarding the appropriate way for a country to assure the independent promotion and protection of human rights in a federal state. The UNHCHR has recently commissioned a study on NHRIs in federal states, but international organisations and non-governmental organisations have overall provided very little guidance on strategies for the promotion and protection of human rights in federal states. In fact, the ICC itself seems uncertain about how to treat SHRIs; the Bermuda Ombudsman, Hong Kong Equal Opportunities Commission, Northern Ireland Human Rights Commission, Scottish Human Rights Commission and Puerto Rican Oficina del Procurador Del Ciudadano have been accredited, but other SHRIs are excluded (and are therefore also excluded from those regional NHRI groupings that base admission on ICC accreditation and function similarly as forums for the exchange of information and best practices).[127]

A second observation is that strict adherence to principles of dual federalism appear to be very much the exception rather than the rule. Dual federalism refers to systems characterised by exclusive competencies at the federal and sub-federal level, whereby each governmental level has a monopoly of authority on matters falling under their competency and an inability to intervene in matters not falling within their competency.[128] In the federal systems studied above, it is really only in Canada and the Austrian states of Tyrol and Vorarlberg that this characterisation would be accurate. Instead, federal countries have mostly instituted either unitary regimes, where the NHRI exists without a correspondent SHRI and is competent to deal with human rights violations even at the sub-national level, or differing forms of shared federalism, where both NHRI and SHRI at times have the authority to deal with the same subject matter. This finding is consistent with trends in other areas of public administration, where recent studies have shown that cooperative federal systems where powers are shared between different levels of government are becoming increasingly prevalent.[129] In theory, there may be considerable advantages to such a system, such as the provision of opportunities for a more diverse set of players to influence the policy-making process and reducing the likelihood of regulatory capture by interest groups.[130] One of the characteristics of shared sovereignty, however, is that the question of hierarchical subordination will tend to arise.[131] This study shows that countries have come up with a range of different answers to the difficult question of how to deal with situations where identical complaints are made to both SHRIs and NHRIs.

The relative absence of dual federalism systems is perhaps surprising when it comes to institutions from the human rights ombudsman tradition, as national classic ombudsman institutions in federal countries which are not ICC-member NHRIs tend to have a competency restricted to federal government actions. In Belgium, Australia and Pakistan, for example, the federal (classical) ombudsman institutions are restricted to reviewing the actions of the federal government, and various state and regional ombudsman, where they exist, have exclusive jurisdiction at their tiers.[132] In fact, commentators have assumed that this is the natural state of affairs.[133] It is plausible that there are certain pressures stemming from membership in the ICC that make dual federalism relatively unattractive, such as the Paris Principles requirement that an NHRI shall issue 'opinions, recommendations, proposals and reports on *any* matters concerning the promotion and protection of human rights'.[134] This appears to be the case in Belgium,[135] and would be consistent with recent research showing the standardising influence of the Paris Principles on the development of NHRI types.[136]

A final observation is that federalism issues related to human rights institutions are still quite vigorously debated and controversial in many parts of the world, and it is therefore difficult to make strong recommendations regarding best practices. As mentioned above, these debates have been particularly pronounced in Spain, as is perhaps unsurprising given the particularly strong emotions regarding autonomy in that country. However, tensions have arisen elsewhere, too. In Mexico, for example, the President of the Federal District (Mexico City) Human Rights Commission notes that 'We have some projects in common [with the National Human Rights Commission], but to be honest, we don't have a very similar conception.'[137] The relationship between the NHRI and SHRIs have also been criticised as dysfunctional in India, where a prominent non-governmental organisation has complained that '[n]either of the commissions utilise the other's potential or expertise, thus losing the opportunity for a mutually beneficial relationship'.[138] In the United States, some human rights advocates have argued for the establishment of a NHRI,[139] while the Russia and India NHRIs have pressured states to establish SHRIs.[140] There are thus very few systems that one could consider both stable and widely accepted.

It must of course be stressed that the development of NHRIs and SHRIs in federal countries is, at least in some cases, a relatively recent development. Therefore, only time will tell if best practices can develop, and if the influence of the ICC and Paris Principles can lead to any kind of convergence in the ways in which responsibilities and competencies are divided between NHRIs and SHRIs. For now, however, it seems clear that a wide range of practices exist, and it would behoove non-governmental organisations and the international community to work with federal countries to ensure that their chosen systems function effectively.

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Notes

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8. See Mónica Beltrán Gaos, *La Comision Nacional de los Derechos Humanos de Mexico* (Valencia, Spain: Universidad Politécnica de Valencia, 2005), 241–63.
9. William Riker, *Federalism: Origin, Operation, Significance* (Boston, MA: Little Brown, 1964), 11.

10. Thomas Hueglin and Alan Fenna, *Comparative Federalism* (Peterborough, Canada: Broadview Press, 2006), 32–3.
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13. Ann Lynn Griffiths and Karl Nerenberg, *Handbook of Federal Countries* (Montreal, Canada: McGill-Queens University Press, 2005), xix.
14. Hueglin and Fenna, *Comparative Federalism*, 33–4.
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18. See ICC, 'Chart of the Status of National Institutions Accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights' (May 2012), http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NIs%20(30%20May%202012).pdf.
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32. Lei Nº 7.576, de 27 de novembro de 1991, art. 2(1) (São Paulo).
33. See Office of the Comptroller General website, 'Ombudsman Office', http://www.cgu.gov.br/english/AreaOuvidoria/OQueE/.
34. See Government of Brazil website, 'Citizenship', http://www.brasil.gov.br/sobre/citizenship/consumer-protection/ombudsman-1/br_model1?set_language=en.

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45. Federal Commission against Racism website, http://www.ekr.admin.ch/index.html?lang=fr.
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48. Ibid.
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50. See South African Human Rights Commission website, 'Contact Details', http://www.sahrc.org.za/home/index.php?ipkContentID=2&ipkMenuID=2. In addition to a human rights commission, South Africa also possesses a Public Protector's Office, which is a form of ombudsman institution. It is similarly organised as a unitary body with sub-offices in the provinces and has the ability to investigate actions of provincial government officials. Pursuant to an understanding with the Human Rights Commission, the Public Protector investigates individual cases of governmental human rights abuses while the Human Rights Commission investigates 'the wider tendencies of human rights abuses'. Linda Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Leiden, Netherlands: Martinus Nijhoff Publishers, 2004), 239.
51. See Nepal National Human Rights Commission, 'Contact Details', http://nhrcnepal.org/nhrc_new/general.php?pg=contact.
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57. Commonwealth Secretariat, *National Human Rights Institutions: Best Practice* (London: Commonwealth Secretariat, 2001), 31.
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61. See Enric Bartlett, 'National and/or Regional/Local Ombudsman' (paper presented at the Regional Ombudsman Conference: The Ombudsman in Southeastern Europe, Sofia, Bulgaria, November 28–30, 2003).
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63. See Amnesty International, 'Recommendations for Effective Protection and Promotion of Human Rights', §1.3.
64. See Law on the Human Rights Ombudsman of BiH, art. 1(2)(2).
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66. The National Human Rights Commission Act (Nepal), 5(b).
67. National Human Rights Commission Act (Nigeria), art. 4.
68. The Human Rights Commission Act (South Africa), preamble.
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125. Bueso, 'Spain's Parliamentary Ombudsman', 331; Reif, *Ombudsman, Good Governance and the International Human Rights System*, 150.
126. Hueglin and Fenna, *Comparative Federalism*, 353.
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Chapter 4

‘Welcoming a New International Human Rights Actor?: The Participation of Sub-National Human Rights Institutions at the United Nations’ (2014) 20 Global Governance 437.

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Welcoming a New International Human Rights Actor? The Participation of Subnational Human Rights Institutions at the UN

Andrew Wolman

Subnational human rights institutions are often thought of as distinctly local bodies, addressing human rights concerns within their jurisdictions with little attention to the processes and mechanisms of the wider international human rights regime. This article shows that this description is no longer necessarily accurate. Rather, subnational human rights institutions can and do participate in the UN human rights regime in a number of important ways. Such participation is potentially beneficial to the UN human rights processes, and subnational human rights institutions have in fact been welcomed by institutional actors at the UN. Nevertheless, the UN, national human rights institutions, and subnational human rights institutions themselves can all do more to ensure that subnational human rights institutions are able to participate fully in the UN human rights system. ***Keywords:*** *subnational human rights institutions, United Nations, Human Rights Council, Universal Periodic Review, national human rights institutions.*

While national human rights institutions (NHRIs) are now widely recognized as playing an accepted and prominent role in the UN human rights system, less attention has been paid to the international engagement of their subnational counterparts: those state, provincial, and regional human rights commissions and ombudsman institutions known broadly as subnational human rights institution (SNHRIs). On the contrary, SNHRIs are often thought of as distinctly local bodies that address human rights concerns within their jurisdictions with little attention to the processes and mechanisms of the wider international human rights regime. This perception is no longer entirely accurate. As I show in this article, SNHRIs are becoming increasingly active participants in the UN human rights system where they are introducing their distinct viewpoints to a landscape previously dominated by national-level actors.

It should be noted that, when compared with NHRI participation, SNHRI engagement with the UN remains at a relatively low level. However, the potential significance of this new actor at the international stage is greater than the current rate of engagement might indicate. NHRI engagement at the UN also started out at low levels, and it is only in the past few years that NHRI

participation has become more common and has spread beyond the main human rights mechanisms to other UN bodies such as the Commission on the Status of Women and the Permanent Forum on Indigenous Issues. A similar trend is certainly possible with SNHRIs, especially given that the Secretary-General is now strongly encouraging further SNHRI participation.[1]

More importantly, SNHRI participation in a UN system that until recently was considered a bastion of the nation-state represents a significant innovation in human rights governance that so far has gone largely unremarked by scholars.[2] Global governance research has exhaustively addressed the process of international human rights norm transmission to the local level, employing concepts such as norm diffusion and internalization,[3] localization,[4] and vernacularization.[5] However, these theoretical approaches have had little to say about the implications of the active participation of subnational state entities in international mechanisms, tending instead to see them more as passive receptors of global norms, which they then transmit (or "translate" in Sally Merry's terminology)[6] to their communities. The innovation of active and multifaceted SNHRI participation at the UN shows that a greater give and take is possible between the *local* and the *global* (to use the common, but heavily criticized terms) with results that warrant further empirical and theoretical study.

In this article, I thus take a first step toward addressing the issue by examining the principal ways in which SNHRIs are participating at the UN: through filing or contributing to reports to treaty bodies and at the Universal Periodic Review (UPR); acting as or engaging with independent national mechanisms pursuant to the Convention on the Rights of Persons with Disabilities (CPD) and Optional Protocol of the Convention Against Torture (OPCAT); and engaging with the special procedures. I argue that the implications of this engagement are largely positive, and conclude by suggesting possible ways of facilitating further SNHRI participation.

An Introduction to SNHRIs

As with NHRIs, SNHRIs are independent governmental bodies that protect and promote human rights; however, SNHRIs differ in that their operations are limited to subnational jurisdictions, whether municipalities, provinces, autonomous regions, or other subdivisions. At the broadest level, SNHRIs can be divided into two types: human rights commissions and ombudsman, a classification scheme that the UN has also used for NHRIs.[7] These two types have developed in different regions along a somewhat different time line, and tend to display distinct functional characteristics (although a certain amount of hybridization has occurred in some countries).

The ombudsman institution originated at the national level in 1809 in Sweden as a legislatively appointed individual mandated to monitor the legality and fairness of public administration, largely through the issuance of non-

binding recommendations in response to individual complaints.[8] By the 1960s ombudsman institutions were spreading throughout the world, and also were being established at the subnational level in federal nations such as Canada and Australia. While the traditional ombudsman institution did not implement human rights norms, this began to change with the establishment of new "human rights ombudsmen" institutions in postdemocratization Spain and Portugal. These institutions had a specific mandate to protect human rights, and often engaged in significant human rights promotional activities. The human rights ombudsman model was later adopted at the subnational level in Spain (both at the level of autonomous communities and municipal government) and proliferated at both the national and subnational levels in much of Latin America and Eastern Europe when these regions experienced their waves of democratization. Today, there are seventy-six regional human rights ombudsmen in Russia alone, and thirty-two in Mexico.[9] Simultaneous to these developments, ombudsman institutions that lack a specific human rights mandate (often called "classical ombudsmen") have begun to show an increasing willingness to make use of human rights norms in their work, even without an explicit mandate to do so.[10] Thus, even many of the classical subnational ombudsmen in Europe and the common-law world would be considered SNHRIs, although their promotional work may be minimal and human rights activities typically comprise a small percentage of their workload.[11] Examples of classical subnational ombudsmen that are recognized as using human rights norms include the British Columbia ombudsman and the Bermuda ombudsman.[12]

Meanwhile, state and municipal human rights commissions emerged first in the United States during the 1920s and 1930s as a way to address racial tensions and promote equal opportunity, eventually becoming more common during the civil rights era.[13] Although these commissions varied in form and function, they mainly focused on reducing racial discrimination through the enforcement of antidiscrimination laws, including federal employment and housing discrimination laws, as well as local ordinances. This antidiscrimination commission model was later adopted at the state or provincial level in other common-law countries with federal or devolved structures such as Canada, Australia, and the United Kingdom. More recently, commission-form SNHRIs have also been established by all twenty-three Indian states, although these differ in that their mandates cover the full corpus of human rights rather than just equality rights.[14] Commission-form SNHRIs today are generally multiperson independent bodies, appointed by either the subnational legislature or executive, that are mandated to promote and monitor human rights and to advise subnational governments on human rights issues. Most (but not all) human rights commissions also have the power to investigate complaints based on violation of antidiscrimination laws or human rights charters and to make nonbinding recommendations to the parties.[15]

The Existing Framework: International Engagement of NHRIs

In order to understand the place of SNHRIs in the international system, it is first necessary to examine the existing framework for NHRI engagement, which provides the context for current SNHRI engagement. NHRI participation at the UN is usually dated back to the General Assembly's 1993 adoption of the Paris Principles Relating to the Status of National Institutions (Paris Principles).[16] The Paris Principles elaborated a set of benchmarks for NHRIs that, among many other provisions, stated that NHRIs should "cooperate with the United Nations and any other organization in the United Nations system"[17] For many years, there was a relatively low rate of NHRI engagement with UN mechanisms, and participation in the Human Rights Commission was restricted to agenda items specifically related to NHRIs.[18] Since the formation of the Human Rights Council, however, NHRIs have significantly increased their presence in Geneva and they are now given access to participate at the UN in their own right, apart from their national delegations. Among other privileges, NHRIs are permitted to submit documents for the consideration of the Human Rights Council, make written statements and oral interventions on any item on the council's agenda, and sponsor parallel events.[19]

As UN bodies have been granted special access for NHRIs, there has arisen the need to define which bodies qualify as NHRIs. To date, the UN has resolved this dilemma by limiting privileged NHRI participation to those NHRIs that have received A status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The ICC is a global NHRI forum, which accredits member institutions according to their compliance with the Paris Principles: A status signifies full compliance with the Paris Principles; B status signifies partial compliance or insufficient documentation to make a determination; and C status signifies a lack of compliance. As discussed further below, the appropriate extent of ICC accreditation of SNHRIs is one of the key unresolved issues relating to SNHRI participation at the UN.

NHRI participation at the international level has been the subject of considerable academic research over the past decade, and this research also provides a contextual backdrop to many of the conceptual issues surrounding SNHRI participation at the international level.[20] One issue that has been repeatedly raised is how to fit NHRIs into the established categories for participants at the international level. For example, Rachel Murray examined whether NHRIs should be considered subjects of international law, concluding that the practical relevance of such a designation was minimal.[21] Murray and Frans Viljoen wrestle with the question of whether NHRIs should be considered "state" or "nonstate" actors.[22] Viljoen concludes that NHRIs are "state" but not "governmental" actors; effectively comprising a third cate-

gory.[23] As a practical matter this conclusion seems to best reflect the actual role of NHRIs, which by and large have acted independently of their national delegations in international proceedings. The proper place for SNHRIs among types of international actors is a similarly relevant issue, although with a twist: the scholarly and practical acceptance of NHRIs as a separate category means that for SNHRIs the most important question is not whether they are a state or nonstate actor, but rather whether they should or should not be considered a form of NHRI (a "subnational NHRI" as Linda Reif labels them).[24]

Another strand of research has attempted to ascertain how NHRI participation at the international level can add value, both to the NHRI's own work and the work of the international human rights regime itself. Chris Sidoti argues that NHRI participation in UN mechanisms can increase an NHRI's effectiveness at home, strengthen its base in law and practice, consolidate its position, and help it build support and widen partnerships.[25] He envisions an even more beneficial impact at the international level, due to NHRIs' contributions of information and expertise to international human rights mechanisms.[26] Murray focuses more narrowly on the value of NHRIs to the international system, and suggests four primary justifications for international participation: to ensure government accountability by providing an alternative voice, to bring NHRI expertise to the international system, to speak with a collective NHRI voice, and to protect human rights defenders.[27] Viljoen, however, doubts whether NHRIs have anything to add to the work that nongovernmental organizations (NGOs) are already undertaking with regard to the first two of these rationales, and questions the substantive impact of a collective NHRI voice.[28] According to Viljoen, NHRIs provide added value at the international level primarily through their ability to protect human rights defenders and their ability to intervene with their government to exert pressure on another government.[29] Although this discussion of the value of international engagement is important for SNHRIs as well, the situation is not exactly the same. As I discuss in this article, there are other potentially beneficial aspects of SNHRI engagement that do not apply to NHRIs while there may also be SNHRI-specific factors that decrease their utility at the international level.

SNHRI Engagement at the United Nations

While the role of NHRIs at the international level is now widely acknowledged, there has been less consideration of the international activities of SNHRIs, which are often thought of as solely concerned with activities in their own localities, with the only potential connection to the international level being their implementation of international norms. In this section, I demonstrate that SNHRIs can have an international presence, and examine

three principal ways in which SNHRIs currently participate in the UN human rights system: through the UPR and treaty body reporting processes, through acting as or engaging with independent mechanisms under the CPD and OPCAT, and through engaging with the special procedures of the UN Human Rights Council. I also highlight where relevant the differences and similarities between NHRI and SNHRI forms of participation. Though SNHRIs have also been established at lower administrative levels, I focus on SNHRIs from states, provinces, and autonomous regions since those are the ones that are most likely to engage with the UN system.

It should be stressed, however, that my intention is not to present a comprehensive list of avenues for SNHRI involvement at the UN. Clearly there are many other ways that SNHRIs can and do participate in UN mechanisms, including participating in expert meetings organized by the Office of the High Commissioner for Human Rights (OHCHR),[30] attending conferences of human rights treaty parties,[31] providing information for OHCHR studies,[32] and even filing complaints before international bodies.[33] The Yucatan Human Rights Commission, for example, is explicitly mandated to submit complaints to international human rights organs in cases of grave violations of human rights or where the commission's recommendations are ignored.[34] In addition, there have been examples of SNHRI attendance at ordinary Human Rights Council sessions; however, such participation has been relatively exceptional since SNHRIs lack the general right to submit documents or take the floor for any item under discussion unless they have received A status accreditation by the ICC.[35]

Human Rights Reporting Processes

Human rights reporting comprises one of the most important implementation mechanisms of the international human rights regime. The most significant human rights reporting at the UN takes place through the UPR process and treaty body reporting. During the UPR, which was a product of the 2005–2006 reform in the UN's human rights apparatus, each member state is subjected to a review of its human rights record in the Human Rights Council. The UPR, which takes place for each state once every four years, is based on a report submitted by the national government as well as a ten-page compilation of stakeholder reports and a ten-page compilation of UN information. These reports are then the subject of interactive discussions between the reporting state and other member states at a meeting of the UPR Working Group.

Meanwhile, parties to the ten core UN human rights treaties are obliged to submit separate periodic reports to each treaty's committee regarding their compliance with the terms of that particular treaty. Unlike the UPR, which is an intergovernmental process, the treaty bodies are composed of independent experts. As is the case in the UPR, other stakeholders have the opportu-

nity to submit parallel reports (often called "shadow reports") to the treaty bodies regarding the relevant state's record. These reports are normally reviewed in the presence of state representatives, and are generally followed by the treaty body's issuance of concluding observations.

There are four basic mechanisms by which SNHRIs can participate in the reporting process. The first way is through integrating SNHRI information regarding local conditions into the report submitted by the national government. This type of consultation is currently encouraged by US national authorities, as evidenced by a 2010 letter from the Department of State to state and local human rights commissions asking them to submit information on their actions for inclusion in reports pursuant to the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all forms of Racial Discrimination (CERD), and the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[36] Similarly, the Flemish children's rights commissioner is mandated to report to the Belgian national government so that his or her findings can be integrated into Belgium's periodic report to the Committee on the Rights of the Child.[37] It is worth noting that both Belgium and the United States lack an A status NHRI that might otherwise be a more logical SNHRI consultation partner. SNHRIs can also contribute to responses given by nation-states to questions posed by a treaty body during the course of a review, an example being the responses drafted by Quebec's Commission des Droits de la Personne et des Droits de la Jeunesse in response to questions posed to the Canadian government during the examination of its report to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) Committee.[38]

A second possible mode of indirect SNHRI participation in UPR and treaty body reporting is through the provision of information to the home state's national-level NHRI for inclusion in the NHRI report. A status NHRIs can attend working group meetings during their home country's UPR, albeit without the right to speak; can make oral statements at the UPR plenary sessions; and can take the floor after their home country's delegation.[39] Summarized information from A status NHRIs is also compiled in a separate section of the ten-page report on stakeholder contributions that is submitted to the Human Rights Council.[40] While treaty body procedures vary, there is also a clear trend toward providing greater opportunities for participation to A status NHRIs in the treaty reporting process.[41]

One instance of NHRI coordination with SNHRIs in the reporting process was the 2010 submission by the Australian Human Rights Commission for Australia's UPR. After consultation, seven human rights and antidiscrimination commissions at the Australian state or territorial levels endorsed the Australian Human Rights Commission's submission.[42] In the past, similar attempts have been made in Canada to encourage formal coordination

between the Canadian Human Rights Commission and provincial human rights commissions during the treaty reporting process through the establishment of a Continuing Committee of Officials on Human Rights, but more recently provincial commissions have reportedly stopped serving as part of this committee.[43] Of course, consultation between NHRIs and SNHRIs does not necessarily improve the quality of NHRI reporting. During preparation of the Indian National Human Rights Commission's submission to the Human Rights Council during its second UPR, five regional consultations were held with state human rights commissions along with other stakeholders. However, according to the national human rights commission, the state human rights commissions "contributed almost nothing, confirming that most are still inchoate, and must be strengthened."[44]

Third, while the Paris Principles require NHRIs to have "as broad a mandate as possible" and address human rights violations "in any part of the country," at least in occasional cases it is possible for SNHRIs to be accredited as A status (i.e., Paris Principles compliant) NHRIs by the ICC, thus giving them the ability to act directly at the international level as NHRIs.[45] According to the ICC Sub-Committee on Accreditation, multiple national institutions may "in very exceptional circumstances" be accredited as long as the national government provides its written consent and the concerned institutions provide a written agreement regarding rights and duties as an ICC member, including arrangements for participation in the international human right system.[46] As of February 2013, the only SNHRIs with A status accreditation were the Northern Ireland Human Rights Commission; the Scottish Human Rights Commission, and the Equality and Human Rights Commission (which may just as easily be classified as an NHRI that lacks authority over the entire country since it exercises its mandate in England, Wales, and Scotland, for those human rights issues not devolved to the Scottish parliament). The Northern Ireland Human Rights Commission has taken advantage of its A status to participate in the United Kingdom's UPR in 2012 and file a parallel report before the Committee Against Torture in 2013.[47] The Scottish Human Rights Commission has also filed numerous reports to the UN, including a recent report to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee).[48] It is worth noting that the Puerto Rico Oficina del Procurador del Ciudadano and Hong Kong Equal Opportunities Commission have also applied for ICC accreditation, but they each received C status, which signifies noncompliance with the Paris Principles and does not lead to greater access to the UN system.[49]

The fourth way for SNHRIs to participate in the reporting process is by contributing shadow reports as a general stakeholder, without any claim of NHRI status. Stakeholder reports are accepted by both treaty bodies and by the Human Rights Council during UPR sessions. One SNHRI that has been particularly active in submitting stakeholder reports is the Hong Kong Equal

Opportunities Commission, which has regularly submitted alternate reports alongside the Hong Kong Special Administrative Region's reports to the ICESCR, ICCPR, CEDAW, CAT, CPD, and CERD Committees.[50] While stakeholder reports are often drafted by a single entity, they can also result from the collaborative work of multiple interested parties. Thus, an SNHRI could in principle collaborate with other SNHRIs or interested civil society organizations in a joint report (although the latter may or may not be considered appropriate, depending on the nature of the ties between SNHRIs and NGOs in a particular jurisdiction). A recent example of this type of cooperation is the joint submission by a group of seven Mexican state human rights commissions before the Committee Against Torture.[51]

Independent National Mechanisms

Another way of entry into the UN system for SNHRIs has been involvement in the independent national mechanisms that are mandated by both the CPD and OPCAT. According to the CPD, state parties "shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention."[52] States are instructed to take into account the Paris Principles when designating independent mechanisms.[53] Meanwhile, states parties to the OPCAT shall "set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment," which are referred to as National Preventive Mechanism (NPMs).[54]

To date, the majority of independent mechanisms designated under the CPD and NPMs under the OPCAT have been NHRIs.[55] However, with regard to both treaties, federalism concerns have arisen in some states regarding the appropriateness of a single national-level body acting in issue areas that have traditionally been addressed at the state level. This has resulted in a number of innovative responses; for example, Germany has designated a Joint Commission of the Länder as the NPM along with the Federal Agency for the Prevention of Torture while Argentina has designated a National System to Prevent Torture that is comprised of a National Committee for the Prevention of Torture, a Federal Council of Local Preventive Mechanisms, and local preventive mechanisms to be designated in each province.[56]

Federalism concerns also have led to SNHRIs being designated as independent mechanisms under both treaties. Unlike the treaty body or UPR reporting process, there is no need for independent mechanisms to be accredited by the ICC, and the possibility of multiple bodies is explicitly anticipated by the treaty texts. Thus, the United Kingdom has designated the Equality and Human Rights Commission, the Scottish Human Rights Commission, the Northern Ireland Human Rights Commission, and the Equality Commission

of Northern Ireland to jointly serve as independent mechanisms pursuant to Article 33(2) of the CPD.[57] With regard to the OPCAT, Denmark has designated Greenland's ombudsperson as Denmark's NPM (along with Denmark's national ombudsman) while the Scottish Human Rights Commission and Office of the Children's Commissioner for England have each been designated as one of eighteen NPMs in the United Kingdom.[58]

In this context, it is also worth noting the interesting reaction of the Catalan parliament to Spain's OPCAT ratification. The Catalan government had called for its human rights ombudsman (called the sindic de greuges) to be designated as one of Spain's NPMs. When the Spanish national government chose to instead appoint the national defensor del pueblo as a unitary national NPM, the Catalan parliament nevertheless passed a law designating the sindic de greuges as the "Catalan Authority for the Prevention of Torture and other Cruel, Inhuman or Degrading Punishment in virtue of the OPCAT," and granted it new competencies to visit sites of detention and prevent torture.[59] Essentially, it is now acting as an unofficial (at least at the national and international levels) preventive mechanism. Similarly, the state of Rio de Janeiro has established a local preventive mechanism and has issued a report on torture prevention in the absence of the establishment of any NPM by Brazil at the federal level.[60]

In addition, just as SNHRIs can play an indirect role in the reporting process for treaty bodies and the UPR, the possibility also exists for them to participate indirectly in the work of national expert bodies even when the SNHRIs are not themselves designated. Perhaps the most formalized example of such cooperation has taken place in Mexico where the National Commission of Human Rights, in its role as Mexico's NPM pursuant to the OPCAT, has signed collaboration agreements with thirty of Mexico's state human rights commissions.[61] A typical agreement with the Sinaloa State Human Rights Commission provides that the national human rights commission will conduct inspection visits while the state commission commits to providing human and material resources to the extent possible, participate in developing observations addressed to the competent authorities, and monitor and establish communications with civil society organizations.[62]

Special Procedures

The *special procedures* refers to those independent human rights experts mandated by the Human Rights Council to report and advise on particular human rights themes or the state of human rights in particular countries. As of October 2013, there were thirty-six special procedures currently operating with thematic mandates, and thirteen with mandates to report on particular countries where the international community has human rights concerns.[63] Most of these special procedures consist of a single expert called a special rapporteur, but five of the thematic mandates are made up of five-person

working groups. Although the range of actions undertaken by the special procedures varies, their main activities include fact-finding through country visits, developing jurisprudence, and communicating human rights complaints to government representatives. The only area of the special procedures where A status ICC accreditation is necessary to fully participate is the plenary Human Rights Council meeting when a special rapporteur reports on a country visit; at these meetings, only A status NHRIs are allowed to address the plenary after the concerned state.[64]

There are relatively few strict rules regarding the organizations with which the special procedures should engage during their country visits, although their guidance manual states broadly that country visits allow for contact with NHRIs and "facilitate an intensive dialogue with all relevant state authorities, including those in the executive, legislative and judicial branches."[65] Thus practices vary but, in some circumstances, special procedures have found it useful to meet with SNHRIs during country visits as a way of ascertaining objective information from independent observers working in local areas. For example, in Mexico in 2010 the special rapporteur on the promotion and protection of the right to freedom of opinion and expression met with the Comisión de Defensa de los Derechos Humanos del Estado de Guerrero[66] while the special rapporteur on the independence of judges and lawyers met with the Comisión Estatal de Derechos Humanos de Nuevo León.[67] Elsewhere, the special rapporteur on the independence of judges and lawyers met with the commissioner for human rights of the Sverdlovsk region during a country visit to Russia,[68] the special rapporteur on torture and other cruel, inhuman or degrading treatment and punishment met with the defensor del pueblo de la provincia de Buenos Aires,[69] and the special rapporteur on the right to food met with the Ontario Human Rights Commission during a recent country visit to Canada.[70]

In the United States, the Navajo Nation Human Rights Commission recently went a step further in engaging with the special procedures by submitting a formal complaint to the special rapporteur on the rights of indigenous peoples, alleging that the United States and state of Arizona were violating the rights of the Dine and other indigenous peoples to access the San Francisco Peaks as a sacred site through the proposed use of wastewater for artificial snowmaking in a commercial ski operation.[71] The complaint called for the special rapporteur to formulate recommendations and proposals to prevent, remedy, and redress these violations, which he in fact did by presenting a set of observations to the US government in July 2011.[72] This illustrates an interesting dynamic whereby an SNHRI has purposefully initiated engagement with the UN in order to increase pressure on the national government to respect rights in the subnational entity, a dynamic similar to that anticipated by Murray with respect to NHRIs holding their governments accountable.[73]

Potential Benefits of SNHRI Participation in UN Mechanisms

There are a number of potential advantages to SNHRI involvement in UN processes that have yet to be fully explored. Perhaps the most evident advantage from the UN's perspective would be the increased access to objective local information that SNHRIs could make available at the international level. Especially in federal polities, the national-level actors—whether NHRI or governmental—may lack detailed knowledge of the types of human rights abuses occurring in the provinces and the reasons for such abuses. In addition, there is no strong tradition of participation by other subnational actors (e.g., mayors, governors, and local NGOs) in UN human rights processes. SNHRIs can therefore fill an important need for accurate and neutral testimony on local conditions while minimizing the risk of duplicating existing voices due to the relative lack of other internationally engaged subnational actors.

Second, besides their role in conveying local information, SNHRIs can potentially convey new perspectives on human rights in their interactions with UN processes, by including voices that are rarely heard at the national level. For example, indigenous peoples' perspectives are probably more prominent at the subnational than national level in many countries, which is one of the reasons why indigenous rights have received relatively short shrift in UN human rights treaties. Providing more access to organizations like the Greenland ombudsman, Northwest Territories Human Rights Commission, or Chiapas State Human Rights Commission could provide at least one outlet for official human rights organizations that more prominently represent the concerns of indigenous peoples. Similarly, discussion of the right to self-determination, which is often overlooked by the UN human rights system despite its prominent inclusion in Article 1 of the ICCPR and ICESCR, could benefit from the contributions of SNHRIs such as the Catalan sindic de greuges and Quebec's Commission des Droits de la Personne et des Droits de la Jeunesse, which would presumably provide different perspectives than most national governments.

Third, greater participation in UN processes would likely improve SNHRI familiarity with UN-established human rights norms and improve SNHRI capacity to integrate those international norms into their everyday internally focused work of, inter alia, human rights promotion, complaint resolution, human rights training, policy, and legislative reviews. The importance of this channeling function has been highlighted by Murray with respect to the international engagement of NHRIs, and much the same argument applies to SNHRIs.[74] While some SNHRIs still exclusively rely on domestic (local or national) rights norms, an increasing number are also directly applying international norms, generally from the major human rights treaties and Universal Declaration of Human Rights.[75] By further integrating

SNHRIs into UN processes, the UN would naturally encourage SNHRIs to in turn integrate international norms into their work.

Fourth, SNHRI participation in UN processes would facilitate the inclusion of truly independent state voices from countries that possess SNHRIs, but either lack an NHRI accredited with A status by the ICC (as is the case with Belgium, Switzerland, and the United States), lack an NHRI with full substantive authority throughout the country due to strong federalism or regionalism traditions (as is the case in Canada, Australia, and elsewhere), or possess an accredited NHRI that in fact does not act with robust independence (as some would argue is the case in Mexico).[76] NHRIs are often lauded as vital participants in UN processes that "bring a measure of honesty to international forums where it is lacking."[77] Where no NHRI exists, SNHRIs can bring that same honesty and objective perspective. Of course, while providing greater voice to SNHRIs in these situations may provide short-term benefits, one could argue that it incrementally decreases the pressure to establish a full-fledged and fully authoritative NHRI in countries that currently lack them, which some might consider a preferable long-term alternative.

These benefits may be offset by potential drawbacks to UN participation. There is the danger that increased participation at the international level would draw money and personnel away from SNHRIs' primary task of improving human rights conditions within their own jurisdictions. This has proven a serious issue even for generally better-funded NHRIs when they have been given more international responsibilities such as NPM status.[78] There may also be logistical difficulties inherent in some aspects of UN management of SNHRIs as a coherent new category as well as the potential risk of SNHRI participation in UN processes eating into the time and attention granted to NGOs, an outcome that some observers have criticized with respect to NHRI participation.[79]

Overall, however, in recent years the UN has accepted the advantages of SNHRI involvement. In 2011, High Commissioner for Human Rights Navanetham Pillay publicly encouraged subnational human rights institutions to "enhance [their] engagement with the United Nations treaty bodies and the special procedures mechanisms of the Human Rights Council."[80] This statement was reiterated the same year in a report from the Secretary-General stating that "[i]nteraction by subnational human rights institutions with the international human rights system, including the universal periodic review, the treaty bodies and the special procedures, is strongly encouraged."[81] This welcoming attitude is consistent with the advice of the 2004 Panel of Eminent Persons on United Nations–Civil Society Relations, which argued that a more systematic engagement of local authorities with the UN system would "strengthen global governance, control democratic deficits in intergovernmental affairs, buttress representational democracy and connect the United Nations better with global opinion."[82]

Conclusion

Considering the potential benefits of greater SNHRI engagement in UN processes, it is notable that SNHRI participation remains at a relatively low level, at least when compared with NHRI engagement. For some SNHRIs, this surely is due to a lack of capacity; many SNHRIs lack the funding and staffing resources to devote to international engagement (as, for that matter, do some NHRIs). In the United States, for example, the president of the SNHRI association has welcomed calls from the national government to participate in the reporting process, but has also clarified that federal assistance "in the form of dedicated staff, education and training, and funding, is essential to enable commission staff to engage in reporting efforts."[83] Other SNHRIs may view engagement with international organizations as outside of their mandate, or at least of relatively low priority. However, there nevertheless are actions that can be taken by the UN, NHRIs, and the SNHRIs themselves that would facilitate future engagement with UN processes for those SNHRIs that see such engagement as beneficial.

One way that UN bodies could encourage greater SNHRI participation would be to provide more explicit guidance on how to include SNHRIs in particular situations. For example, guidance documents for the special procedures could instruct them to consult with SNHRIs when relevant (in addition to NHRIs and civil society groups), and the Human Rights Council could create a separate accreditation status for SNHRIs that would allow them to participate in Human Rights Council sessions even without applying for exceptional ICC accreditation. In addition, the UN could increase its level of capacity-building assistance to SNHRIs in developing countries. Not only would this assist with improving SNHRI professionalism and spread best practices in their day-to-day work, but it would also necessarily familiarize SNHRIs with UN norms and mechanisms, increasing the likelihood that SNHRIs will choose to engage more fully with the international system.

As for NHRIs, there are two principal actions that could be taken to increase the level and quality of SNHRI participation in UN processes. First, those NHRIs that actively participate at the UN could ensure that they consult with interested SNHRIs prior to engaging at the international level. This would allow SNHRIs to indirectly have a voice at the UN even where limited finances or restrictive mandates may make direct participation difficult. Second, NHRIs could also play more of a proactive role in providing training to SNHRIs in their home country on how best to interact with the international human rights system. At this point, many NHRIs have well over a decade of experience with intensive participation in UN processes and would be in a good position to pass on that expertise to their subnational counterparts. In nations such as India and Australia, there already have been encouraging examples of NHRIs offering training to SNHRI officers.[84]

The most important step that SNHRIs could take to facilitate their participation at the UN would be to develop an effective global forum for

transnational cooperation. Although there are many existing regional ombudsman forums and the International Ombudsman Association operates globally, these forums are not especially human rights focused, are generally open to both national and subnational ombudsmen, and do not have a significant membership of nonombudsman SNHRIs. The experience of the ICC with NHRIs shows that the establishment of a credible global forum for SNHRI cooperation would create a conduit for information on UN processes to be passed down to SNHRIs, could offer a means of accrediting SNHRIs for greater access, and would provide a more prominent collective voice to promote greater interactions between SNHRIs and the UN system. The establishment of such an institution is an area where UN assistance could also be helpful; the ICC, for instance, is heavily supported by OHCHR in terms of both staffing and finances.

An alternative option would be for the ICC to allow A status accreditation to more SNHRIs, as has been suggested by commentators in certain circumstances.[85] However, this seems unlikely to occur at a large scale. As with any group, current ICC members would fear that expansion would water down the influence of existing members. In addition, allocating ICC voting rights to SNHRIs while respecting the principle of sovereign equality would be challenging, as some countries have dozens of SNHRIs while others have none. Currently, this issue is dealt with somewhat unsatisfactorily in the case of the United Kingdom by allotting only one collective vote to all ICC-accredited UK bodies. Finally, establishing appropriate criteria for SNHRI eligibility would be a major challenge, given that emphasis on a broad mandate by the Paris Principles presents difficulties for SNHRIs.

Even at the current levels of participation, however, it is becoming evident that there is a new actor in the UN human rights system that bears further research and consideration. Where we once could refer to a three-level international human rights regime with global, regional, and national elements, it is clear that today the international human rights regime is also making room for SNHRIs to participate, both directly and indirectly through coordination with national governments or NHRIs in their home countries. While the implications of this development seem largely positive—and have been recognized as such at the UN—it continues to be a development that warrants greater recognition from a human rights community that has traditionally been reluctant to acknowledge the role of subnational actors. 🌐

Notes

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Chapter 5

‘Sub-National Human Rights Institutions and Transgovernmental Networks’ (2015) 33(2) Nordic Journal of Human Rights 110.

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Sub-National Human Rights Institutions and Transgovernmental Networks

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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

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I. 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 national human rights institutions ('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 effectively

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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 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 favour 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.

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II. 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 is 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 States[10] and the 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 47 Council of Europe member states,[13] all of which have been established since the 1970s.[14] While some of these are classic

[9]See e.g., 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; and Commonwealth Human Rights Initiative, 'The Parliamentary Committee as Promoter of Human Rights: The UK's Joint Committee on Human Rights' (2007) 17.

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[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.

[14]D Ansari and HM 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).

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 Argentina[17] 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 16 SNHRIs, all established since 2011.[19]

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III. Transgovernmental Networks: The Conceptual Framework

Government officials have long had formal and informal relationships 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 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.

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[15]H Pihlajasaari and H 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]L Reif, 'Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman' (2011) 31 *Boston Coll Third World LJ* 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 13 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]A-M Slaughter, *A New World Order* (Princeton University Press 2004), 14.

[21]See, e.g., K Kern and H 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'. H Bulkeley, 'Transgovernmental Networks', in J-F Morin and A Orsini (eds), *Essential Concepts of Global Environmental Governance* (Routledge 2015), 220–221.

[22]See J Resnik, 'Foreign as Domestic Affairs: Rethinking Horizontal Federalism and Foreign Affairs Preemption in Light of Translocal Internationalism' (2007) 57 *Emory LJ* 31.

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 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 the publication of reports. Recent research has stressed the 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

[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]A Smith, 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?' (2006) 28 *Hum Rts Q* 909.

[25]R 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. R Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Hart 2007), 68.

[26]R Keohane and J 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]A-M Slaughter and T Hale, 'Transgovernmental Networks and Multi-Level Governance', in H Enderlein, S Wälti and M Zürn (eds) *Handbook on Multi-Level Governance* (Edward Elgar 2010) 360.

[28]*Ibid*.

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

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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.

Secondly, 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 Organisation 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 fora for lower level officials to develop their professional agendas separately from and 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]

Thirdly, transgovernmental networks can also have a socialising 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 behaviour: material inducement, persuasion, and 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

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

[31]L Casini, 'Domestic Public Authorities within Global Networks: Institutional and Procedural Design, Accountability, and Review', in J Pauwelyn, R Wessel and J Wouters, *Informal International Lawmaking* (OUP 2012), 392.

[32]Keohane and Nye (n 26) 44.

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

[34]R Goodman and D Jinks, *Socializing States: Promoting Human Rights through International Law* (OUP 2013), 22.

[35]R Goodman and D 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.

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 is likely to have synergistic effects 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 characterised as a

[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]A-M Slaughter, 'Governing the Global Economy through Government Networks', in M Byers (ed) *The Role of Law in International Politics: Essays in International Relations and International Law* (OUP 2000), 204.
[42]A-M Slaughter, 'The Real New World Order', (Sept–Oct 1997) *Foreign Affairs* 197.
[43]K Raustiala, 'The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law' (2002) 43 *Virginia J Intl L* 1–93.
[44]See e.g., G de Beco, 'Networks of European National Human Rights Institutions' (2008) 14 *Eur LJ* 876–77.
[45]For more critical perspectives, see P Verdier, 'Transnational Regulatory Networks and their Limits' (2009) 34 *Yale J Intl L* 113; M 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*.

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deficit of democratic accountability.[48] This would not normally be considered a drawback for NHRI and SNHRI networks, however, as both are by definition supposed to act independently of their home governments, and in fact derive much of their credibility from that very independence.[49]

IV. 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. Secondly, 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.

IV.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 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 70 NHRI members with A status, signifying compliance with the Paris Principles.[53] It also has accredited 25 NHRIs with B status, signifying partial compliance with the Paris Principles, and 10 NHRIs with C status, signifying non-compliance.[54] Re-accreditation is required every five years.[55] While B and C status NHRIs can participate in some ICC

[48]F Bignami, 'Transgovernmental Networks vs Democracy: The Case of the European Information Privacy Network' (2005) 26 *Mich J Intl L* 807–868.

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

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

[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]S 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. L 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.

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activities, they are not voting members and do not receive privileged treatment at the UN.[56] In addition to allowing for full participation within the ICC and providing an entryway for participating in the UN, A status is widely recognised as a sign of institutional legitimacy and credibility.[57]

Structurally, ICC decision-making is managed by a bureau consisting of 16 voting members, four of 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]

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 fora.[62] Secondly, the ICC assists in the establishment of new NHRIs and capacity building for existing NHRIs.[63] Thirdly, 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] Fourthly, 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] Fifthly, 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

[56] *Ibid* 156–57.

[57] *Ibid* 156.

[58] *Ibid* 155.

[59] *Ibid* 156.

[60] C Sidoti, 'National Human Rights Institutions and the International Human Rights System' in R Goodman and T Pegram (eds), *Human Rights, State Compliance, and Social Change* (CUP 2012), 109.

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

[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; a 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.

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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 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) fora 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 has been

[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.

[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.

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] 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 the '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 relationships 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

[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.

[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]A Durbach, C Renshaw, and A 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.

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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 significant,[87] and Renshaw found that the APF had advanced the acceptance by NHRIs of standards relating to 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.

IV.II 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

[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]V 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 LJ* 1.

[87]S Pasha, 'The Evolution of the Asia Pacific Forum of National Human Rights Institution's Regional Training Program', in H Osaka (ed), *Human Rights Education in Asia-Pacific, Vol. II* (Asia-Pacific Human Rights Information Center 2011), 73–82.

[88]Renshaw, 'The Role of Networks' (n 2) 205.

[89]*Ibid* 185.

[90]Cardenas, 'Chains of Justice' (n 50) 49.

[91]P Rosenblum, 'Tainted Origins and Uncertain Outcomes: Evaluating NHRIs', in R Goodman and T Pegram (eds), *Human Rights, State Compliance, and Social Change* (CUP 2012), 314–20.

[92]Currently, 27 out of 70 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*.

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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 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 the name suggests, 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. Secondly, 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] Thirdly, 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. Fourthly, 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,

[95]The Austrian Ombudsman Board, 'International Ombudsman Institute' http://volksanwaltschaft.gv.at/en/international-activities/international-ombudsman-institute accessed 15 November 2014.

[96]In 2012–2013, 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 2012–2013. IOI, 'Annual Report 2012/2013' (2013) 50–51.

[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).

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on the other hand, generally exclude SNHRIs. Fifthly, 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 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 favour 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]

V. 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 access training or develop norms independently, 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.

[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.

[104]See C Harlow and R Rawlings, 'Promoting Accountability in Multi-Level Governance: A Network Approach' European Governance Papers (EUROGOV) No C-06-02 (2006) 25–27.

[105]See A Stuhmcke, 'Australian Ombudsmen and Human Rights' (2009) 20–22.

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V.I 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 Principles repeatedly use 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 the OHCHR in setting up and operating the ICC, there may also have been reluctance 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 them 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 sub-national 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,

[106]The ICC has faced similar questions with regard 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. R 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).

[108]CM 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 LJ* 147, 159–60.

[109]See C 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.

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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 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 analysing 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 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

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

[113]*Ibid*.

[114]*Ibid*.

[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://afcndh.org/membres/les-membres-votants/ accessed 15 November 2014.

Human Rights Commission and the New Brunswick Human Rights Commission) were granted non-voting associated member status.[121]

V.II SNHRIs in ombudsman networks

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 accepts SNHRIs alongside national-level ombudsman institutions.[122] At the global level, for example, the IOI has 63 sub-national-level members out of a total of 164 member institutions.[123] At the regional level, the percentage 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 89[124] and 84 out of 103[125] member institutions have sub-national mandates. In both cases, all or nearly all member SNHRIs are from autonomous regions or provinces (and their equivalents, such as cantons and länder), rather than municipalities. On the other hand, the Asian Ombudsman Association has only nine sub-national-level members out of 29 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]

V.III 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,

[121]Association Francophone des Commissions Nationales des Droits de l'Homme, 'Les Membres Associés' http://afcndh.org/membres/les-membres-associes/ accessed 15 November 2014.

[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.

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Canada, and Bermuda.[129] Meanwhile, in Europe, the European Network of Ombudspersons for Children includes children's rights ombudsmen and commissions from mostly national jurisdictions from across the continent, along with a handful of sub-national members.[130]

V.IV 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.

VI. 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 sub-regional 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 conclusions. 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

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

[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.

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international standards and lesser international cooperation.[132] Secondly, 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. Thirdly, 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 doing so. Fourthly, 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. Fifthly, individual SNHRIs will in many cases be unable to participate robustly 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 participate directly 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 promote and protect human rights more effectively 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.

VII. ICC and SNHRI Membership

There is 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 seems 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

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

[133]Brodie (n 6); and Cardenas 'Chains of Justice' (n 50) 49.

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

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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.

Other options would promote greater opportunities for SNHRIs to access networking benefits indirectly. 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 fora 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 fora, 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

[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).

[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; and 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).

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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 themselves, as well as civil society organisations, NHRIs, and the OHCHR. 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 play a 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 favour 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 (i.e., 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

[139]Sidoti (n 60) 96.

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

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bodies such as the UN Human Rights Council have only a limited amount of time to spend on analysing country practices and that this time is currently fully occupied by other actors. However, if one believes 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 were 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.

VIII. 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 join NHRIs at the ICC credibly, 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.

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[141]See, generally, Wolman 'Welcoming a New International Human Rights Actor?' (n 134).

[142]See, e.g., 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; and Estado de Chiapas, Decreto no 233, Ley de la Comisión Estatal de los Derechos Humanos (19 Aug 2013).

Chapter 6

‘Sub-National Human Rights Institutions and the Domestication of International Human Rights Law’ (2015) 33(2) Netherlands Quarterly of Human Rights 224.

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SUB-NATIONAL HUMAN RIGHTS INSTITUTIONS AND THE DOMESTICATION OF INTERNATIONAL HUMAN RIGHTS NORMS

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Abstract

While the domestication of international human rights law has been intensively studied in recent years, little attention has been paid to the domestication role of sub-national human rights institutions, meaning those ombudsmen, human rights commissions, and similar independent non-judicial governmental institutions that possess sub-national mandates, and whose mission includes the implementation of human rights norms. This article demonstrates that sub-national human rights institutions around the world are not simply local institutions implementing local norms. Rather, they are increasingly involved in the domestication of international human rights law through their quasi-judicial resolution of disputes, promotion of governmental compliance with international norms; promotion of international norms in civil society; promotion of the use of international norms by the courts, and use of international norms as standards in human rights monitoring. The article explores the implications of these actions, and how the sub-national human rights institutions add to the existing domestication of international norms by national-level actors.

Keywords: domestication; human rights; National Human Rights Institutions; ombudsmen; sub-national human rights institutions

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1. INTRODUCTION

In recent years, scholars have focused considerable attention on the means by which international human rights norms are transmitted to the domestic sphere. Empirical legal scholars have examined the domestication role of domestic courts, compiling databases of cases and conceptualising the different ways in which judges use international law.[1] Drawing from the ground-breaking work of Sikkink, Risse, and others, political scientists have studied the conditions under which international human rights norms can be internalised into domestic practice.[2] Socio-legal and anthropological approaches have highlighted the role of both international and local non-governmental organisations in 'localising' international human rights norms within particular cultural contexts.[3] A small but active group of academics have focused their attention on National Human Rights Institutions (NHRIs), those national human rights commissions, human rights ombudsmen, and other institutions that have emerged around the world in recent years with – in many cases – the express goal of domesticating international human rights law.[4] The sustained academic attention to the issue of domestication is in part a reflection of the growing consensus of its importance to human rights advocacy: in short, human rights practitioners have realised that the weakness of international human rights mechanisms means that domestic institutions must play the leading role in actually applying international human rights norms, if those norms are to actually make a significant difference in people's lives.

This article will extend this attention to sub-national human rights institutions (SNHRIs), those sub-national equivalents of NHRIs that are defined here as *independent non-judicial governmental institutions that possess a sub-national mandate, and whose*

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1 André Nollkaemper, *National Courts and the International Rule of Law* (OUP 2011); Magnus Killander (ed), *International Law and Domestic Human Rights Litigation in Africa* (Pretoria University Law Press 2010); Michael Kirby, 'Domestic Courts and International Human Rights Law – The Ongoing Judicial Conversation' (2010) 6 Utrecht L Rev 168.

2 Thomas Risse, Stephen Ropp, and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (CUP 1999); Ryan Goodman and Derek Jinks, 'Incomplete Internalization and Compliance with Human Rights Law' (2008) 18 Eur J of Intl L 725.

3 Sally Engle Merry, *Human Rights & Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2006); Koen de Feyter, *Localizing Human Rights,* University of Antwerp Institute of Development Policy and Management, Discussion Paper 2006/02 (2006); Zvika Orr, 'The Adaptation of Human Rights Norms in Local Settings: Intersections of Local and Bureaucratic Knowledge in an Israeli NGO' (2012) 11 J Human Rights 243.

4 Richard Carver, 'A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law' (2010) 10 Human Rights L Rev 1; Morten Kjaerum, *National Human Rights Institutions Implementing Human Rights* (Danish Institute for Human Rights 2003). According to one scholar, the domestication of international norms is the "raison d'être" for NHRIs. Sonia Cardenas, 'Adaptive States: The Proliferation of National Human Rights Institutions' (2004) Carr Center for Human Rights Working Paper T-01–04, <http://content.knowledgeplex.org/kp2/cache/kp/24.pdf> accessed 6 February 2015.

mission includes the implementation of human rights norms.[5] These institutions – provincial and local ombudsmen, anti-discrimination commissions, *defensores del pueblo*, and the like – have become increasingly ubiquitous around the world. While some SNHRIs are focused on implementing civil rights norms from domestic sources with little attention to the corpus of international human rights law, this is not always the case. In fact, as this article will demonstrate, SNHRIs with different legal traditions and institutional forms from around the world are increasingly involved in domesticating international norms in a myriad of ways.

After a brief introduction to SNHRIs, this article will address the direct application of international human rights norms by SNHRIs by examining three related questions.[6] First, what sources of human rights norms do SNHRIs use, and how do they relate to international norms? In particular, this section will examine the different ways that SNHRI mandates refer to international norms, and the ways in which SNHRIs have justified the use of international human rights norms when such use is not explicitly provided for in their mandates. Second, in what functions have SNHRIs used international norms? This section will explore five broad manners of use, namely the use of international norms in adjudicating claims; promotion of governmental compliance with international norms; promotion of international norms in civil society; promotion of the use of international norms by the courts, and the use of international norms as standards in human rights monitoring. Third, what are the implications of SNHRI domestication of international norms? This section will focus on exploring what SNHRI domestication of international norms adds to the existing human rights regime beyond the domestication role already played by NHRIs and other actors.

2. SUB-NATIONAL HUMAN RIGHTS INSTITUTIONS

While the proliferation of NHRIs in the past two decades is a well-known and relatively straight-forward story, far fewer people are aware of the simultaneous and similarly striking growth in independent human rights institutions at the sub-national level.[7] In some places, the two types of institutions developed in tandem: in Russia,

5 To date, the domestication of international law by SNHRIs has been the subject of relatively little academic attention, and those studies that have taken note of the trend have largely focused on entities within a single country. See, eg, Risa Kaufman, 'State and Local Commissions as Sites for Domestic Human Rights Implementation' in Shareen Hertel and Kathryn Libal (eds) *Human Rights in the United States: Beyond Exceptionalism* (CUP 2011); Lesley Wexler, 'The Promise and Limits of Local Human Rights Internationalism' (2010) 37 Fordham Urban L J 599.

6 For the purposes of this article, the term 'international human rights norms' will be used to refer to those norms contained in international human rights treaties, customary international law, and declarations such as the Universal Declaration of Human Rights.

7 On NHRI proliferation, see, eg, Cardenas (n 4); Anna-Elina Pohjolainen, *The Evolution of National Human Rights Institutions – The Role of the United Nations* (Danish Institute for Human Rights 2006); Jeong-Woo Koo and Francisco Ramirez, 'National Incorporation of Global Human Rights:

India, and Morocco, for example, the establishment of human rights commissions or ombudsman institutions at the national level was accompanied by the authorisation (and, over time, the establishment) of analogous institutions at sub-national levels.[8] Elsewhere, especially in the US, Canada and Australia, pre-existing sub-national anti-discrimination institutions gradually began adopting more of a human rights focus.[9] Meanwhile, classical ombudsman institutions around the world turned more and more to human rights[10] while 'human rights ombudsman' institutions (with an explicit human rights implementation mandate) were established at national and sub-national levels in newly democratised countries in Southern and Eastern Europe and Latin America.[11] Most recently, new grass-roots movements have begun to emerge in cities to promote human rights at the local level, leading to the establishment of entirely new and innovative forms of SNHRIs.[12]

The SNHRIs that emerged through these various processes are now present on every continent of the world, and in significant numbers. There are 71 regional human rights ombudsmen in Russia;[13] 47 state human rights commissions in the US;[14] 23 state human rights commissions in India;[15] at least 1,000 *personeros municipales* (human rights ombudsmen) in Colombia,[16] and an estimated 900 sub-national human

Worldwide Expansion of National Human Rights Institutions, 1966–2004' (2009) 87 Social Forces 1321.

8 Federal Constitutional Law on the Commissioner for Human Rights of the Russian Federation, N 1-FKZ, Art 5 (26 February 1997) [Russia]; Protection of Human Rights Act 1993 [as amended by the Protection of Human Rights (Amendment) Act, 2006-No 43 of 2006] art 21 (1994) [India]; Dahir no 1–11–19 du 25 rabii I 1432, art 28–31 (1 March 2011) [Morocco].

9 Shubhankar Dam, 'Lessons from National Human Rights Institutions Around the World for State and Local Human Rights Commissions in the United States' Report Prepared for Harvard Executive Session on Human Rights Commissions and Criminal Justice (August 2007) 10.

10 Linda Reif, 'Ombudsmen and Human Rights Protection and Promotion in the Caribbean: Issues and Strategies' in Victor Ayeni, Linda Reif and Hayden Thomas (eds) *Strengthening Ombudsman and Human Rights Institutions in Commonwealth Island and Small States* (Commonwealth Secretariat 2000) 163.

11 Linda Reif, 'Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman' (2011) 31 Boston College Third World L J 278.

12 Charlotte Berends and others (eds), *Human Rights Cities: Motivations, Mechanisms, Implications* (University College Roosevelt 2013).

13 European Commission against Racism and Intolerance, 'Fourth Report on the Russian Federation' CRI (2013) 40, 18.

14 Kenneth Saunders and Hyo Eun Bang, 'A Historical Perspective on U.S. Human Rights Commissions' Executive Sessions Papers: Human Rights Commissions and Criminal Justice (June 2007) 13. In addition, the US has hundreds of local human rights commissions, including over 60 in California alone. ibid 11.

15 Minister of State in the Ministry of Home Affairs, Response to Unstarred Question no 3963 (18 February 2014) <http://mha1.nic.in/par2013/par2014-pdfs/ls-180214/3963.pdf> (accessed 11 April 2015).

16 The Federación Nacional de Personeros de Colombia currently includes as members 1,093 *personeros municipales* and *personeros distritales*. Federación Nacional de Personeros de Colombia, 'Directorio de Personerías' <http://fenalper.org/index.php/2014–08–04–04–41–56/directoriopersonerias> (accessed 11 April 2015).

rights boards in Turkey.[17] According to a Council of Europe report, there are several hundred regional ombudsmen and close to 1,000 local ombudsmen in Council of Europe Member States.[18] Clearly, these SNHRIs comprise a very diverse institutional category. SNHRIs exist at virtually all administrative levels, from cities and counties to provinces and vast autonomous regions. While by definition all are engaged in human rights implementation, they do so in different ways: many receive and investigate complaints from the public, but others concentrate on promotional activities, monitoring, or providing sub-national governments with advice and guidance. Some SNHRIs are mandated to implement the broad sweep of human rights, while others focus on particular rights, such as the rights of children or the elderly. Nevertheless, SNHRIs are increasingly viewed as a coherent (if poorly defined) group by other actors in the international system. In recent years the UN Secretary General, the Office of the High Commission on Human Rights (OHCHR), the Commonwealth Human Rights Initiative, and others have issued recommendations specifically geared toward "sub-national human rights institutions", signifying a recognition that the category is practically meaningful, at least in the eyes of the international community.[19]

3. INTERNATIONAL HUMAN RIGHTS NORMS AND SNHRI MANDATES

While SNHRIs (by definition) are concerned with implementing human rights, they vary quite widely as to which norms they implement, and where those norms originated. Fundamentally, one can point to three types of normative sources in use. First, some NHRIs are explicitly mandated to implement one or more forms of international human rights norms. Second, some NHRIs are mandated to implement a set of human rights norms contained elsewhere in the (national or sub-national) domestic laws of the country where the SNHRI is located. Third, the mandates of

17 Kirsten Roberts and Bruce Adamson, 'Chapter 23 Peer-Review Mission: Human Rights Institutions', Delegation of the EU to Turkey (January 2011) 8.

18 Council of Europe, Commissioner for Human Rights, '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 (some of these ombudsmen would address classic maladministration issues without implementing human rights, and thus would not be considered SNHRIs according to the definition used here).

19 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) <www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10798&LangID=E> (accessed 11 April 2015); 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.

many NHRIs are silent or ambiguous as to the sources of the human rights norms that are to be implemented. Of course, in some cases, these three categories of sources will be combined, so that a SNHRI will be mandated to implement both domestic norms and certain international treaties, or will have a general mandate to promote "human rights" (with source undefined) but will be mandated to use specific domestic or international norms to resolve disputes.

3.1. SNHRI MANDATES TO IMPLEMENT INTERNATIONAL NORMS

An increasing number of SNHRIs are explicitly mandated to directly implement international human rights norms in their work. These SNHRIs include both commission and ombudsman-types at the municipal level and the provincial level, from every region of the world. There are significant differences in the type of international norms that are specifically included in these mandates. At the expansive end, some SNHRIs are mandated to use generally recognised norms of international law[20] or to use norms from international treaties without reference to ratification status.[21] In these jurisdictions, SNHRIs may act as entryways for human rights norms not yet explicitly accepted at the national level. More commonly, many SNHRIs are mandated to implement the international human rights treaties that have been ratified by the SNHRI's home country. This is the case for the Yucatán Human Rights Commission,[22] the Scottish Commission on Human Rights,[23] the Cordoba (Argentina) *Defensor de los Derechos del Niño*,[24] the Oaxaca Human Rights Commission[25] and the Yukon Human Rights Commission.[26]

In some cases, a broad treaty mandate is either supplemented (as in the case with the Yukon Human Rights Commission[27] and Moscow Child Rights Ombudsman[28]) or replaced (as in the case with the Eugene and Portland Human Rights Commissions[29]) by reference to the Universal Declaration of Human Rights (UDHR). From a practical perspective, the use of the UDHR has a few implications.

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20 This broad guidance is relatively common in Russia and Eastern Europe. See, eg, Primorsky Krai Law N 110-CP (11 December 1997) art 4(1) [Russia]; Novgorod Regional Law N 552-OZ (3 November 2005) art 3 [Russia]; City of Novi Sad Decree no 47, Ombudsman (2008), art 4, 26 [Serbia].

21 See, eg, Regolamento per la disciplina delle funzioni del Difensore Civico della Provincia di Biella [Italy], Approvato con DCP 98 (5 September 2000) art 2.

22 Estado de Yucatán Decreto 152/2014 (28 February 2014) s 2(x).

23 Scottish Commission for Human Rights Act 2006 s 2(b).

24 Ley Provincial 9.396, art 4 (2007) [Cordoba].

25 Ley de la Defensoría de los Derechos Humanos del Pueblo de Oaxaca, Decreto No 823, art. 2 (14 February 2012) [Estado de Oaxaca].

26 Human Rights Act, RSY 1986 (Supp), c 11, s 1.

27 Ibid.

28 City of Moscow Law No 43, On the Ombudsman for Childs Rights in the City of Moscow (3 October 2001) art 5.

29 Eugene Council Ordinance No 20481 (29 November 2011); City of Portland Ordinance No. 181670 (19 March 2008).

First, it increases the SNHRI's room for interpretation, given that the UDHR is more vaguely phrased than the major UN conventions and has not been the subject of authoritative interpretation by treaty bodies. Second, the acceptance of the preeminent status of the UDHR by virtually all of the world's countries (despite its technically non-binding status) gives the UDHR legitimacy as a normative source even in countries (such as the US) that have not ratified all of the core human rights treaties. On the other hand, the UDHR's non-binding nature may in some cases make it easier for governmental bodies to reject SNHRI recommendations based solely upon the UDHR.

For other SNHRIs, only a smaller subset of ratified treaties or other international norms are cited as sources of law. Sometimes these are particularly fundamental or well-accepted treaties. For example, in India, where the federal legislation authorising the establishment of a national human rights commission also defines state human rights commission mandates, human rights are defined as encompassing constitutionally guaranteed rights as well as those rights embodied in the International Covenant on Civil Political Rights (ICCPR) or International Covenant on Economic, Social and Cultural Rights (ICESCR) and enforceable by Indian courts.[30] The European Convention of Human Rights (ECHR) is singled out for implementation by the Northern Ireland Human Rights Commission[31] as well as provincial and sub-provincial human rights boards in Turkey.[32] It should be noted that the ECHR is essentially a civil and political rights convention, so singling out this treaty may be problematic from the perspective of the indivisibility of human rights.

In other cases, where a SNHRI only addresses a specific area of human rights, the mandate refers only to sources related to the narrower subject area. This is most commonly the case in the area of children's rights. Thus, the mandates of the Northern Ireland Commission for Children and Young People,[33] the Flemish Children's Commissioner,[34] and the Balamban (Philippines) Municipal Council for the Protection of Children[35] refer specifically to the Convention on the Rights of the Child (CRC). The Children's Ombudsman of the Republic of Srpska[36] is guided by the CRC as well as other international instruments related to the protection of the rights and interests of children. Interestingly, the CRC is also the only international treaty

30 Protection of Human Rights Act, 1993 [as amended by the Protection of Human Rights (Amendment) Act, 2006–No 43 of 2006] art 2(f).

31 Northern Ireland Act, 1998, s 69(11)(b).

32 Regulation on the Establishment, Duties, and Working Principles of Provincial and Sub-Provincial Human Rights Boards (Turkey) (23 November 2003) art 11(a).

33 The Commissioner for Children and Young People (Northern Ireland) Order 2003 no 439 (NI 11) (2003) art 6(3).

34 Decree of 15 July 1997 establishing a Children's Commissioner and Creating the Office of the Children's Commissioner, art 4–6.

35 Municipality of Balamban Children's Code (14 July 2009) sec 83 [Philippines].

36 Law of Ombudsman for Children of Republic of Srpska, No 103/08 (2008), art 1.

source specified in the organic law of the Catalan *Síndic de Greuges* (ombudsman), despite its mandate to address all types of human rights.[37]

In the case of NHRIs, scholars have at times attempted to quantify the percentage of mandates that directly refer to international sources.[38] This article does not attempt to follow suit for SNHRIs. Such a task would be complicated by the high number of SNHRIs, the lack of readily accessible information about many SNHRI mandates, and the absence of a widely accepted list of recognized SNHRIs. The most that can be said is that significant numbers of SNHRIs from a wide range of countries are mandated to use international norms, and that this group comprises a diverse range of SNHRI types: general and single-issue SNHRIs; ombudsmen and commissions; and SNHRIs at the municipal, provincial, and autonomous regional administrative levels. What is equally clear, however, is that not all SNHRIs are mandated to implement international norms. In the US, for example, such mandates are still very much the exception rather than the rule.[39] According to one recent report, most US SNHRIs, despite focusing their attention on issues of racial discrimination, lacked even a basic familiarity with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).[40]

3.2. SNHRI MANDATES TO IMPLEMENT DOMESTIC LAW NORMS

In many instances, SNHRIs are only mandated to implement domestic norms, such as the rights contained in a constitution, statute or charter. These domestic sources can be adopted at the national or sub-national level. Even where the mandate does not mention international sources, however, SNHRIs may still be involved in the domestication of international norms. For one thing, the domestic norms that SNHRIs are implementing may have a normative content that overlaps with international norms. In fact, this will almost always be the case, to a certain extent, in human rights law.[41] Sometimes, the overlap will be intentional, as the domestic norms will have been explicitly drafted so as to implement international treaty obligations. In other cases, the domestic rights norms may not be intentionally based on international human rights law, and may even predate the adoption of major human rights treaties, but nevertheless contains much the same normative content. Regardless of the intent of the domestic law's

37 Act No 24/2009 of 23 December 2009 on the Síndic de Greuges (Generalitat de Catalunya), art 4.

38 See, eg, Brian Burdekin, National Human Rights Institutions in the Asia-Pacific Region (Martinus Nijhoff 2007) 31; Carver (n 4) 6–7 (finding that 45 per cent of NHRI mandates authorise the institution to apply international human rights treaty law, and an additional 45 per cent of mandates do not specify the source of the human rights norms to be implemented).

39 Tara Melish et al, ' U.S. Human Rights Network's CERD Working Groups on Local Implementation & Treaty Obligations, A Report To The Committee on the Elimination of Racial Discrimination on U.S. CERD Obligations and Domestic Implementation' (February 2008) 10 <www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN7.doc> (accessed 11 April 2015).

40 Ibid 11.

41 Nollkaemper (n 1) 218.

drafters, where substantive overlap exists, the SNHRI will be engaged in indirect domestication (to use Nollkaemper's terminology) of international law.[42] Indirect domestication may have somewhat different effects than direct implementation of international norms, however, as in many cases the jurisprudence developed by local courts will diverge significantly from the recommendations and comments of treaty bodies, even when both are dealing with an identical textual starting point.[43] Thus, SNHRIs that rely on this accumulated domestic precedent will be implementing a different set of norms than SNHRIs that rely directly on international treaties (or on international actors' interpretation of treaty norms).

Direct implementation of international norms may also be possible, at least in some contexts. One way that international norms have been directly implemented is through an SNHRI's interpretation that a domestic law mandate necessarily includes international law because the relevant country has a monist tradition of treating international law as binding in domestic settings. This type of interpretation has been given to the mandate of *Personeros Municipales* (municipal ombudsmen) in Colombia. The *Personero Municipal*'s mandate is defined by the rights included in the Colombian Constitution.[44] However, the Colombian Constitution takes a monist view of international human rights law, stating that ratified human rights treaties prevail in the internal legal order.[45] Thus, at least according to the guidance document produced by the Colombian Vice Presidential Office, *Personeros* must ensure that the content of all laws and administrative regulations are consistent with international human rights treaties.[46]

Even where SNHRIs are directly implementing domestic law, some SNHRIs use international norms as an interpretative tool to determine the content of the domestic norms. This interpretive strategy can be explicitly mandated, as is the case in the state of Victoria (Australia) Ombudsman, which fields complaints of state breaches of the Victoria Charter of Human Rights and Responsibilities, and is explicitly authorised to use international law to help interpret the Charter's provisions by the Charter itself.[47]

Sometimes, SNHRI mandates also contain references to international norms in their preambles, in which case the SNHRI can use these preambular references to justify the use of international norms as an interpretative tool. This can be

42 Ibid 117.

43 Ibid 218–19. Other commentators, however, dismiss the substantive difference between direct and indirect implementation of international human rights law as unimportant, see Helena Pihlajasaari and Halvdan Skard, 'The Office of Ombudsman and Local and Regional Authorities: Explanatory Memorandum', Report for Council of Europe Congress for Local and Regional Authorities (2011), para 10.

44 Programa Presidencial de Derechos Humanos y DIH, Vicepresidencia de la República, 'El Personero Municipal y la Protección de los Derechos Humanos y de la Población Civil' (2009) 36 <http://historico.derechoshumanos.gov.co/Prensa/Destacados/documents/2010/destacados/Guia_para_ElPersonero_2009.pdf> (accessed 11 April 2015).

45 Constitution of Colombia (1991), art 93.

46 Programa Presidencial de Derechos Humanos y DIH (n 45) 37.

47 Charter of Human Rights and Responsibilities Act 2006, No 43 (Victoria), art 32(2).

accomplished either as a general matter of statutory interpretation or through explicit reference to the preamble in the statute's operative clauses. Thus, for example, the Montréal Ombudsman is mandated to 'if it is deemed necessary, refer to the Preamble' in interpreting the substance of the Montréal Charter of Rights and Responsibilities, and the Charter's preamble specifies that citizens possess rights contained in the UDHR and human rights treaties ratified by Canada.[48]

Finally, the use of international law as an interpretative tool can simply be initiated at the SNHRI's discretion. This was the case in Quebec, where the Quebec Human Rights Commission has inferred the relevance of international norms in its interpretations of domestic law due to its conclusion that the Province of Quebec could not properly legislate in a manner incompatible with its international commitments.[49] This technique is an illustration of what is known in the US as the 'Charming Betsy' principle, which holds that statutes should wherever possible be interpreted consistently with a country's international obligations.[50] As a practical matter, there may be little substantive difference in outcome in cases where international law is used to interpret domestic norms compared to cases of the direct implementation of international norms.

3.3. MANDATES THAT ARE SILENT OR UNCLEAR ON THE SOURCE OF HUMAN RIGHTS NORMS

Finally, some SNHRI mandates are silent or ambiguous as to the precise domestic or international source of the norms that they implement. For example, they may simply be charged with promoting "human rights" or investigating the "fairness" of governmental actions. This ambiguity or silence may leave room for the SNHRI to choose to invoke international norms. To give one example, the Seattle Human Rights Commission is mandated to provide advice 'in respect to matters affecting human rights and in furtherance thereof', without mention of what norms it should look to for guidance.[51] In its 2013 work plan, the Commission specified that it would work with an international human rights framework, including all treaties ratified by the US, treaties signed but not ratified, and US endorsed international human rights declarations.[52] This expansive acceptance of international norms was prompted by a

48 City of Montréal, Montréal Charter of Rights and Responsibilities (2005), art 34.

49 Lysiane Clément-Major, 'International Human Rights Standards: The Quebec Perspective' (Ontario Human Rights Commission Conference: Advancing Economic, Social and Cultural Rights: Implementing International Human Rights Standards into the Legal Work of Canadian Human Rights Agencies, Toronto, Ontario, December 2000).

50 Murray v. The Schooner Charming Betsy, 6 US 64, 118 (1804). Variations of this principle are a feature of human rights jurisprudence in many common law countries. See Melissa Waters, 'Creeping Monism: The Judicial Trend Toward Interpretative Incorporation of Human Rights Treaties' (2007) 107 Columbia L Rev 628, 660–66.

51 Seattle Municipal Code (1997), 3.14.931.

52 Seattle Human Rights Commission, 2013 Work Plan <www.seattle.gov/Documents/Departments/SeattleHumanRightsCommission/SHRC_2013_workplan.pdf> (accessed 11 April 2015).

Seattle City Council resolution declaring Seattle to be a Human Rights City committed to respecting, protecting and fulfilling the full range of universal human rights.[53] Similarly, the Los Angeles County Human Relations Commission has embraced an international human rights framework despite the absence of a clear mandate in its organic legislation,[54] and even though the Ontario Human Rights Code (which was enacted in 1962) does not explicitly mandate the Ontario Human Rights Commission to employ international norms, the Commission itself has stated that it 'relies upon international human rights treaties and Canadian human rights law to inform its research, policy development, outreach, advice, inquiries and interventions'.[55]

4. HOW DO SNHRIs IMPLEMENT INTERNATIONAL HUMAN RIGHTS NORMS?

This section will attempt to clarify the different ways in which SNHRIs work toward the domestication of international human rights law. Fundamentally, there are five principle mechanisms by which SNHRIs can and do domesticate international norms (although others mechanisms may occasionally be used as well). First, those SNHRIs that function as quasi-judicial institutions can directly utilise international human rights law in their decisions when hearing petitions from individuals. Second, SNHRIs can promote compliance with international human rights law by governmental authorities, whether at the sub-national or national levels. Third, SNHRIs can focus on educating and raising awareness of international human rights within civil society. Fourth, SNHRIs can attempt to promote the use of international human rights law by the courts. Fifth, SNHRIs can employ international human rights norms as standards when carrying out human rights monitoring. These domestication mechanisms are broadly similar to those used by NHRIs.

4.1. QUASI-JUDICIAL USAGE OF INTERNATIONAL HUMAN RIGHTS NORMS

Many SNHRIs have a mandate to hear and rule upon petitions from individuals alleging human rights violations. This is always the case with ombudsman-style SNHRIs, who indeed often have a petition-handling mandate that goes beyond rights

53 City of Seattle Resolution 31420 (4 December 2012).

54 County of Los Angeles Community and Senior Services, 'For the First Time, State Department Asks State and Local Human Rights Agencies to Help US Comply with its Human Rights Treaty Obligations' (26 May 2010) <http://css.lacounty.gov/Data/Sites/1/FolderGalleries/Press/humanrightstreatypressrelease_5–26–10_rev_3_2_f_3.pdf> (accessed 11 April 2015).

55 Letter from Ontario Human Rights Commission to High Commissioner of Human Rights re OHCHR Thematic Study on Participation of Persons with Disabilities in Political and Public Life (14 October 2011) <www.ohrc.on.ca/en/re-ohchr-thematic-study-participation-persons-disabilities-political-and-public-life> (accessed 11 April 2015).

abuses to also encompass maladministration or corruption.[56] It is also true of many state and local anti-discrimination commissions in the US, Canada and Australia, although there are also some commissions with a purely advisory mandate. With ombudsman-type institutions, petitioners are generally required to allege that the human rights violations have been perpetrated by a sub-national governmental entity; however, many anti-discrimination commissions can also hear cases alleging discrimination by certain private sector actors.[57] As is the case with NHRIs, the decisions made by SNHRIs are generally not considered binding, and compliance with SNHRI recommendations varies by jurisdiction.

The use of international standards in the complaint-handling process is an element of many SNHRIs' work. Oftentimes, these international norms will be used in conjunction with analogous domestic norms so as to emphasise the universality and importance of these domestic norms, but in some cases international law can provide standards that go beyond those embraced elsewhere in domestic law. In some ways, however, the use of international standards to rule on individual complaints is likely to have relatively little impact in the broader society. The decisions of SNHRIs will only rarely be read or discussed by the general public. Even in common law jurisdictions, the precedential value of SNHRI decisions is likely to be slim (or none), especially outside of the SNHRI's jurisdiction. Nevertheless, over time, the enforcement of international norms may lead to their internalisation, help develop new rights jurisprudence, and provide additional recourse where domestic law standards provide less protection than international rights law.[58]

4.2. PROMOTION OF GOVERNMENT IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS NORMS

Another common task for SNHRIs is to promote government implementation of international human rights law. This can involve three conceptually different tasks. First, SNHRIs can pressure the (national or sub-national) executive to follow international human rights norms in their policy-making and policy-implementation roles. Thus, for example, the British Columbia Ombudsman has provided advice to

56 Roy Gregory and Philip Giddings, 'The Ombudsman Institution: Growth and Development' in Roy Gregory and Philip Giddings' (eds) *Righting Wrongs: The Ombudsman in Six Continents* (IOS Press 2000) 3–4 (surveying ombudsman definitions, all of which involve a complaint-handling function).

57 In the US, for example, state and local human rights commissions can typically investigate certain complaints of private sector discrimination, see Saunders and Bang (n 14) 1. Provincial Human Rights Commissions in Canada can hear complaints of discrimination by private sector entities regulated at the provincial level. Tina Piper and A Wayne MacKay, 'The Domestic Implementation of International Law: A Canadian Case Study', in Errol Mendes and Anik Lalonde-Roussy (eds) *Bridging the Global Divide on Human Rights* (Ashgate, 2003) 120–1.

58 Gaylynn Burroughs, 'Realizing Domestic Social Justice through International Human Rights: Part I: More than an Incidental Effect on Foreign Affairs: Implementation of Human Rights by State and Local Governments' (2006) 30 NYU Rev L and Social Change 411, 421–22.

the British Columbia provincial government on implementing the CRC into domestic policies,[59] while the *Conseil Lyonnais pour le Respect des Droits* has lobbied the French national government to maintain a Children's Ombudsman office in compliance with a recommendation of the UN Committee on the Rights of the Child.[60]

Second, SNHRIs can review pending (national or sub-national) legislation or promote new legislation with an eye towards ensuring consistency with international human rights norms. For example, Scotland has recommended that the UK (as well as the Scottish) government incorporate the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) into domestic laws[61] and the Jalisco (Mexico) Human Rights Commission urged the state of Jalisco to pass new legislation to implement CEDAW and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.[62] The Río Negro (Argentina) *Defensor del Pueblo* has urged local law reform to ensure compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol).[63]

Third, SNHRIs can advocate for the ratification or acceptance of as-yet unaccepted international norms, as is commonly done by NHRIs, and indeed is explicitly mentioned in the Principles Relating to the Status of National Institutions (Paris Principles), a set of principles adopted by the UN General Assembly that have evolved into authoritative guidelines for NHRIs.[64] While this type of advocacy seems to play a much less prominent role in the work of SNHRIs than NHRIs, it is not always ignored. For example, the Mexico City Human Rights Commissioner has called upon the Mexican government to ratify the Optional Protocol to the ICESCR.[65] Similarly,

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59 Linda Reif, *The Ombudsman, Good Governance and International Human Rights System* (Martinus Nijhoff 2004) 111.

60 Letter from Conseil Lyonnais pour le Respect des Droits to Prime Minister re la suppression de défenseur-e des droits de l'enfant, 5 November 2009 <www.respect-des-droits.org/attachedfiles/download.php?id=1965,3221> (accessed 11 April 2015).

61 Scottish Human Rights Commission, 'Submission – Convention on the Elimination of Discrimination Against Women' (25 June 2013) <www.scottishhumanrights.com/resources/policysubmissions/cedawnews2013> (accessed 11 April 2015).

62 Editorial, 'CEDHJ pide al Congreso crear marco legal para proteger a las mujeres' *La Jornada Jalisco* (14 November 2012) <www.lajornadajalisco.com.mx/2012/11/14/cedhj-pide-al-congreso-crear-marco-legal-para-proteger-a-las-mujeres/> (accessed 11 April 2015).

63 Defensor del Pueblo de Río Negro (Argentina) Resolución No 28 del 2011 (17 October 2011).

64 Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, UNGA Res 48/134 (20 Dec 1993) 48th Session (1993) UN Doc A/RES/ 48/141 para 3(c). While the Paris Principles were explicitly drafted with national institutions in mind, in some instances SNHRIs have nevertheless used them for guidance. See, eg, Bermuda Human Rights Commission, '2010 Annual Report' (2011) 22; Ontario Human Rights Commission, 'Reviewing Ontario's Human Rights System' (2005) 19; Estado de Chiapas (Mexico), Decreto no 233, Ley de la Comisión Estatal de los Derechos Humanos (19 Aug 2013).

65 Comisión de Derechos Humanos del Distrito Federal de México, 'Se pronuncia CDHDF porque el Estado mexicano ratifique el Protocolo Facultativo del Pacto Internacional de Derechos Económicos, Sociales y Culturales' (14 October 2011) <www.portalfio.org/inicio/noticias/item/7562-méxico-

the Saskatchewan Human Rights Commissions has requested the Canadian federal government to voice its support for the Declaration on the Rights of Indigenous Peoples.[66]

Although formal ratification of international human rights norms can only take place at the national level, the Salt Lake City Human Rights Commission and the San Francisco Commission on the Status of Women in the US have also urged local adherence to unratified treaty norms (CEDAW, in both cases).[67] While this type of sub-national human rights incorporation provides an interesting new sub-national entryway for international human rights norms, and has been lauded by many advocates, the potential also exists for conflict with national-level foreign policy control; as Martha Davis notes, 'even these seemingly benign, inwardly focused instances of domestic incorporation of human rights norms might be seen as impinging on federal foreign affairs prerogatives that have been expressed through inaction'.[68]

4.3. PROMOTION OF INTERNATIONAL HUMAN RIGHTS NORMS IN CIVIL SOCIETY

SNHRIs can also promote international human rights norms among civil society or the general public. This is intended to ultimately create 'a culture of human rights so that every individual in society shares the values that are reflected in the international and national human rights legal framework'.[69] The promotion of international human rights norms in civil society should also have an indirect effect on government policies, as it encourages individuals to stand up for their rights against government actors and insist that governments respect their rights.[70] Promotional activities can include human rights training and education programs, as well as awareness-raising activities. These tasks can be carried out by the SNHRI itself, through its own publications and

df-se-pronuncia-cdhdf-porque-el-estado-mexicano-ratifique-el-protocolo-facultativo-del-pacto-internacional-de-derechos-económicos-sociales-y-culturales.html> (accessed 11 April 2015).

66 Letter from Saskatchewan Human Rights Commission to Prime Minister Stephen Harper re Declaration on the Rights of Indigenous Peoples <www.shrc.gov.sk.ca/media_room/corr-declar-indigenous.html> (accessed 11 April 2015).

67 Salt Lake City Human Rights Commission, 'Discrimination Report' (July 2009) 36; Columbia Law School Human Rights Institute, 'Implementing Recommendations from the Universal Periodic Review: A Toolkit for State and Local Human Rights and Human Relations Commissions' (2011) <www.law.columbia.edu/ipimages/Human_Rights_Institute/UPR%20Toolkit.pdf> (accessed 11 April 2015).

68 Martha Davis, 'Upstairs, Downstairs: Subnational Incorporation of International Human Rights Law at the End of an Era' (2008) 77 Fordham L Rev 411, 421.

69 OHCHR, 'National Human Rights Institutions: History, Principles, Roles, and Responsibilities' (2010) 57 <www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf> (accessed 11 April 2015).

70 As Amnesty International states with respect to NHRIs, 'a population which is educated in their human rights is an asset to assist NHRIs to carry out their task'. Amnesty International, 'Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights' AI INDEX: IOR 40/007/2001 (1 October 2001) 18.

programs, or by funding and sponsoring events carried out by third parties, such as human rights symposia or film festivals. SNHRI activities to promote international norms are relatively common, and vary widely in their nature and effect. For example, in Pakistan, the Punjabi Ombudsman Office has translated the CRC into Urdu, which it distributed as a promotional brochure.[71] In the US, the Barnstable County (Massachusetts) Human Rights Commission organises a Human Rights Academy to bring together students from each Cape Cod high school to learn about the UDHR.[72] Of course, SNHRIs will vary in the extent to which they engage in civil society-oriented promotional activities; those that hew closely to the traditional ombudsman model may be more focused on handling complaints, although even ombudsman-style SNHRIs increasingly consider human rights promotion as part of their mandate.[73]

Among the various avenues for promoting international norms, two particular techniques stand out as particularly common. The first of these is the display of international human rights treaties or the UDHR on the SNHRI webpage (or alternatively the provision of a link to the text of these norms at the OHCHR website or elsewhere). This is common, even among SNHRIs that are not specifically mandated to implement international human rights norms.[74] Some SNHRIs go a step further by displaying or reporting on recommendations from international treaty bodies or the Universal Periodic Review process.[75] Webpage awareness-raising has obvious appeal for SNHRIs that often lack the budget and staffing to engage more directly with the community. It also has its disadvantages, however, most notably its ineffectiveness in reaching those people (often the most vulnerable) who lack internet access or awareness, and its fundamentally passive nature; in order to view the treaties or UDHR, members of the public must first come to the SNHRI's website and click on the relevant link.

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71 Office of the Ombudsman Punjab, 'How We Work' <http://ombudsmanpunjab.gov.pk/children-complaint-office/how-we-work/> (accessed 11 April 2015).

72 Barnstable County Human Rights Commission, 'Human Rights Academy' <www.bchumanservices.net/barnstable-county-human-rights-commission/#Human_Rights_Academy> (accessed 11 April 2015).

73 See, eg, Linda Reif, 'Enhancing the Role of Ombudsman Institutions in the Protection and Promotion of the Rights of Persons with Disabilities' (Speaking Truth to Power – the Role of the Ombudsman in the 21st century conference, Wellington, New Zealand, 14 November 2012) 19.

74 For example, these SNHRIs display the UDHR on their websites: Defensor del Pueblo de Río Negro (Argentina) <www.defensoriarionegro.gov.ar/drn/orden-juridico/> (accessed 11 April 2015); Bermuda Human Rights Commission <www.gov.bm/portal/server.pt?open=512&objID=495&PageID=0&cached=true&mode=2> (accessed 11 April 2015); The following SNHRI websites display the text of international treaties: Victoria (Australia) Human Rights and Equal Opportunities Commission <www.humanrightscommission.vic.gov.au/index.php/the-law/international-law> (accessed 11 April 2015); Northern Ireland Human Rights Commission <www.nihrc.org/index.php/human-rights-law/un-conventions-and-treaties> (accessed 11 April 2015).

75 Scottish Human Rights Commission, 'Universal Periodic Review' <www.scottishhumanrights.com/international/uprinternational> (accessed 11 April 2015); Victoria (Australia) Human Rights and Equal Opportunities Commission, 'Media Statement on the UN Human Rights Committee findings on the police assault of Corinna Horvath in 1996' <www.humanrightscommission.vic.gov.au/index.php/news-and-events/media-releases/item/802-media-statement-on-the-unhcr-findings-on-the-police-assault-of-corinna-horvath-in-1996> (accessed 11 April 2015).

Another commonly used technique is for the SNHRI to take advantage of one of the various 'days' set aside by the UN General Assembly to promote the relevant international norm, either through the issue of a press release or through sponsoring other awareness-raising activities such as a public seminar or celebration. The most commonly celebrated day is probably December 10, known as 'Human Rights Day', which commemorates the adoption of the UDHR.[76] For example, the International Association of Official Human Rights Agencies (IAOHRA), an association of US and Canadian SNHRIs, adopted a resolution, whereby members committed to 'utilize Human Rights Day […] to raise awareness of the UDHR and encourage residents to take action to support its principles'[77] and has specifically encouraged its members to commemorate Human Rights Day through the use of proclamations, op-eds, community events and educational e-mails.[78] Other days commonly commemorated by SNHRIs with the promotion of international norms include March 8 (International Women's Day); March 21 (International Day for the Elimination of Racial Discrimination), and December 3 (International Day of Persons with Disabilities).[79]

4.4. PROMOTION OF THE USE OF INTERNATIONAL NORMS BY THE COURTS

In addition to promoting international norms to government agencies and civil society, some SNHRIs have attempted to promote the use of international norms by the courts. One way that this has been accomplished has been through the filing of *amicus curiae* briefs in ongoing cases, urging compliance with international norms.

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76 The Maharashtra (India) Human Rights Commission held a public Human Rights Day program publicising the ICCPR and UDHR. Maharashtra Human Rights Commission, 'Celebration of International Human Rights day on 10th December, 2012' (December 2012) <www.mshrc.gov.in/downloads/10%20Dec%202012.pdf> (accessed 11 April 2015); Amherst (Massachusetts) Human Rights Commission held a community reading of the UDHR on Human Rights Day. Amherst Human Rights Commission, 'Celebration of Universal Declaration of Human Rights' (10 December 2013) <http://amhersthumanrights.blogspot.kr/2013/12/celebration-of-universal-declaration-of.html> (accessed 11 April 2015).

77 IAOHRA, Resolution no 1, 'International Human Rights' (31 August 2010).

78 Letter from Risa Kaufman and Leon Russell to IAOHRA Members re Celebrating Human Rights Day (November 2009) <www.iaohra.org/storage/November%202009%20-Celebrating%20Human%20Rights%20Day.pdf> (accessed 11 April 2015).

79 For example, the Kaliningrad Human Rights Ombudsman issued a news release highlighting and linking to the CPD, see Commissioner for Human Rights in the Kaliningrad Region, 'International Day for the Rights of the Disabled' <http://ombudsman39.ru/news/mezhdunarodny-deny-boryb-za-prava-invalidov> (accessed 11 April 2015). In Argentina, the Defensora del Pueblo de Río Negro published an article quoting CEDAW in the local newspaper on International Women's Day, see Nadina Díaz, 'Día Internacional de la Mujer' *Diario El Cordillerano* (8 March 2014) <www.elcordillerano.com.ar/index.php/notas-de-opinion/columnas-abiertas/item/11621-dia-internacional-de-la-mujer> (accessed 11 April 2015). In the US, the IAOHRA distributes a resource packet to member SNHRIs to promote CERD compliance on the International Day for the Elimination of Racial Discrimination, see IAOHRA, International Day for the Elimination of Racial Discrimination <www.iaohra.org/international-day/> (accessed 11 April 2015).

For example, the Mexico City Human Rights Commission submitted an *amicus* brief to the federal Supreme Court, that was intended to ensure that the Court's jurisprudence complied with the requirements of the Convention on the Rights of Persons with Disabilities (CPD).[80] The City of Buenos Aires *Defensor del Pueblo* urged the Buenos Aires *Tribunal Superior de Justicia* to use the ICESCR and other relevant international norms in interpreting the right to housing in Argentina.[81] In Canada, the Saskatchewan, Ontario and Alberta Human Rights Commissions filed an *amicus* brief in the Supreme Court of Canada arguing that the British Columbia Code should be interpreted consistently with the CPD.[82]

Some commission-type SNHRIs can also promote the use of international norms as litigants. This type of litigation can take place either in specialised human rights tribunals (where, for example, the Quebec Human Rights Commission has regularly advocated the use of international human rights law[83]), administrative courts,[84] or in the general court system.[85] Of course, the downside to this method of human rights promotion is that participating in litigation as a party can be expensive and time-consuming, so such actions are likely to be rare except in jurisdictions where SNHRI appearances before human rights tribunals or appeals to the courts are expressly anticipated.

Finally, SNHRIs may in some cases promote the use of international norms by the courts outside of a litigation context. For example, the Mexico City Human Rights Commission recently issued a press release criticising the Mexican Supreme Court's failure to cite international law.[86] Such overt criticism of the courts is rare, however, and even NHRIs have been reluctant to directly criticise court decisions.[87]

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80 Comisión de Derechos Humanos del Distrito Federal, 'La CFHDF pide a la SCJN observar los estándares internacionales que obligan a México en materia de capacidad jurídica' (9 July 2013) <www.portalfio.org/inicio/noticias/item/12771-mexico-df-la-cdhdf-pide-a-la-scjn-observar-los-estandares-internacionales-que-obligan-a-mexico-en-materia-de-capacidad-juridica.html> (accessed 11 April 2015).

81 Defensora del Pueblo de la Ciudad Autónoma de Buenos Aires, Amicus Curiae Brief, Expte N 6153/08 Ministerio Público – Asesoría General Tutelar de la Ciudad Autónoma de Buenos Aires c/ GCBA s/ acción declarativa de inconstitucionalidad (2009).

82 Joint Intervention of Saskatchewan Human Rights Commission, Ontario Human Rights Commission and Alberta Human Rights Commission in Frederick Moore on behalf of Jeffrey P. Moore v Her Majesty the Queen in Right of the Province of British Columbia as represented by the Ministry of Education, et al, Court File Nos 34040 & 34041 (Supreme Ct Canada, 2012).

83 Clément-Major (n 50).

84 Eg Re Brisbane Housing Company Ltd (No 3) [2012] QCAT 529 (16 October 2012) [Queensland] para 23 (Queensland Anti-Discrimination Commission highlighting rights to adequate standard of living, food, clothing and housing in ICESCR and CPD).

85 Eg Yukon (Human Rights Commission) v. Yukon Order of Pioneers, Dawson Lodge #1, 1993 CanLII 3415 (YK CA).

86 Comisión de Derechos Humanos del Distrito Federal, 'Prevalecen normas locales sobre Tratados Internacionales en materia de DDHH de las personas con discapacidad' (20 February 2012) <www.portalfio.org/inicio/noticias/item/8915-méxico-df-prevalecen-normas-locales-sobre-tratados-internacionales-en-materia-de-ddhh-de-las-personas-con-discapacidad.html> (accessed 11 April 2015).

87 Andrew Wolman, 'National Human Rights Institutions and the Courts in the Asia-Pacific Region' (2013) 19 Asia Pacific L Rev 237, 247.

4.5. USE OF INTERNATIONAL HUMAN RIGHTS NORMS AS MONITORING STANDARDS

The final domestication mechanism commonly used by SNHRIs is the use of international norms as standards when monitoring a particular situation, policy or law. For example, the Puebla Human Rights Commission conducted an analysis of local legislative compliance with the full slate of human rights treaties to which Mexico is a party.[88] Other reviews focus on a single treaty. Thus, the Andaluz *Defensor del Pueblo* reviewed the compliance of Andaluz autonomous legislation with the CPD,[89] the Salt Lake City Human Rights Commission reviewed the status of women while using CEDAW as a guiding document,[90] and both the Madrid *Defensor del Menor* and the Flemish Children's' Rights Commission have monitored their jurisdiction's implementation of the CRC.[91] While SNHRI monitoring may not directly lead to the implementation of international norms, it can have an indirect effect; by measuring rights under international norms, the SNHRI is providing an incentive for the government (and other actors, where relevant) to meet those norms, in order to show improvement.

Although many monitoring reports are aimed at domestic actors, some SNHRIs have monitored local conditions primarily in order to convey their findings to international actors. In the US, Belgium, Australia, the UK, Mexico and Hong Kong, for example, SNHRIs have contributed their findings to periodic reports for treaty bodies and the Universal Periodic Review (as submitted by either the national government or NHRI or, in the case of Hong Kong and certain Mexican states, as independent 'alternative reports').[92] Of particular interest is the monitoring role that SNHRIs can play as independent mechanisms under the CPD and National Preventive Mechanisms under the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). While most States have formally nominated NHRIs to play those roles, both treaties state that parties can appoint multiple bodies to fulfil these roles, and in fact a few States have officially included SNHRIs among their bodies: the UK designated the Equality and Human Rights Commission, the Scottish Human Rights Commission,

88 Comisión Estatal de Defensa de los Derechos Humanos de Puebla, 'Puebla a la vanguardia en el estudio de la armonización legislativa local y tratados internacionales' (22 August 2012) <www.portalfio.org/inicio/noticias/item/10443-puebla-puebla-a-la-vanguardia-en-el-estudio-de-la-armonización-legislativa-local-y-tratados-internacionales.html> (accessed 11 April 2015).

89 Defensor del Pueblo Andaluz, Resolución formulada en la queja 11/6034 dirigida a Consejeria de la Presidencia. Relativa a: Adecuación de la normativa autonomica a la convención internacional sobre los derechos de las personas con discapacidad (21 March 2012).

90 Salt Lake City Government, 'Mayor, Human Rights Commission to Release Report on Women in Salt Lake City' (28 May 2013) <www.ci.slc.ut.us/mayor-human-rights-commission-release-report-women-salt-lake-city> (accessed 11 April 2015).

91 Reif (n 60) 322.

92 Andrew Wolman, 'Welcoming a New International Human Rights Actor? The Participation of Subnational Human Rights Institutions at the United Nations' (2014) 20 Global Governance 437, 442–43.

the Northern Ireland Human Rights Commission, and the Equality Commission of Northern Ireland as CPD independent mechanisms,[93] while Denmark has designated Greenland's Ombudsperson as an NPM and the UK has designated the Scottish Human Rights Commission and Children's Commissioner for England (among several other institutions) as NPMs.[94] In Brazil and Argentina, several SNHRIs have been granted monitoring rights as 'local preventive mechanisms' that then coordinate their findings with the national-level NPM.[95] In Catalunya, the autonomous regional government has designated the *Sindic de Greuges* as a preventive mechanism, although this designation has not been officially accepted by the Spanish central government.[96]

4.6. INWARD AND OUTWARD DOMESTICATION OF INTERNATIONAL NORMS

SNHRI monitoring actions and SNHRI promotion of human rights norms in civil society are generally inward-oriented, meaning that the SNHRI will be monitoring rights within its jurisdiction (whether for the benefit of local or extra-jurisdictional actors) or promoting human rights within its jurisdiction.[97] This is also the case for SNHRIs in their complaints handling function, at least in the geographic sense; there are (exceptionally) some SNHRIs that can review the actions of national governmental entities that take place within the SNHRI's sub-national jurisdiction.[98] SNHRI promotion of international norms in the courts and SNHRI promotion of international norms to governments, on the other hand, can sometimes be outward-oriented, intended to influence jurisdictions outside of the SNHRI's home. Usually, such outward-oriented actions will be aimed at influencing the national government or courts.[99] There are also instances of cooperation between different SNHRIs

93 ICC and Canadian Human Rights Commission, 'Survey of National Human Rights Institutions on Article 33.2 of the Convention on the Rights of Persons with Disabilities' (August 2011) 53–54.

94 OHCHR, 'OPCAT Subcommittee on Prevention of Torture: National Preventive Mechanisms' <www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx> (accessed 11 April 2015).

95 Association for the Prevention of Torture, 'Local Preventive Mechanism' <www.apt.ch/en/opcat-database/?kid=39> (accessed 11 April 2015).

96 Act No 24/2009 of 23 December 2009 on the Síndic de Greuges (Generalitat de Catalunya), arts 68–77.

97 This distinction is adapted for the sub-national context from an analogous distinction posited by Gaylynn Burroughs, who stated that inward-looking strategy 'focuses on promoting the rights of people within the United States, while the outward-looking strategy focuses on promoting human rights in other countries'. Burroughs (n 59) 414.

98 Helena Pihlajasaari and Halvdan Skard (n 43) para 17(b).

99 For example, the Val d'Aosta Ombudsman publicly lent his support to pending national legislation that would bring Italian law into compliance with the CAT and OPCAT. 'Reato di tortura, il Difensore civico valdostano aderisce alla proposta di legge' *Aosta Sera* (23 January 2013) <www.aostasera.it/articoli/2013/01/23/25550/reato-di-tortura-il-difensore-civico-valdostano-aderisce-alla-proposta-di-legge> (accessed 11 April 2015). The Mexico City Human Rights Commission has urged the Mexican federal government to comply with the CRC. Comisión de Derechos Humanos

within a nation to jointly pressure their national government or courts to adopt or follow international norms.[100] It is, of course, difficult to evaluate the impact of such outward interventions. However, they do represent a conceptually interesting lever in international human rights governance, with sub-national governmental actors pressuring national governmental actors to apply international norms. This lever has rarely been recognised by international actors who are more used to promoting their norms directly to national governments.

There have also been occasional attempts by SNHRIs to exercise an influence on the human rights situation in foreign nations. In Eugene, Oregon, for example, the local human rights commission drafted a letter condemning Israeli actions in the Gaza flotilla raid, but suspended work on a resolution after protest from local Jewish groups.[101] Local human rights commissions in the US have occasionally gone a step further and called on their local governments to divest from investments in a human rights abusing country; for example, in 2010 the human rights commission in St. Louis Park, Minnesota, passed a resolution calling on the city to divest itself of investments in companies or nations 'whose operations are complicit in aiding the government of Sudan or of the government of any nation that is supporting genocide'.[102] Aside from substantive objections, these resolutions have sometimes been challenged by members of the public who feel that a human rights commission should focus its attention on local issues rather than international affairs.[103] This type of local activism has also sparked criticism from those who feel that a nation should speak with one voice at the international level.[104] It should be emphasised, however, that such internationalist interventions by SNHRIs are rare; even NHRIs have so far proven extremely reluctant to express their views about human rights in foreign countries.[105]

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del Distrito Federal de México, 'Exhorta CDHDF al Estado mexicano a atender el mandato de la Convención sobre los Derechos del Niño' (29 February 2012) <www.portalfio.org/inicio/noticias/item/8996-mexico-df-exhorta-cdhdf-al-estado-mexicano-a-atender-el-mandato-de-la-convención-sobre-los-derechos-del-niño.html> (accessed 11 April 2015).

100 For example, the Canadian Association of Statutory Human Rights Agencies ('CASHRA') pressed the Canadian federal government to establish an independent monitoring mechanism in accordance with the CPD, see CASHRA, 'Statement by the Canadian Association of Statutory Human Rights Agencies on Canada's First Report Under the Convention on the Rights of Persons with Disabilities' (3 April 2014) <http://cashra.ca/news/statement-by-cashra-2014.html> (accessed 11 April 2015).

101 Ron Kampeas, 'Oregon Rights Panel Coaxed to Table Resolution Slamming Israel' *JTA* (19 January 2011), <www.jta.org/2011/01/19/news-opinion/united-states/oregon-rights-panel-coaxed-to-table-resolution-slamming-israel> (accessed 11 April 2015).

102 Mary Jane Smetanka, 'Worldview in the Suburbs? It's on the Agenda' *Minneapolis Star Tribune* (15 February 2010) <www.startribune.com/templates/Print_This_Story?sid=84423117> (accessed 11 April 2015).

103 Ibid.

104 Eg Lucien Dhooge, 'Darfur, State Divestment Initiatives, and the Commerce Clause' (2007) 32 North Carolina J of Intl L & Commercial Regulation 391.

105 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) 115.

5. IMPLICATIONS OF SNHRI DOMESTICATION OF INTERNATIONAL HUMAN RIGHTS NORMS

Having shown that SNHRIs can, and do, domesticate international human rights norms in a variety of ways, this section will examine the implications of SNHRI implementation of international norms. In particular, it addresses the question of whether SNHRI domestication of international norms adds any value to the existing human rights regime, given that domestication is already commonly carried out by NHRIs, courts, and other actors. It argues that SNHRI domestication of international norms adds to the existing domestication work of NHRIs in three principle ways. First, by providing sub-national actors with a greater opportunity to utilise international norms, SNHRI domestication allows sub-national actors to influence the interpretation of these norms, and potentially implement them more effectively than can be done at the national level. Second, SNHRIs can provide an independent domestication mechanism in countries where NHRIs or other independent actors are unable or unwilling to effectively domesticate international norms. Third, SNHRI domestication allows for the direct application of international norms to restrict sub-national government actions, a task which can sometimes be difficult or impossible for NHRIs and other actors to replicate due to division of powers concerns.

5.1. INCREASED SUB-NATIONAL ROLE IN INTERPRETATION AND IMPLEMENTATION OF INTERNATIONAL NORMS

First, and most obviously, the domestication of international norms by SNHRIs brings the domestication process down to a lower level of government, closer to the people, consistent with the international law principle of subsidiarity.[106] This will have implications on both the way that international human rights law is interpreted, and on its effectiveness. From an interpretive standpoint, there are certain international human rights principles that are likely to be systematically under-emphasised at the national or international level, such as indigenous rights, minority rights, or the right to self-determination, because the main proponents of these rights rarely hold power at the national level. On the other hand, these rights are more likely to be embraced and given teeth by SNHRIs, at least in localities with large indigenous or national

106 Risa Kaufman, '"By Some Other Means": Considering the Executive's Role in Fostering Subnational Human Rights Compliance' (2012) 33 Cardozo L Rev 1971, 2002. The principle of subsidiarity can be characterised as holding that '[w]here a lower (political or social) level can effectively undertake a task, the higher level has to abstain from acting'. Markus Benzing, 'Sovereignty and the Responsibility to Protect in International Criminal Law' in Doris König et al (eds) *International Law Today: New Challenges Today and the Need for Reform?* (Springer 2008) 28. The principle is most prominently in European Union law due to its inclusion in the Maastricht Treaty; while its relevance in other contexts is hotly contested, subsidiarity has been proposed by some as a structural principle of international human rights law, see Paolo Carozza, 'Subsidiarity as a Structural Principle of International Human Rights Law' (2003) 97 Amer J Intl L 38.

minority populations, or where self-determination is widely valued. Thus, for example, in February 2009 the Navajo Nation Human Rights Commission adopted the UN Declaration on the Rights of Indigenous Peoples as a set of minimum standards in the Commission's work, at a time when the Declaration had still not been endorsed by the US at the national level.[107]

More generally, sub-national actors may contribute to the elaboration of rights interpretations that are more grounded in local cultures and traditions. This process has been theorised most thoroughly in Sally Merry's work on the 'vernacularisation' of human rights, which Merry defines as the process whereby human rights are 'translated into local terms and situated within local contexts of power and meaning'.[108] Translation refers to the process of adjusting the language and structure of appropriated norms, programs or interventions to local circumstances. Through the vernacularisation process, new ideas are framed in ways that resonate with pre-existing ideas of justice and order, while preserving their essential attributes and potential to transform unequal or unjust local social relations.[109] Merry places particular emphasis on the critical importance of the identity of the intermediary individuals and institutions that can act as 'translators'.[110] These intermediaries, who 'straddle the global and the local', reframe local grievances by portraying them as human rights violations, and also reframe international norms in locally relevant terms.[111]

SNHRIs are in many situations likely to act as translators. They will generally have closer links to local traditions and cultures than their counterparts in national capitals. They will also often possess the legitimacy that accompanies local self-government in the eyes of the governed. According to Merry's theory, SNHRIs are likely to make real advances in expanding the human rights movement to new areas and increasing the likelihood of local disputes being viewed in rights terms. When translated into the

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107 Navajo Nation Human Rights Commission, 'NNHRC Welcomes the 5th Anniversary of the U.N. Declaration on the Right of Indigenous Peoples' (13 September 2012) <www.nnhrc.navajo-nsn.gov/PressReleases/2012/Sep/091312_NNHRC_welcomes_the_5th_Anniversary_of_the_U.N._Declaration_on_the_Rights_on_Indigenous_Peoples.pdf> (accessed 11 April 2015). More recently, President Obama has expressed his support for the Declaration. See US Department of State, 'Declaration of U.S. Support for the Declaration on the Rights of Indigenous Peoples' (16 December 2010) <www.state.gov/documents/organization/184099.pdf> (accessed 11 April 2015).

108 Merry (n 3) 1.

109 Peggy Levitt and Sally Engle Merry, 'Making Women's Human Rights in the Vernacular: Navigating the Culture/Rights Divide' in Dorothy Hodgson (ed) *Gender at the Limit of Rights* (U Penn Press, 2010) 88.

110 According to Merry, 'the extent to which human rights laws exert an impact at the grass roots depends on the work of these translators'. Sally Engle Merry, 'New Legal Realism and the Ethnography of Transnational Law' (2006) 31 Law & Soc. Inquiry 975, 992–93.

111 Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108 American Anthropologist 38, 39; 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 11 April 2015).

local vernacular, however, these rights will be interpreted and implemented differently in different locales. Some might worry that this could detract from the universality of human rights or lead to the fragmentation of international law.[112] After all, the international human rights system is arguably premised on a system of shared values, and variability in the meaning of particular rights can complicate human rights advocacy.[113] A certain amount of fragmentation, however is not necessarily a negative result; by losing some of its unitary meaning, international law may gain domestic relevance.[114] Some would also argue that a degree of competition among human rights norm-entrepreneurs leads to greater opportunities for incremental positive developments in the law.[115] In any case, the unitary nature of international human rights law certainly does not preclude the implementation of those norms in a manner that is consistent with local culture and practices, and indeed is likely strengthened by empowering a greater number of voices.[116]

In terms of effectiveness, many commentators claim that by moving human rights protection and promotion down to a level closer to the people being affected, the domestication of human rights is likely to be more successful and influential.[117] By this logic, SNHRI implementation of international norms will, all else being equal, be more successful than human rights implementation by NHRIs and other national-level actors. A number of different reasons have been proposed to explain the greater effectiveness of subnational actors. Geographical proximity to the rights bearer may increase the accessibility and availability of human rights services.[118] SNHRI effectiveness may also be furthered by their greater social proximity to the local population; according to one commentator, '[n]ot only is the access easier, the [regional or local] ombudsman is also more acquainted with the regional and local authorities, localities, problems and customs'.[119] At least in some countries, people may be more willing to adopt norms that have been introduced by members of their

112 Nollkaemper (n 1) 221–22.

113 Douglas Lee Donoho, 'Autonomy, Self-Governance, and the Margin of Appreciation: Developing a Jurisprudence of Diversity Within Universal Human Rights' (2001) 15 Emory Intl L Rev 391, 412.

114 Nollkaemper (n 1) 223.

115 Allen Buchanan, *The Heart of Human Rights* (OUP 2013) 211.

116 Calos Iván Fuentes, René Provost and Samuel Walker, 'E Pluribus Unum – Bhinneka Tunggal Ika? Universal Human Rights and the Fragmentation of International Law' in René Provost and Colleen Sheppard (eds) *Dialogues on Human Rights and Legal Pluralism* 55 (Springer 2013).

117 Upendra Baxi, *The Future of Human Rights* (OUP 2002) 101; Kaufman (n 107) 2002; Andrew Schapper, *From the Global to the Local: How International Rights Reach Bangladesh's Children* (Routledge 2013) 175.

118 Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 'Recommendation on systematic work for implementing human rights at the national level' CommDH(2009)3 (18 February 2009) para 7.2.

119 Felix Dünser, 'Regional ombudsmen: An institution to defend citizens´ rights,' Report for the Congress of Local and Regional Authorities of the Council of Europe (2004) 7. See also Jesse Newmark, 'Legal Aid Affairs: Collaborating with Local Governments on the Side' (2012) 21 Boston U Public Interest L J 195, 204.

community rather than 'faceless bureaucrats' in Geneva (or even in their national capitals).[120] Yet another explanation is that moving human rights implementation closer to the people allows the public to better see the beneficial aspects of human rights, and especially economic and social rights, which in turn leads people to increase support of those rights.[121]

5.2. ALTERNATIVE ENTRYWAY FOR INTERNATIONAL NORMS

One of the general benefits of decentralised or federal governmental structures is that they provide multiple paths for human rights norms to gain acceptance.[122] This principle has perhaps been studied (and debated) most intently in the US, where the civil rights movement once met with greater success at the federal level, but contemporary movements to legalise gay marriage or expand access to health care have enjoyed more support at the state level (in certain states).[123] The domestication of international norms by SNHRIs allows the same principle to play out, by providing an additional entryway for international law. This additional entryway will be of particular significance in three particular scenarios. First, when there is no NHRI in a country, then SNHRIs can stand as the only independent governmental actors actively promoting international human rights norms or – in countries with strongly dualist legal systems – using international human rights norms to resolve disputes. This is most clearly the case today in the US, Hong Kong, and Italy.

Second, the domestication of international norms by SNHRIs provides for an important alternative entryway in cases where the NHRI is considered weak or lacking in independence. This is perhaps most striking in the case of Mexico, where the Mexican National Human Rights Commission has been widely viewed as weak and lacking in independence, while many of the sub-national human rights commissions (and in particular the Mexico City Human Rights Commission) play an increasingly prominent role in promoting international norms.[124] In Indonesia, also, there is some evidence that local SNHRIs such as the Yogyakarta Ombudsman are institutionally stronger than the national ombudsman.[125] Of course, in many other

120 Burroughs (n 59) 420.

121 Wexler (n 5) 625–26.

122 Yash Ghai, 'The Structure of Human Rights in Federations' in Kamal Hossain et al (eds) *Human Rights Commissions and Ombudsman Offices: National Experiences* (Kluwer 2000) 51.

123 Robert Schapiro, 'Not Old or Borrowed: The Truly New Blue Federalism' (2009) 3 Harvard L & Policy Rev 33.

124 On the weakness of the Mexican Human Rights Commission, see Jodi Finkel, 'Explaining the Failure of Mexico's National Commission of Human Rights (Ombudsman's Office) after Democratization: Elections, Incentives, and Accountability in the Mexican Senate' (2012) 13 Human Rights Rev 481, 483.

125 Melissa Crouch, 'The Yogyakarta Local Ombudsman: Promoting Good Governance through Local Support' (2007) 2 Asian J of Comparative L 1, 28–9.

situations, NHRIs will be institutionally stronger or more independent than their sub-national counterparts.

Third, SNHRI domestication can take on a more significant role where local populations wish to fully embrace the human rights movement, but national governments prove unwilling to accept all international norms.[126] In these cases, SNHRIs can move farther than the national government by explicitly embracing the UDHR, treaties that are unratified at the national level, or soft law norms. The movement by some US local human rights commissions to embrace CEDAW or the UDHR is one example of this phenomenon, but in fact the desire by local entities to go beyond their home nation in protecting human rights is more widespread. The Human Rights Cities movement has been one vehicle for effectuating this around the world at the municipal level, through a number of measures, centred on civil society actions but also including the establishment of SNHRIs in some cases. By embracing norms that are not accepted at the national level, local jurisdictions can gain reputations as human rights-friendly jurisdictions (with potentially beneficial economic consequences)[127] and act as beachheads for the norms to eventually become more established elsewhere in the country.[128]

5.3. LIMITATION ON DISCRETION OF SUB-NATIONAL ACTORS

From a federalist perspective, the effects of SNHRIs are complex. As described above, their establishment can, in a narrow sense, give more power to local entities to embrace new norms and interpret norms in innovative and locally relevant ways. In a broader sense, however, SNHRIs cabin the power of sub-national governments to develop and implement their own policies, by holding sub-national governments to human rights standards developed and adopted at the international level (and, usually, ratified at the national level). From an international law perspective, sub-national compliance with international human rights norms is of course entirely desirable, as it is undisputed that international human rights law applies equally to all levels of government, whether national or sub-national.[129] In practice, the importance of SNHRIs in holding sub-national governments to account for breaches of international human rights law is magnified by the fact that international and domestic NGOs tend to underemphasise local government advocacy (as do NHRIs), while paying greater attention to national or international level affairs.[130]

126 Wexler (n 5) 615.

127 David Law, 'Globalization and the Future of Constitutional Rights' (2008) 102 Northwestern U L Rev 1277, 1322; Newmark (n 121) 203–04.

128 Newmark (n 121) 253. This would be consistent with Brandeis' famous characterisation of a federal system as a laboratory for democracy. *New State Ice Co. v Liebmann*, 285 US 262, 311 (1932) (J Brandeis, dissenting).

129 International Law Commission, Draft Articles on State Responsibility, UN Doc A/CN.4/L.602/Rev.1, art 4(1) (26 July 2001); *Assanidze v Georgia*, ECtHR (Grand Chamber) Reports 2004-II, paras 137ff.

130 Martha Davis, 'International Human Rights from the Ground Up' in Wendy Chavkin and Ellen Chesler, *Where Human Rights Begin* (Rutgers University Press 2005) 237; Antoine Meyer, 'Local

The direct use of international norms by SNHRIs to restrict and influence the actions of sub-national governments is of particular importance in federal States where strong traditions of local and regional self-government makes it difficult for the national government or an NHRI to directly enforce international norms that constrain sub-national governmental actors.[131] While the challenge of how to implement international norms in federal States has been most widely noted in the US in the wake of the International Court of Justice's *Avena* decision,[132] it has also been a major issue in Australia and elsewhere.[133] Although sub-national governments are involved in all areas of public affairs, in many countries they have particular influence in issues of housing, education, water supply, the environment, and social welfare, meaning that SNHRI implementation of international norms of social and economic rights can be especially meaningful.[134] Globally, the challenge of ensuring sub-national governmental compliance with human rights law has in fact become a more pressing issue in recent years with the current trend towards decentralisation of governmental authority.[135]

6. CONCLUSION

As this article demonstrates, SNHRIs represent an interesting and under-explored locus for the implementation of international human rights norms. While not all SNHRIs use international norms as sources, many do, even in cases where their mandates do not explicitly refer to international norms. SNHRIs domesticate international norms while carrying out the same basic functions as NHRIs, namely complaint-handling, advising the government, public promotion of rights norms, litigation, and monitoring. The implementation of international human rights norms by SNHRIs has significant institutional and normative implications, which appear largely positive from a human rights perspective, and the practice has accordingly been recognised and encouraged by international organisations and SNHRI associations.[136]

Governments & Human Rights Implementation: Taking Stock and a Closer Strategic Look' (2009) 3 Pace Diritti Humani 7, 14.

131 Frédéric Mégret, 'International Human Rights and Global Legal Pluralism: A Research Agenda' in René Provost and Colleen Sheppard (eds) *Dialogues on Human Rights and Legal Pluralism* (Springer 2013) 83; Linda White, 'Federalism and Equality Rights Interpretation in Canada' (2013) 44 Publius: The J of Federalism 157, 158.

132 Eg Jordan Paust, 'Medellín, Avena, the Supremacy of Treaties and Relevant Executive Authority' (2008) 31 Suffolk Transnational L Rev 301; Ted Cruz, 'Defending U.S. Sovereignty, Separation of Powers, and Federalism in *Medellín v. Texas*' (2010) 33 Harvard J of L & Public Policy 25.

133 Katharine Gelber, 'Treaties and Intergovernmental Relations in Australia: Political Implications of the Toonen Case' (1999) 45 Australian J of Politics & History 330.

134 Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 'Local authorities could protect vulnerable people' CommDH/Speech(2006)8 (1 June 2006); Meyer (n 132) 7.

135 Andres Rodiguez-Pose and Nick Gill, 'The Global Trend Towards Devolution and its Implications' (2003) 21 Environment and Planning C: Government and Policy 333.

136 Council of Europe Congress of Local and Regional Authorities, Resolution 191 (2004) on Regional ombudspersons: an institution in the service of citizens' rights, art 15–16; Declaración de Quito,

Further research is necessary to investigate the extent to which SNHRI domestication of international norms represents a growing trend or remains exceptional in nature. Further research can also shed light on the challenges SNHRIs face in effectively domesticating international norms, challenges that may include a lack of experience with international law, a greater comfort with domestic norms, and a lack of capacity to effectively engage with international norms due to, for example, low staffing levels. Nevertheless, it is increasingly clear that the classic view of the international human rights system as a three-tier system with global, regional, and national components is oversimplified. At the sub-national level, SNHRIs also play a role in the direct (as well as indirect) implementation of international human rights norms, a role that is worthy of more consideration and, arguably, cultivation by other national and international human rights actors.

Art 5, adopted at IX Congreso Anual de la Federación Iberoamericana de Ombudsman (November 2004); IAOHRA (n 78).

Chapter 7

‘Human Rights between the Local and Global: A Case Study of the Seoul Human Rights Ombudsperson’, forthcoming in (2017) 18 Asia Pacific Journal of Human Rights and the Law (unpublished draft version).

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Human Rights between the Local and Global:
A Case Study of the Seoul Human Rights Ombudsperson

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Abstract

Over the last two decades, municipal human rights institutions have proliferated around the world. One of the newest examples of such initiatives is the Seoul Human Rights Ombudsperson Office, which was established in January 2013 as one of the core institutions of human rights protection in Seoul, Korea. This article will present a case study of the operations of the Seoul Human Rights Ombudsperson Office based on interviews and documentary research. It will focus on the question of how this newly established institution fits into the existing human rights regime, and in particular address three distinct issues, namely the degree to which the Seoul Human Rights Ombudsperson Office reflects local versus national or international influences, the types of institutional relationships it has with other human rights actors, and the degree to which it implements local versus national or international human rights norms.

Keywords

Ombudsperson –Seoul – Korea – human rights cities – local human rights

I. Introduction

For much of the history of the human rights movement, norm-development and institution-building have taken place almost exclusively at the national and international levels.[1] Over

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[1] The most significant historical exception to this statement is the human rights commissions established in many US cities at an early date. However, even these human rights commissions were until recently far more engaged with domestic ‘civil rights’ norms than international ‘human rights’ law: Kenneth L Saunders and Hyo

the last two decades, however, municipalities around the world have become increasingly engaged with human rights, and one manifestation of this has been the establishment of independent municipal bodies to promote and protect human rights. These have included committees, ombudsperson institutions, monitoring centres, and a range of locally developed institutions, sometimes focusing on a particular sub-category of rights, and sometimes tackling the full range of human rights issues. In many cities, especially in the civil law world, human rights ombudspersons – generally defined as ombudsperson institutions that have an explicit mandate to protect human rights – have been the preferred institutional form.[2] Prominent examples include the Ombudsman de Montreal, Defensor del Pueblo de la Ciudad de Buenos Aires, and the Johannesburg Office of the Ombudsman.

Despite their increasing importance, municipal human rights institutions have received relatively little attention from academics.[3] With the exception of a few country or region-specific studies,[4] the English-language literature has mostly dealt with municipal human rights ombudspersons somewhat tangentially, in articles that either focus more broadly on local human rights implementation or on the development of the national ombudsperson institution in a particular country or region.[5] To a certain extent, major human rights advocacy organisations have likewise ignored local human rights institutions, preferring to lobby for change in national capitals or international centres.[6]

Eun (April) Bang, 'A Historical Perspective on U.S. Human Rights Commissions' (Executive Session Papers of the Human Rights Commissions and Criminal Justice, Kennedy School of Government of Harvard University June 2007) <www.hks.harvard.edu/index.php/content/download/67468/1242682/version/1/file/history_of_hrc.pdf> accessed 6 January 2016.

[2] Linda C Reif, 'Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman' (2011) 31 BC Third World LJ 269, 279.

[3] International Council on Human Rights Policy, *Local Rule: Decentralisation and Human Rights* (2002); Noha Shawki, 'Global Norms, Local Implementation – How are Global Norms Translated into Local Practice?' (2011) 26 Globality Studies J 1 <https://gsj.stonybrook.edu/wp-content/uploads/2011/09/0026Shawki.pdf> accessed 6 January 2016.

[4] See eg Predrag Dimitrijević, 'Do We Need Local Ombudsman – Protector of Human Rights' (2005) 3 Facta Universitatis, Series: Law and Politics 25; Germán Cisneros Farías, Jorge Fernández Ruiz and Miguel Alejandro López Olvera (eds), *Ombudsman Local* (Universidad Nacional Autónoma de México 2007).

[5] See eg Linda C Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Springer 2004); Fredrik Uggla, 'The Ombudsman in Latin America' (2004) 36 J Lat Am Stud 423; Emma Gilligan, 'The Human Rights Ombudsman in Russia: The Evolution of Horizontal Accountability' (2010) 32 Hum Rts Q 575.

[6] Martha F Davis, 'International Human Rights from the Ground Up: The Potential for Subnational, Human Rights–Based Reproductive Health Advocacy in the United States' in Wendy Chavkin and Ellen Chesler (eds), *Where Human Rights Begin: Health, Sexuality and Women in the New Millennium* (Rutgers University Press 2005) 237 ('international human rights advocacy in the United States has generally centered on the obligations that international agreements impose on the federal government'); International Council on Human Rights Policy (n 3) 42 ('international human rights NGOs rarely focus on local government').

This article will attempt to take a step towards filling this gap in the literature through a case study of the Seoul Human Rights Ombudsperson. [7] It will focus in particular on how the Seoul Human Rights Ombudsperson Office relates to and fits in with the existing human rights apparatus and norms, an issue that is important for newly established sub-national human rights institutions all around the world, given that they are generally superimposed upon an already existing fabric of domestic, regional and global human rights institutions and norms.[8] If new sub-national institutions duplicate the functions of existing mechanisms, lead to divergent jurisprudential interpretations, or draw resources away from more effective human rights institutions, then they arguably serve little purpose. On the other hand, if they fill an unmet need, build upon existing institutional strengths, and promote the development of a coherent normative framework, then such institutions can provide a valuable addition to the human rights regime.

Thus, the study will address three particular questions. First, to what extent is the Seoul Human Rights Ombudsperson a product of global or national influences, and to what extent is it the result of local initiatives? Second, what are the institutional relationships that have been forged between the Seoul Human Rights Ombudsperson and the many other existing human rights institutions at the sub-national, national and global human rights bodies? And third, to what extent does the Seoul Human Rights Ombudsperson use existing human rights norms from international or national law, and to what extent does the Ombudsperson

[7] This article will use the term 'Seoul Human Rights Ombudsperson Office' to refer to Seoul City's human rights ombudsperson institution (*시민인권보호관* in Korean). This is the English term that the ombudspersons themselves have used in various forums. See eg Seoul Metropolitan Government Human Rights Division, 'Seoul, a City Where Human Rights is Alive: Response to the Questionnaire of Human Rights Council Advisory Committee on Local Government and Human Rights' (4 April 2014) <www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/LocalGvt/Seoul%20Metropolitan%20Government.docx> accessed 6 January 2016. Other English translations are sometimes used, however. For example, the Korea Human Rights Foundation calls the ombudsperson institution the 'Citizens' Human Rights Mechanism' (which is a more literal translation from the Korean): Korea Human Rights Foundation, 'Report on Local Government and Human Rights 2014' (August 2014) 225 <www.gwangju.go.kr/boardDown.do?boardId=BD_0000000468&seq=268736&fileLinkTp=F&fileLinkSeq=3> accessed 9 March 2017.

[8] Analogous questions regarding normative and institutional relationships with existing actors have also been a major focus of research on National Human Rights Institutions. See eg Brian Burdekin and Anne Gallagher, 'The United Nations and National Human Rights Institutions' in Gudmundur Alfredsson and others (eds), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob TH Mholler* (Springer 2001); Sonia Cardenas, 'Emerging Global Actors: The United Nations and National Human Rights Institutions' (2003) 9 Global Governance 23; Rachel Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Hart Publishing 2007); 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 Publishing 2009); 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: Assessing National Human Rights Institutions* (CUP 2012).

Office serve as a vehicle for developing and elaborating new human rights norms? These questions will be answered largely through a review of materials published by the bodies and commentary on their operations gleaned from conference presentations and local journals, as supplemented by e-mail and in-person interviews with actors directly involved in the operations of the office.

There are a number of reasons why the Seoul Human Rights Ombudsperson Office can be a particularly interesting and important subject for a case study. For one thing, its sheer size makes the city of Seoul an important subject of research. With a population of slightly over 10 million, its human rights policies can affect the well-being of more people than, for example, the total population of Sweden. Second, Seoul is a particularly high-profile municipality in East Asia, and its human rights policies are likely to have an impact on other cities in the region (and indeed, arguably already are, as described below). This impact is likely to be particularly marked because municipal human rights institutions are still relatively rare in Asia, when compared to Europe or the Americas.[9] Finally, Seoul's establishment of a human rights ombudsperson office (and other human rights institutions) is particularly interesting from a human rights governance perspective because it has emerged on largely virgin ground: unlike many western countries, there was no pre-existing municipal ombudsperson or civil rights commission that over time assumed a human rights competency. Rather, new bodies were designed from scratch, in ways that could potentially allow for the integration of norms and concepts from both local and international sources.

II. Background to Human Rights in Korea

In order to better understand the development of the Seoul Human Rights Ombudsperson Office, this section will first provide contextual background on Korea's engagement with human rights policies and institutions. For much of Korea's modern history, human rights were not well protected by government at any level.[10] From Korea's independence in 1948

[9] Seoul is one of the first major cities in Asia to establish a human rights ombudsperson office. The only previous examples of municipal human rights ombudspersons in Asia that I am aware of are those of Kawasaki City, Takefu City, and Kawanishi City in Japan (the latter focusing on children): Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (n 5) 31. There are other examples in Asia of local human rights mechanisms that have some similarities to human rights ombudspersons, including Barangay Human Rights Officers in the Philippines, Japan's Human Rights Protectors, and municipal human rights commissions in a few cities, such as Kaohsiung, Taiwan.

[10] Tae Ung Baik, 'Stabilizing Democracy and Human Rights Systems in South Korea' (2013) 35 U Haw L Rev 877, 880.

until its democratisation in 1987, the country was ruled by a series of military and dictatorial leaders who routinely engaged in arbitrary detention, torture, censorship, restrictions on freedom of association and other violations of basic civil and political rights. During this period, and especially after the passage of the authoritarian Yushin constitution in 1972, democratisation protesters nevertheless fought courageously against the regime, often at significant personal cost. Many of these protestors strongly identified with the human rights movement, including most prominently the future president and Nobel Prize winner Kim Dae Jung, who championed 'human rights' in speeches as early as 1983, and later publicly defended the human rights movement against the so-called Asian Values challenge that emanated from Singaporean and Malaysian politicians in the early 1990s. Several other democratisation activists were in fact human rights lawyers, including Roh Moo Hyun (who became president from 2003-2008), Park Won-soon (mayor of Seoul as of 2016), and Moon Jae-In (leader of Korea's main progressive party, the Minjoo Party of Korea, from 2015-2016).

After Korea's post-1987 democratisation, the country gradually integrated itself into the global human rights system. Korea acceded to the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights in 1990, the UN Convention relating to the Status of Refugees in 1992, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1995.[11] In 1994, the Ministry of Foreign Affairs established a Human Rights and Social Policy division, and Korea was a member of the UN Commission on Human Rights from 1993 to 1998.[12] It took somewhat longer for Korea to develop strong human rights institutions at the domestic level. While the Ministry of Justice had established a Human Rights Division in 1962, it was viewed as window dressing until the 1990s.[13] After years of debate, the National Human Rights Commission of Korea (NHRCK) was established in 2001 to promote and protect human rights within the country. Meanwhile, starting in 1996, a series of issue-specific truth commissions were set up to address past human rights abuses, culminating in the establishment of the more broadly mandated Truth and Reconciliation Commission, which operated from 2005 to 2010.[14]

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[11] Office of the United Nations High Commissioner for Human Rights, 'Status of Ratifications' <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=141&Lang=EN> accessed 6 January 2016.
[12] Ian Neary, *Human Rights in Japan, South Korea, and Taiwan* (Routledge 2002) 89.
[13] ibid. In 2006, its duties were transferred to a new Human Rights Bureau.
[14] Baik (n 10) 894.

While human rights norms are now firmly entrenched in Korea's domestic and international policies, human rights issues remain politically contentious in contemporary Korea. Since 1987, many of the leaders of Korea's main progressive parties have been former democratisation activists who are quite comfortable with the language and politics of human rights (and, in several cases, self-identify as human rights activists). Conservative leaders, on the other hand, often are identified with the pre-1987 authoritarian leadership, and no one more so than President Park Geun Hye, whose father ruled Korea autocratically from 1961 to 1979. Conservative politicians and their supporters have tended to view the human rights movement with suspicion, at least as applied domestically.[15] According to one commentator, 'The struggle between the conservatives who support authoritarian regimes and the liberals or progressives who want to move ahead to achieve the consolidation of democracy and sound human rights systems is not over yet.'[16]

Despite the salience of human rights in Korean political discourse and its increasing institutionalisation at the national level, there was until recently little attention paid to human rights at the local governmental level. In part, this was unsurprising: there is no tradition of local government involvement in human rights institutionalisation in East Asia, and local governments in Korea (whether at the upper or lower level) possess relatively little autonomy, when compared to local governments in larger or more heterogeneous countries.[17]

This lack of local rights activity began to change in 2005, when the small southern city of Jinju declared itself a 'human rights city'.[18] Gwangju Metropolitan City, which is a higher-level local administrative entity governing Korea's sixth largest city, followed suit in 2007 with the enactment of a democracy, human rights, and peace development ordinance, and later with its own 'human rights city' declaration and its establishment of a Human

[15] Korean conservatives generally support movements to improve human rights in North Korea, however, while progressives have traditionally been reluctant to integrate human rights objectives into inter-Korean relations: Andrew Wolman, 'South Korea's Response to Human Rights Abuses in North Korea: An Analysis of Policy Options' (2013) 110 AsiaPacific Issues 1.

[16] Baik (n 10) 896.

[17] See eg Development Centre of the Organisation for Economic Co-operation and Development, *Industrial Policy and Territorial Development: Lessons from Korea* (OECD Publishing 2012) 82. Korea currently has seventeen upper level sub-national divisions: one special city (Seoul), six metropolitan cities, one special autonomous city, eight provinces, and one special autonomous province: Korea Human Rights Foundation (n 7) 200. As of September 2013, these upper level areas are divided into 225 lower level divisions: 69 autonomous districts (25 of which are in Seoul), 73 autonomous cities and 83 counties.

[18] Korea Human Rights Foundation (n 7) 218. The term 'human rights city' was first used by the NGO The People's Movement for Human Rights Learning; it defined a human rights city as a 'city or a community where people of good will, in government, in organizations and in institutions, try and let a human rights framework guide the development of the life of the community': People's Movement for Human Rights Learning, 'Human Rights Learning and Human Rights Cities: Achievements Report' (March 2007) 3 <www.pdhre.org/achievements-HR-cities-mar-07.pdf> accessed 6 January 2016.

Rights Division (in 2010), a Citizens' Commission on the Promotion of Human Rights (2012), and a Human Rights Ombudsman (2013).[19] Gwangmyeong City, near Seoul, adopted a human rights ordinance in 2011 and set up a human rights council in 2012.[20] Dong Gu (borough) of Ulsan Metropolitan City also passed a human rights promotion ordinance in 2011, and established a human rights commission in 2012.[21] While these early local initiatives reflected the influence of the global movement towards 'human rights cities', they were also inspired by local histories. In the case of Gwangju, human rights and democratisation was particularly important because Gwangju was the site of a brutal massacre of democratisation protestors in 1980. Jinju city leaders were inspired by the Hyeongpyeong Movement, a movement for the abolition of status-based discrimination that started in Jinju in the 1920s, and Ulsan Dong Gu's declaration emphasised workers' rights because the locality has long been one of the centres of the Korean labour movement.[22] In the few years following these early movers and the passage of the Seoul Human Rights Ordinance (discussed below), local human rights initiatives have become increasingly widespread: as of February 2015, 15 out of 17 first-level sub-national administrative divisions in Korea have passed human rights ordinances, as have 55 out of 227 second-level administrative divisions.[23] In addition to Seoul, 19 sub-national jurisdictions in Korea have created sub-national human rights institutions (at the provincial, city and neighbourhood levels).[24]

III. Legal Framework for the Seoul Human Rights Ombudsperson

It was in this context of growing local governmental human rights activity that Park Won-soon ran for the Seoul Mayor position in 2011. Park was at the time known as one of the country's most prominent human rights lawyers. After attaining prominence as the defender of torture victim Kwon In Sook, Park co-founded and served as Secretary General of the Peoples' Society of Participatory Democracy in 1994. In the following years, he helped

[19] Korea Human Rights Foundation (n 7) 219-20.
[20] ibid 230.
[21] ibid 228.
[22] ibid 206.
[23] Sung Soo Hong, 'A Review of Human Rights Commissions in Local Authorities - A case of the Seoul Human Rights Commission' (2015) 26 Chungnam L Rev 93, 96 (the two first-level divisions that lack human rights ordinances are Incheon and Jeju).
[24] Korea Human Rights Foundation (n 7) 218-19 (this figure includes human rights centres, offices, commissions and ombudsperson institutions).

found the Korea Human Rights Foundation and later established the Beautiful Foundation, one of the country's largest charities.[25] It was not a complete surprise when Park proclaimed the Seoul Citizens' Human Rights Declaration on 19 October 2011, as one of his highest profile campaign commitments.[26] The Declaration consisted of ten articles which largely focused on traditional economic, social and cultural rights (articles 3 and 6 to 10), but also protected the right to participate in and access information about city government (article 1), right to free assembly (article 2), right to life (article 4), right to access the city (article 5) and contained a non-discrimination commitment (preamble).[27] Within a week of his election in November 2011, Park adopted the Declaration as the framework for his human rights policy, along with a plan to establish a human rights ombudsperson institution in the city.[28]

During the following months, the legal framework for the Seoul Human Rights Ombudsperson Office, along with other core elements of Park's human rights policy, was drafted and enacted on September 28 as the Seoul Human Rights Framework Ordinance.[29] According to the Framework Ordinance, the Mayor is authorised to appoint up to five human rights ombudspersons, who must have human rights expertise and either have work experience in government or academia, or be recommended for the position by a civil society human rights organisation.[30] These ombudspersons are appointed to renewable two-year terms and are intended to act independently, with protection against dismissal.[31] The ombudspersons are mandated to investigate any complaint alleging 'human rights infringement' by the Seoul City government, an administrative agency under its jurisdiction, a borough where the infringement is related to affairs delegated by the City, or certain institutions and welfare facilities established by or subsidised by the City.[32]

In addition to authorising the establishment of the Seoul Human Rights Ombudsperson Office, the Framework Ordinance also established the Seoul Human Rights

[25] Lee Sun-young, 'Park Won-soon: Frustrated Activist Jumps into Politics' *The Korea Herald* (Seoul, 4 October 2011) <www.koreaherald.com/view.php?ud=20111004000869> accessed 6 January 2016. From 2005, Park also served as a Commissioner on Korea's Truth and Reconciliation Commission.
[26] Korea Human Rights Foundation (n 7) 224.
[27] Seoul City Government, '서울시민권리선언' (Seoul Citizens' Human Rights Declaration) <http://gov.seoul.go.kr/files/2014/06/5395bb9d73a0b0.65433596.pdf> accessed 11 March 2017.
[28] Joseph Chu, 'New Seoul City Mayor's Actions to Prioritize Human Rights' (*South Korea Human Rights Monitor*, 18 November 2011) <www.humanrightskorea.org/2011/weekly-news-brief-november-1418-2011/> accessed 6 January 2016.
[29] Framework Ordinance on Human Rights (Enactment no 5367, 28 September 2012).
[30] ibid art 18.
[31] ibid art 19.
[32] ibid art 20(1).

Centre and Seoul Human Rights Committee.[33] The Human Rights Centre engages in a wide range of human rights activities, including human rights research, education, developing programmes to improve human rights, and consulting on human rights infringements.[34] It is also specifically mandated to assist the ombudspersons in their work.[35] In part, this is done through the establishment of a human rights protection team, which is in charge of counseling petitioners and registering cases to be reported to the Ombudsperson Office.[36] In addition, the ombudspersons are able to use the Centre as a type of secretariat, for tasks such as on-site investigations, inspection of documents, and collecting of information or materials.[37] Unlike the Ombudsperson Office, however, the Human Rights Centre operates as an administrative division of Seoul City Government and is not designed to be functionally independent.[38]

The Seoul Human Rights Committee is a 15-member independent advisory board, that is mandated to deliberate and provide advice on the establishment and implementation of the City's human rights plan, laws and policies affecting human rights, the operation of the Human Rights Centre, and other matters brought to the Committee's attention by the Mayor, the Committee Chairperson, or the three committee members.[39] Ombudspersons are permitted to attend Committee meetings and provide recommendations.[40] While the Committee does not participate in the ombudspersons' decision-making process, it has made efforts to secure the institutional independence of the Ombudspersons Office during its establishment and early years.[41] The establishment of separate human rights ombudsperson and human rights committee bodies in the same jurisdiction is somewhat unusual; in most cases around the world, a single body will handle both policy review and complaint handling functions. In Seoul's case the decision to create two separate bodies has been a subject of controversy, and the precise division of workload between them is still a matter of debate.[42] On the one hand, separating the ombudspersons from the policy monitoring and advisory

[33] The Framework Ordinance also authorised a number of policy initiatives, including the drafting of a Human Rights Plan of Action and compulsory human rights education for Seoul City public officers: ibid arts 7 and 10.
[34] ibid art 11.
[35] ibid.
[36] Korea Human Rights Foundation (n 7) 208.
[37] Framework Ordinance on Human Rights (n 29) art 20(3).
[38] Interview with Park Dongsuk, Director of Seoul City Human Rights Division (Seoul, Korea, 18 November 2015).
[39] Framework Ordinance on Human Rights (n 29) art 14.
[40] ibid art 20(5).
[41] Presentation by Moon Kyungran, Chairperson of the Seoul City Human Rights Commission (World Human Rights Cities Forum 2015, Gwangju, Korea, 15 May 2015) <www.whrcf.org/bbs/board.php?bo_table=announc_eng&wr_id=21&page=2> accessed 6 January 2016.
[42] Sung Soo Hong, 'A Review of Human Rights Commissions in Local Authorities' (n 23) 128-29.

functions allows them to devote their time exclusively to community complaints while retaining the image of independence that comes with greater separation from the policy-making process. On the other hand, the existence of two bodies creates greater complexity and the potential for jurisprudential conflicts or turf wars.

The Seoul Human Rights Ombudspersons Office, Human Rights Committee and Human Rights Centre are all physically located in the same open-plan office on the second floor of City Hall, and to a large extent can be viewed as different core elements of a single coherent municipal human rights system. However, they are supplemented by other human rights institutions that focus either on a particular issue area or a particular borough of the City. At the Seoul City level, there is a Centre for the Human Rights for Persons with Disabilities and a Committee on the Human Rights of the Child and Youth.[43] At the borough level, Seongbukgu, Dongjakgu and Seodaemungu have all passed human rights ordinances.[44] Seongbukgu's human rights system is most advanced, and provides for the establishment of a human rights administrative office and an independent human rights committee.[45]

IV. Establishment and Operation of the Seoul Human Rights Ombudsperson Office

After a brief period of establishing the office, the Ombudspersons Office became operational in January 2013.[46] While the Seoul Human Right Framework Ordinance authorises the appointment of up to five ombudspersons, so far only three have served at one time; currently the three ombudspersons are Lee Eun Sang, Jeon Sung Whi, and Yoo Jae Hyeong.[47] While Ombudsperson Lee has an activist background, Ombudspersons Jeon and Yoo came to the job from national-level commissions, respectively the Anti-Corruption and Civil Rights Commission (ACCRC) and the Commission on Verification and Support for the Victims of Forced Mobilization under Japanese Colonialism in Korea.[48]

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[43] Seoul Metropolitan Government Ordinance on the Promotion of Human Rights of Persons with Disabilities (Enactment No 5073, 14 July 2011).
[44] Sung Soo Hong, 'A Review of Human Rights Commissions in Local Authorities' (n 23) 106.
[45] Kim Jin-Dong, 'Seongbuk: The City of Human Rights, Participation and Cooperation' (Human Rights Cities Forum, Gwangju, Korea, 16 May 2014).
[46] Moon Kyungran (n 41).
[47] While Lee Eun Sang was one of the original ombudspersons appointed in 2013 and is now in her second term, Jeon Sung Whi, and Yoo Jae Hyeong replaced Yeom Gyu-hong and Noh Seung Hyun in 2015 when their terms came to an end.
[48] Email from Lee Eun Sang, Seoul City Human Rights Ombudsperson to author (18 January 2016).

For such a young institution, the Ombudsperson Office has received a relatively significant number of complaints, perhaps illustrating that it is filling a need for local-level human rights complaint resolution. So far, from its establishment in January 2013 through January 2016, the Ombudsperson Office has received 726 complaints, of which it has investigated 326 cases and issued 38 recommendations.[49] These cases covered a wide range of human rights violations, but workplace harassment (including sexual harassment), discrimination, right to privacy, and rights of the disabled have been particularly common subjects for complaints. All decisions have been taken on a consensus basis, although this has been done by custom rather than requirement, and the Ombudspersons Office has not yet established an official policy as to whether to decide based on majority vote or require unanimity in case of disagreement.[50] While the Ombudspersons' recommendations are non-binding, as is the norm for ombudsperson institutions around the world, over 90 per cent of Seoul Human Rights Ombudsperson recommendations have so far been followed by the City.[51]

One innovative programme that has been put into place to help integrate Seoul residents in the decision-making process is the so-called Citizens' Human Rights Jury. Under this initiative, a group of 150 Seoul residents (above the age of 14) and 50 experts are impaneled, among whom eight residents and four experts can be chosen to form juries to rule on human rights petitions that are expected to have a particularly strong influence on society.[52] Juries can be formed at the request of the Ombudspersons Office, Human Rights Committee or Mayor, but are only available with the petitioner's permission.[53] Verdicts are then approved by a favourable vote of two-thirds of the members, with the jury presided over by a non-voting expert appointed by the Ombudspersons.[54] So far human rights juries have been established in three cases.[55] The Ombudspersons can overrule a jury's decision on any particular case, however (and in fact, this has already happened).[56]

In order to illustrate the work of the Ombudsperson Office, along with its potential challenges, three of the most significant cases to be decided so far will be examined in

[49] ibid.
[50] Interview with Lee Eun Sang, Seoul City Human Rights Ombudsperson (Seoul, Korea, 18 November 2015).
[51] ibid.
[52] Seoul Human Rights Ombudsperson, '서울시 인권제도 운영현황' (Operation Status of Seoul City Human Rights System) (24 February 2015).
[53] Seoul City Human Rights Center, '나도 인권배심원!' (I Am a Human Rights Juror, too!) (2015).
[54] Interview with Lee Eun Sang (n 50).
[55] ibid.
[56] Seoul Human Rights Ombudsperson Decision, '퇴직자 보안서약서 작성 강요로 인한 인권침해' (Enforcement of security pledge to retirees) (27 August 2015).

greater depth. The first case involved a petition from Lee Chung Heon, in his role as president of the Chinese Residents' Association of Seoul Korea.[57] Lee alleged that the City of Seoul was engaged in discriminatory treatment of Hwagyo (Chinese nationals) who were residents of Seoul, because Korean nationals over the age of 65 could ride the Seoul public transit system for free and access various sites such as museums and royal tombs for free, while Hwagyo over the age of 65 with permanent residency in Korea were denied such benefits.[58] According to Lee, this rule was unfair because Hwagyo residents paid full taxes and otherwise fulfilled the duties of citizens, with the exception of military service. The City defended its policy by claiming that they were already running the subway system at a significant deficit, and thus could not afford to change their policies.

On 28 June 2013, the Ombudsperson Office ruled in Lee's favour. The decision stated that Hwagyo can be considered 'Seoul citizens' according to article 2 of the Framework Ordinance,[59] emphasising that they share virtually equal local rights (with the exception of eligibility for a few local political offices) and local responsibilities with Korean nationals. The Ombudsperson Office then concluded that discrimination against permanent residents living in Seoul with regard to welfare benefits violated their human rights, as defined under article 2 of the National Human Rights Commission Act.[60] This conclusion was supported by citing a decision of the Constitutional Court, a ruling of the NHRCK on equal rights, and the governments' inclusion of migrant children in a welfare scheme under the Juvenile Welfare Support Act. Finally, the Ombudsperson Office compared Seoul's policy unfavourably with practices in the United States and Europe, and admonished the City that continuing with such discrimination was inconsistent with its goal of becoming a 'human rights city'. The Ombudsperson Office recommended a revision of various Seoul City policies toward foreign national permanent residents (including but not limited to Hwagyo), and specifically their inclusion in the senior citizen free-ride scheme for Seoul public transit.

There was significant tension and political opposition regarding this recommendation from the public transit authorities, who reiterated their financial constraints.[61] Eventually,

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[57] Seoul Human Rights Ombudsperson Decision, '65 세 이상 화교 영주권자에 대한 지하철 복지 혜택 등 차별' (Discriminatory Treatment with Regard to Subway Benefits, etc., against Hwagyo Permanent Residents over 65 Years Old) (Case no 13(7), 28 June 2013).

[58] This echoed a complaint long-made by other foreign activists in Seoul: Lee Hyo-sik, 'Elderly Foreigners Upset by Discrimination in Free Subway Use' *Korea Times* (12 April 2011) <www.koreatimes.co.kr/www/news/nation/2011/04/117_85083.html> accessed 6 January 2016.

[59] Framework Ordinance on Human Rights (n 29) art 2 ('The term "citizen" means a person who has domicile or residence, or who stays, in the City and a person who works at a place of business located in the City').

[60] National Human Rights Commission Act (Act No 6481, 24 May 2001).

[61] Interview with Lee Eun Sang (n 50).

however, the policies on the Seoul bus and subway system towards permanent residents over the age of 65 were liberalised to allow for the withdrawal of one-time free-ride cards with a refundable deposit, and by June 2015, free travel was finally allowed on an entirely non-discriminatory basis.[62]

A second important migrant rights petition was received in 2014, this time from an unnamed petitioner on behalf of an unregistered migrant from Mongolia.[63] The petition alleged that the fact that unregistered migrants were ineligible to participate in Seoul City's provision of free childcare for children under the age of six constituted impermissible discrimination. The petitioner argued that the exclusion of unregistered children from free childcare was inconsistent with the Framework Ordinance, the UN Convention on the Rights of the Child, and a recommendation made by the NHRCK on the right to education of migrant children.

The Ombudsperson Office referred this case to the Citizen Jury, which decided by an eight to four vote that the exclusion of unregistered children from social welfare service constituted a discriminatory policy prohibited by the Korean Constitution, the Convention on the Rights of the Child, the National Human Rights Commission Act, the Infant Care Act, the Seoul Human Rights Ordinance and the Ordinance on the Protection and Promotion of Human Rights of the Child and Youth. The Citizen Jury stressed that the interests of the children should be taken into account first, and recommended that the City take all appropriate administrative measures to guarantee necessary protection and ensure that a system is in place to make childcare subsidies and other benefits available to undocumented children. The Seoul Government's initial reaction has been to state that it would consider the Ombudsperson Office's recommendation.[64] Specifically, it agreed to launch a study into the number of unregistered immigrants' children currently residing in Seoul, before addressing issues of budgeting and other matters required to bring about a policy change.[65]

A third case that attracted considerable public attention involved a petition alleging that the president of the Seoul Philharmonic Orchestra (Park Hyun-jung) had engaged in sexually and physically abusive behavior toward several of her employees since assuming

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[62] ibid; '65세이상영주권자,서울지하철탑승무료' (Permanent Residents over 65 years old get Free Subway Access in Seoul) *Joongang Ilbo* (20 March 2015) <http://news.joins.com/article/17395563> accessed 6 January 2016.

[63] Seoul Human Rights Ombudsperson Decision, '미등록 이주민의 자녀에 대한 보육지원 차별' (Discrimination in Childcare Support for Children of Undocumented Migrants) (Case no 13(4), 24 December 2014).

[64] Claire Lee, 'Seoul to Consider Allowance for Illegal Immigrants' Children' *The Korea Herald* (8 January 2015) <www.koreaherald.com/view.php?ud=20150108001121> accessed 6 January 2016.

[65] ibid.

office in February 2013.[66] The petition was delivered to the Ombudsperson Office two days after 17 orchestra employees sent a letter detailing the abuse to the media, with the allegations publicly refuted by Park. Unlike the cases previously discussed, this case was not involved with the question of whether a law or policy was appropriate, but rather whether an individual in fact engaged in sexual harassment and workplace bullying, and if so whether these specific actions could be considered infringements on personal rights.

After completing a fact-finding investigation, the Ombudsperson Office found that sexually humiliating expressions had been used by Park to both male and female employees, and that employees had been subject to insults and extreme expressions that in fact constitute workplace bullying and contravene the personal rights protections in article 10 of the Korean Constitution. The Ombudsperson Office also found that during the course of the investigation, the victims had been forced to work in the same space as the person who inflicted harm on them, which caused them further damage. The Ombudsperson Office therefore recommended to the Mayor that Park be subject to disciplinary measures and receive human rights education, and that the Orchestra should implement measures to prevent workplace bullying. Furthermore, it recommended that paid holidays and psychotherapy be provided to the victims, and that Seoul-affiliated organisations (like the Orchestra) should follow the Seoul City Guidelines on the Prevention of Recurrence of Sexual Harassment and Verbal Abuse.

In the immediate aftermath of the ombudsperson recommendation, Park offered her resignation, which was accepted.[67] This was not the end of the story, however. A police investigation soon cleared Park of the charges against her and, following a police raid on the orchestra's office and network administrator, 10 of the 17 original petitioners were booked on charges of false accusation.[68] Eventually the wife of the orchestra's conductor was also indicted on charges of defaming Park, and the orchestra's conductor stepped down amid accusations of embezzlement.[69] Beyond the ongoing drama and still-disputed facts, this case brings up interesting questions regarding the power of Seoul's Ombudsperson Office and its place within the spectrum of justice institutions. At the end of the day, the ombudsperson's investigatory conclusions were ignored and in fact directly contradicted by the parallel work

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[66] Seoul Human Rights Ombudsperson Decision, '출연기관 대표에 의한 성희롱 및 폭언' (Sexual Harassment and Verbal Abuse by the Head of a Performance Institution) (Case no 14(151), 19 December 2014).

[67] 'Seoul Phil Accepts Chief's Resignation Over Alleged Abuse' *The Korea Herald* (30 December 2014) <www.koreaherald.com/view.php?ud=20141230000905> accessed 6 January 2016.

[68] Yim Seung-hye, 'Harassment Claims at Orchestra Said to be Lies' *Korea Joongang Daily* (29 December 2015) <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3013310> accessed 6 January 2016; Kwon Ji-youn, 'Chung Myung-whun Steps Down from Seoul Phil' *The Korea Times* (30 December 2015) <www.koreatimes.co.kr/www/news/culture/2015/12/143_194263.html> accessed 6 January 2016.

[69] Kwon Ji-youn (n 68).

of police investigators who possessed greater authority and resources, and whose work could lead to the formal filing of criminal charges. In this case, the ombudsperson investigation could be seen as a waste of civic resources at best, and at worst as a way for the orchestra employees to gain credibility for their defamation of Park by choosing a forum that was perhaps more inclined to believe their claims of harassment while less able (compared to police investigators) to thoroughly examine counter-claims.

V. Seoul Human Rights Ombudsperson Office and the Broader Human Rights Regime

This section will address in some more detail the question of how the Seoul Human Rights Ombudsperson Office fits into the broader international human rights regime. It will contextualise these questions with reference to the existing body of research into the relationship of National Human Rights Institutions (NHRIs) and sub-national human rights institutions with other human rights actors and norms.

A. Local and Global Factors in the Establishment of the Seoul Human Rights Ombudsperson

As a starting point, it is important to examine the role of other human rights actors in the establishment of the Seoul Human Rights Ombudsperson. To what extent was its creation a result of influences from existing forces or a reaction to local concerns? At the national level, there is a considerable body of research into the establishment of NHRIs, including ombudsperson institutions.[70] Some of this research highlights the importance of the United Nations and other major international actors such as the Council of Europe and the Commonwealth in the proliferation of NHRIs during the 1990s and 2000s.[71] Pegram also

[70] See eg Jeong-Woo Koo and Francisco Ramirez, 'National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institutions, 1966-2004' (2009) 87 Social Forces 1321; Thomas Pegram, 'Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions' (2010) 32 Hum Rts Q 729; Sonia Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights* (U of Pennsylvania Press 2014).

[71] Anne Smith, 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?' (2006) 28 Hum Rts Q 904; Pegram (n 70). Cardenas specifically cites the importance of the UN role in standard setting, capacity building, network facilitating, and membership granting: Cardenas, 'Emerging Global Actors' (n 8) 23.

notes the importance of contagion from regional peers,[72] while other commentators have highlighted the importance of regional and global NHRI networks in encouraging the establishment of new bodies.[73] In a few instances, NHRIs have been imposed by coercive external agencies, generally in the context of a peace agreement ending civil war or communal tensions. [74] Reif claims that the forces responsible for human rights ombudspersons' proliferation include 'democratization, public institution building, comparative law influences, limited state resources, international and regional movements to establish national human rights institutions, [and the adoption of treaties] that rely on NHRIs, for domestic implementation of international human rights obligations'.[75]

While there has been less research into the factors accounting for the emergence of sub-national human rights ombudspersons, there are a few patterns that stand out. For example, it seems common for sub-national ombudspersons to be established in polities where there is also a human rights ombudsperson at the national level, examples being Spain, Mexico, Argentina and Russia.[76] In some of these cases, the establishment of sub-national human rights ombudspersons (or commissions) was either encouraged or otherwise supported by the national institution.[77] There has also been some research into the proliferation of 'human rights cities', some of which have also established human rights ombudspersons. According to Oomen and Baumgärtel, the establishment of human rights cities was sometimes a civil society-driven initiative, but more frequently occurred at the initiative of local authorities who wanted to increase engagement with the human rights framework.[78]

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[72] Pegram (n 70) 737.

[73] 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: Assessing National Human Rights Institutions* (CUP 2012) 155-56.

[74] Pegram (n 70) 746.

[75] Reif, 'Transplantation and Adaptation' (n 2) 272.

[76] It should be noted however, that the national government was not necessarily the first mover in these countries. In Spain, the national defensor del pueblo was the first in the country to be established: Defensor del Pueblo de España, *The Book of the Ombudsman* (Defensor del Pueblo de España 2003) 188. In Argentina, however, the national defensor del pueblo institution (1993) postdates the establishment of the municipal defensor del pueblo in Buenos Aires (1985): ibid 189. This was also the case in Mexico, where the state of Aguascalientes established the first defensor del pueblo in 1988: Jodi Finkel, 'Explaining the Failure of Mexico's National Commission on Human Rights (Ombudsman's Office) after Democratization: Elections, Incentives, and Unaccountability in the Mexican Senate' (2012) 13 Human Rights Rev 473, 481.

[77] The Indian National Human Rights Commission, for example, has encouraged the formation of State Human Rights Commissions: Arun Ray, *National Human Rights Commission of India: Formation, Functioning and Future Prospects* (2nd edn, Khama Publishers 2004) 509. The Russian human rights ombudsperson has similarly encouraged the establishment of regional human rights ombudsperson institutions in Russia: Natella Boltyanskaya, 'Interview with Ombudsman Vladimir Lukin on Ekho Moskvi' (16 February 2004) <http://eng.yabloko.ru/Publ/2004/radio/040213_ekho.html> accessed 6 January 2016.

[78] Charlotte Berends and others (eds), *Human Rights Cities: Motivations, Mechanisms, Implications* (U College Roosevelt 2013) 11.

Some of the external factors that have been instrumental in the establishment of other NHRIs and sub-national human rights ombudspersons have clearly not played an important role in the establishment of the Seoul Human Rights Ombudsperson. International organisations such as the UN have so far been relatively silent regarding the promotion of local human rights ombudsperson institutions, in Korea or elsewhere,[79] as have regional organisations, at least outside of their own member states.[80] Trans-governmental networks of municipal human rights ombudspersons are weak and largely unable to influence the development of new institutions.[81] The Seoul Human Rights Ombudsperson was not imposed by outside forces pursuant to any peace accords. It is also difficult to credit a contagion effect from regional peers because the Seoul Human Rights Ombudsperson is the first of its type in Korea, and indeed appears to be one of the first of its type anywhere in East Asia (with the exception of a few municipal human rights ombudspersons in mid-sized Japanese cities).[82]

This is not to say that international actors were entirely irrelevant to the establishment of the Seoul Human Rights Ombudsperson. Norms of local human rights institutionalisation that had developed mainly in Europe (especially those associated with the Right to the City, made popular by Henri Lefebvre and David Harvey) clearly had made their way to the Korean peninsula by 2011, most notably at the 2011 World Human Rights Cities Forum in Gwangju. This major conference, which is now repeated annually in Gwangju, hosted delegates from many cities around the world with experience in human rights implementation, and concluded by urging the development of local human rights institutions.[83] As a

[79] There have been a few exceptional statements from UN sources that have mentioned local mechanisms, generally as supplements to national human rights institutions. See eg United Nations General Assembly, 'Resolution 67/163, The Role of the Ombudsman, Mediator, and other National Human Rights Institutions in the Promotion and Protection of Human Rights' (UN Doc A/RES/67/163, 2013) <www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/163> accessed 10 March 2017 (encouraging member states to 'consider the creation or the strengthening of independent and autonomous ombudsman, mediator and other national human rights institutions at the national and, where applicable, the local level').

[80] The Council of Europe has been active in promoting local human rights ombudsmen within its borders: Council of Europe Congress of Local and Regional Authorities, 'On the Role of Local and Regional Mediators/ Ombudsmen in Defending Citizen's Rights' (Recommendation 61, 17 June 1999) < https://wcd.coe.int/ViewDoc.jsp?p=&id=848103&direct=true> accessed 10 March 2017.

[81] Andrew Wolman, 'Sub-National Human Rights Institutions and Transgovernmental Networks' (2015) 33 Nordic J of Human Rights 110, 127-28.

[82] Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (n 5) 31. While the Seoul Human Rights Ombudsperson may not be a product of regional contagion, there is some evidence that it has produced a contagion effect, as other sub-national governments in Korea such as Gwangju and Gangwon-do have established human rights ombudsperson institutions in following years: Seoul Metropolitan Government Human Rights Division (n 7) 9. In some of these cases, the political dynamic has also mirrored that of Seoul, namely a progressive local leader (like Ahn Hee-jung in Chungcheongnamdo) with a background as a human rights activist has established institutions upon winning political office, in the background of continued conservative leadership at the national level.

[83] 2011 World Human Rights Cities Forum, 'Gwangju Declaration on Human Rights City' (16-17 May 2011) <www.uclg-

prominent human rights lawyer, Park Won-soon would have been exposed to these international developments; reportedly he modeled his Seoul Citizens' Human Rights Declaration in part on documents drafted in other 'human rights cities' around the world including Montreal, Barcelona, and Eugene, Oregon.[84]

Within this context of awareness of the importance of the international trends in local rights implementation in Korean human rights circles by 2011 to 2012, two other local factors also appear of critical importance for the Seoul Human Rights Ombudsperson's establishment: first, the importance of human rights (and their institutionalisation) to Park Won-soon and others on the Korean political left, and second, the complex contribution of the NHRCK to the Ombudsperson Office's founding.

In discussions with a current ombudsperson and the head of the Seoul Human Rights Division, both stressed the overwhelming importance of Mayor Park Won-soon's vision in the establishment of Seoul's human rights institutions.[85] Clearly, the creation of the Ombudsperson Office was a direct reflection of his longstanding embrace of the human rights movement (and association with it). While Park's importance to the Office's founding is unquestionable, it is important to emphasise that his proposals were consistent with a long-standing idea in Korean left-wing politics that civil society human rights activists should be integrated into government as the best way to ensure progressive governance.[86] The apex of this trend occurred during the progressive Roh Moo Hyun administration, when, according to one study, 158 government positions were filled by current or former members of People's Society for Participatory Democracy (a human rights and social justice organisation of which Park was one time the Secretary-General).[87] In a sense, the establishment of a human rights ombudsperson office is a continuation of this strategy of making a place for human rights in governance institutions, and the development of a local human rights system was always likely to follow the election of Park to the mayoralty.[88] Moreover, Park's successful utilisation of human rights institutionalisation as a major campaign plank demonstrates that

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cisdp.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524_2_0.pdf> accessed 11 March 2017.

[84] Korea Human Rights Foundation (n 7) 206.

[85] Interview with Lee Eun Sang (n 50); Interview with Park Dongsuk (n 38).

[86] See generally Joon Seok Hong, 'From the Streets to the Courts: PSPD's Legal Strategy and the Institutionalization of Social Movements' in Gi-Wook Shin and Paul Chang (eds), *South Korean Social Movements: From Democracy to Civil Society* (Routledge 2011).

[87] Seok-Choon Lew and Hye-Suk Wang, 'PSPD Report' (Non-Governmental Organization Series, Center for Free Enterprise 2006) 93.

[88] The fact that the Seoul Human Rights Ombudsperson is so much connected to one man may, of course, eventually be detrimental; it is not a foregone conclusion that the Seoul Human Rights Ombudsperson will survive the election of a new mayor, especially one that is from the conservative Saeneuri party.

human rights concepts already had a certain saliency among Seoul residents due to their long association with heroes of the political left such as Kim Dae Jung and Roh Moo Hyun.

Secondly, the NHRCK was a more complex factor in the background of the Seoul Human Rights Ombudsperson's founding. In early 2008, the NHRCK started a campaign to encourage Korean municipalities to enact local human rights ordinances, and organised meetings for that purpose in Gwangju.[89] This campaign culminated in the issuance of a recommendation in April 2012 on the establishment of human rights cities, along with a model local human rights ordinance.[90] In 2010, however, there were significant changes at the NHRCK, when conservative president Lee Myung Bak appointed a new chairperson, Hyun Byung-chul, who had no human rights experience and was widely perceived to be a weak human rights supporter.[91] At this point, the NHRCK gradually stopped being trusted by many progressives and human rights advocates.[92] This weakness, in turn, became a justification for why it might be necessary to have other governmental institutions that could promote and protect human rights while staying out of the control of the now-conservative national leaders. In short, because the NHRCK could no longer be trusted as a strong independent voice for human rights, progressive local leaders were incentivised to create their own institutions.[93] Ombudsperson Lee more diplomatically stated that the NHRCK's inability to quickly respond to all the petitions that it received opened space for the Seoul Human Rights Ombudsperson to more promptly respond to inquiries regarding Seoul City government.[94]

B. Seoul Human Rights Ombudsperson and Relationships with Existing Human Rights Institutions

[89] Jean Ahn, 'Korea's City of Human Rights: Gwangju' (2010) 59 FOCUS <www.hurights.or.jp/archives/focus/section2/2010/03/koreas-city-of-human-rights-gwangju.html> accessed 6 January 2016.
[90] Anselmo Lee, 'Local Government and Human Rights' (World Human Right Cities Forum, Gwangju, Korea, 18 September 2015).
[91] Bae Hyun-Jung, 'Human Rights Activist Slams Chief Hyun', *The Korea Herald* (16 July 2012) <www.koreaherald.com/view.php?ud=20120716000966> accessed 6 January 2016.
[92] Kim Hyeong-wan, 'An Open Letter to Human Rights Commission Chairperson Hyun Byung-chul' *The Hankyoreh* (9 November 2010) <www.hani.co.kr/arti/english_edition/e_editorial/447824.html> accessed 6 January 2016.
[93] Hong makes a similar argument that the waning of national government concern for human rights in part accounts for the post-2008 rise of local attention to human rights: Sung Soo Hong, 'Institutionalization of Human Rights within Local Authorities of Korea: History and Challenges' (World Human Rights Forum, Gwangju, Korea, 16 May 2013) 56-57.
[94] Interview with Lee Eun Sang (n 50).

When the Seoul Human Rights Ombudsperson commenced its operations in 2013, it did not occupy a human rights vacuum; on the contrary, as discussed earlier Korea was already well-integrated into the international human rights regime at the time, and a variety of governmental and non-governmental actors in Seoul were and are engaged in promoting and protecting human rights. The question thus arises: how does the Seoul Human Rights Ombudsperson interact with these other institutions? In other contexts, sub-national human rights ombudsperson institutions around the world have developed a range of different relationships. Some collaborate with their country's national human rights ombudsperson institution, as is the case for example in Argentina, where there are formal collaboration agreements between the national human rights ombudsman and all provincial and municipal human rights ombudsmen in the country.[95] Some have networked with their peers in other localities, whether on a formal or informal basis.[96] A few ombudsperson institutions have participated in UN or regional human rights mechanisms, for example through contributing to periodic reports to UN treaty bodies, acting as Preventive Mechanisms under the Optional Protocol for the Convention against Torture or meeting with UN Special Rapporteurs.[97]

In the case of the Seoul Human Rights Ombudsperson, there appears to be relatively little contact between local human rights institutions and actors at the national, regional, or global level. There have been no meetings or cooperation between the Seoul Human Rights Ombudsperson and the national government.[98] There has been no formal coordination between the NHRCK and the Seoul Human Rights Ombudsperson Office, although there are informal contacts when needed, for example to discuss cases that are pending in both institutions, and NHRCK decisions have been cited on occasion.[99] Nor are there formal meetings with the national-level ACCRC, although informal contacts exist, as one of the current ombudspersons worked for the ACCRC.[100] Similarly, the Seoul Human Rights

[95] Jorge Luis Maiorano, 'Argentina: The Defensor del Pueblo de la Nación' in Roy Gregory and Philip Giddings (eds), *Righting Wrongs, the Ombudsman in Six Continents* (IOS Press 2000) 70.
[96] Wolman, 'Sub-National Human Rights Institutions and Transgovernmental Networks' (n 81) 126-27.
[97] Andrew Wolman, 'Welcoming a New International Human Rights Actor?: The Participation of Sub-National Human Rights Institutions at the United Nations' (2014) 20 Global Governance 437, 443-47.
[98] Interview with Park Dongsuk (n 38).
[99] Interview with Lee Eun Sang (n 50). Because the NHRCK has a broad complaint resolution mandate that covers human rights abuses committed by local government entities, all (or at least the vast majority) of complaints that come before the Seoul Human Rights Ombudsperson Office could also potentially be filed before the NHRCK. So far there are no formal rules regulating which institution will hear a complaint if in fact one is filed at both institutions: ibid.
[100] ibid. The ACCRC functions as an ombudsperson institution at the national level, although its organic act provides for the establishment of local government ombudspersons as well. Although the ACCRC lacks an explicit human rights mandate, many of the cases brought before the Seoul City Ombudsperson could presumably also be brought before it: Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission (Act No 8878, 29 February 2008).

Ombudsperson has not had any interactions with international institutions, with the minor exception of contributions to a UN Human Rights Council questionnaire response regarding Seoul human rights initiatives.[101] Given the fact that the Seoul Human Rights Ombudsperson Office was established at the initiative of Mayor Park Won-soon and without the active support of the national government or international figures, this lack of formal cooperation is perhaps unsurprising. Whether or not this low level of institutional integration is a significant problem is of course a more difficult question. In general, however, there are good reasons to favour stronger relationships between sub-national human rights institutions and their national or international counterparts. Sub-national human rights institutions can provide valuable information and perspectives on local human rights issues to national or international monitoring bodies, while at the same time benefitting from the exposure to new norms and human rights expertise developed at the national or international levels.[102] Sub-national human rights institutions can also benefit politically from support by more powerful national bodies to ensure that their recommendations are carried out without undue delay; the ombudsperson's recommendation in the Hwagyo case, for example, might have been carried out more promptly if the Seoul Human Rights Ombudsperson Office had been more successful in enlisting political backing from potential national-level allies.

While the Seoul Human Rights Ombudsperson Office has had few interactions with national or international human rights actors, it has made a concerted effort to interact with local citizens and civil society groups. The Seoul Human Rights Ombudsperson has held twice a year meetings with civil society representatives and operates a hotline for feedback from the community.[103] It also accepts complaints from civil society organisations (as well as individuals), and has had several important cases submitted by associations, including the Hwagyo case discussed above. On at least one occasion, the Ombudsperson Office has also consulted with a representative of a civil society organisation (Amnesty International Korea) for advice in deciding a case.[104] In addition to this openness to dialogue with civil society organisations, Seoul human rights institutions have made a number of efforts at involving individual private citizens in its work. For example, the Seoul Human Rights Ombudspersons Office sometimes holds briefings for civil society representatives to attend when they are

[101] Interview with Lee Eun Sang (n 50).
[102] Wolman, 'Welcoming a New International Human Rights Actor?' (n 97) 448-49.
[103] ibid.
[104] Seoul Human Rights Ombudsperson Decision, '넝마공동체 인권침해 사건' (Human Rights Violations against Neongma Community) (Case no 2012-1, 28 December 2012).

releasing a particularly noteworthy recommendation.[105] Perhaps the Citizens' Human Rights Jury program described above represents the most concerted effort to solicit the input of private citizens.

The Seoul Human Rights Ombudsperson Office (along with its sister institutions) has also been proactive in interacting with other peer sub-national human rights institutions in Korea. For example, in March 2015, the Seoul Human Rights Committee and the Chungcheongnamdo (province) Human Rights Promotion Committee signed a formal cooperation agreement, and the Seoul Human Rights Division has also recently hosted a workshop targeted at 17 different local human rights offices to discuss best practices and ongoing initiatives.[106] Separately, the Seoul Human Rights Ombudspersons have also met with their peers in cities such as Gwangju and Suwon on a mostly informal basis, and have been involved in trying to set up an official network of Korean human rights ombudspersons.[107] Given Seoul's position as the largest (by far) municipality in Korea, it is not particularly surprising that it is playing a leadership role with regards to other Korean local areas' development of human rights institutions.

C. Seoul Human Rights Ombudsperson and Types of Human Rights Norms Used

Finally, it is worth examining the types of norms used. There is already a small body of research examining the types of human rights norms that are used by sub-national human rights institutions.[108] Fundamentally, one can point to three types of normative sources. First, some sub-national human rights institutions are explicitly mandated to implement one or more forms of international human rights norms. In a few notable cases, this has even led to municipalities embracing a wider range of human rights treaties than are accepted at the national level by their home country.[109] Second, some sub-national human rights institutions are mandated to implement human rights norms contained elsewhere in the national-level laws or jurisprudence of the country where the sub-national institution is located. Third, local

[105] Interview with Park Dongsuk (n 38).
[106] ibid.
[107] Interview with Lee Eun Sang (n 50).
[108] Lesley Wexler, 'The Promise and Limits of Local Human Rights Internationalism' (2010) 37 Fordham Urb LJ 599; Risa Kaufman, 'State and Local Commissions as Sites for Domestic Human Rights Implementation' in Shareen Hertel and Kathryn Libal (eds), *Human Rights in the United States: Beyond Exceptionalism* (CUP 2011); Andrew Wolman, 'Sub-National Human Rights Institutions and the Domestication of International Human Rights Law' (2015) 33 NQHR 224.
[109] Wolman, 'Sub-National Human Rights Institutions and the Domestication of International Human Rights Law' (n 108) 228-34.

normative sources can be developed by, for example, the passage of a human rights charter. This may allow for the development of new human rights norms or divergent interpretations of existing norms that reflect local values and interests.

In the case of the Seoul Human Rights Ombudsperson, the ombudspersons are mandated by the Framework Ordinance to investigate petitions of human rights infringements, with the term 'human rights' defined as 'any of human dignity, self-worth, liberty and rights, which are prescribed by the Constitution and statutes, or acknowledged by international human rights treaties signed or ratified by the Republic of Korea and by customary international laws'.[110] In practice, the ombudspersons have clearly made a point of employing a wide variety of norms. National-level norms have been most commonly cited. Out of 21 published decisions from the period of December 2012 to March 2015, 17 decisions cite national statutes, including on several occasions the National Human Rights Commission Act, the Act on the Prohibition of Discrimination of Disabled Persons, and the Framework Act on Women's Development.[111] In addition, 18 decisions cite the Korean Constitution, most commonly article 10, which protects the right to dignity and the pursuit of happiness.[112]

Interestingly, however, the ombudspersons have also proved very willing to refer to international treaty norms, and even to take into account findings from other countries' laws and jurisprudence. For example, the Ombudsperson Office has cited UN human rights treaties in eight out of 21 published cases.[113] In several other cases, a broad range of international norms have been cited from outside the UN treaty system. For example in a 16 October 2014 decision, the Ombudsperson Office cited an International Labour Organisation Resolution, a UN Declaration, and a case from the US Equal Employment Opportunity Commission.[114] The following month, the Ombudsperson Office cited the European Framework Agreement on Harassment and Violence at Work as well as relevant laws in

[110] Framework Ordinance on Human Rights (n 29) art 2.
[111] The 21 published decisions examined here make up the entirety of the cases published online, at <http://gov.seoul.go.kr/archives/category/human/guard_human/guard_human-n1> accessed 6 January 2016.
[112] Constitution of the Republic of Korea (1948) art 10 ('All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals'). It is worth noting that this provision provides very broadly worded rights protection, potentially allowing the Ombudspersons more room to address situations which are not specifically protected by other clauses.
[113] UN treaties cited include the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities.
[114] Seoul Human Rights Ombudsperson Decision, '사업소 직원 간 성희롱 등' (Sexual Harassment among Employees at a Roadwork Site, etc) (Case no 14(107) ,16 October 2014).

Sweden, France and Japan.[115] Three decisions have cited the Universal Declaration of Human Rights. Oftentimes, these international norms are cited in conjunction with relevant local or national norms, as was the case in the Childcare Support for Unregistered Migrants case reviewed above.

Meanwhile, relatively few human rights norms from local (Seoul) sources have been used to determine the scope of rights protection, the notable exceptions being the Seoul Metropolitan Government Guidelines for the Prevention of Sexual Harassment, which was cited as a source in four of the 21 published cases,[116] and the Seoul Ordinance on the Protection and Promotion of Human Rights of the Child and Youth, which was cited on three occasions.[117] In fact, there have been efforts by Mayor Park and the Seoul Human Rights Centre to draft a distinctive human rights charter for Seoul, but these efforts have so far been unsuccessful. Consistent with the human rights plan laid out in Park's campaign declaration, in 2014 the Human Rights Centre selected a committee of 150 ordinary citizens and 30 human rights experts to draft a charter that could be adopted by Seoul City.[118] The end result was a draft document called the Seoul Citizens' Human Rights Charter, which consisted of 50 articles protecting a wide range of rights, including several economic, social, and cultural rights as well as rights regarding political participation and transparency. While the document in many ways reflects classic human rights norms, it also includes several clauses which are peculiarly suited to the urban context,[119] and some that seem particularly consistent with Korean concerns, one example being the article 12 right to be protected from disasters and

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[115] Seoul Human Rights Ombudsperson Decision, '사업소 용역업체 직원에 대한 성추행 등' (Sexual Harassment against an Employee of a Contractor, etc) (Case no 14(123) (Consolidated), 21 November 2014).

[116] Seoul Human Rights Ombudsperson Decision, '서울시 위탁업체 내 직원 간 성폭력 1' (Sexual Violence among Employees at a Seoul City Contractor) (Case no 13(5), 7 June 2013); Seoul Human Rights Ombudsperson Decision, 'Sexual Harassment among Employees at a Roadwork Site (n 114); Seoul Human Rights Ombudsperson Decision, '자원봉사자에 의한 성희롱' (Sexual Harassment by a Volunteer) (Case no 15(18), 18 March 2015).

[117] Seoul Human Rights Ombudsperson Decision, '비인가 대안교육기관에 대한 급식 및 교육비 지원 차별' (Discrimination against Alternative Schools with Regard to the Provision of School Meals and Educational Expenditure) (Case no 13(16) (Consolidated), 31 October 2013); Seoul Human Rights Ombudsperson Decision, '서울지방공사의 비인가 대안교육기관 취학자녀를 둔 직원에 대한 학자금 지급 차별' (Discrimination against Employees with Children Attending Unauthorised Alternative School, with Regard to the Payment of Tuition Support) (Case no 13(18), 9 December 2013); Seoul Human Rights Ombudsperson Decision, 'Discrimination in Childcare Support for Children of Undocumented Migrants' (n 63).

[118] Interview with Park Dongsuk (n 38).

[119] This is perhaps most evident in articles 31-33 on the right to live in a pleasant environment, which discusses the need for more parks, protection from noise, and access to transit passes. The Draft Seoul Citizens' Human Rights Charter is reprinted at Kang Min Su, '폐기위기 '서울시민 인권헌장', 직접 보고판단하세요' (Seoul Citizens' 'Human Rights Charter' in Danger of Being Discarded! See and Judge for Yourself) (2 December 2014) <www.ohmynews.com/NWS_Web/view/at_pg.aspx?CNTN_CD=A0002058611> accessed 6 January 2016.

accidents, which reflects Korea's widespread revulsion at lax enforcement of safety standards in the wake of the April 2014 Sewol ferry disaster.[120]

When Mayor Park attempted to adopt the Seoul Citizens' Human Rights Charter, however, these various clauses were all overshadowed by a controversy centred on the fact that the anti-discrimination clause (article 4) protected sexual minorities (among many other groups), and the right to be protected from social violence (article 15) also specifically noted sexual minorities as an at-risk group.[121] Conservative elements (particularly associated with certain Christian groups) fiercely protested the inclusion of these clauses, while criticising Park for going beyond the appropriate role of a local official in order to gain publicity for a potential presidential run.[122] In the end Park decided not to adopt the Charter because of the lack of a social consensus on the issue.[123] This decision was in turn harshly criticised by progressive activists who felt that Park had not stood up firmly for their rights.[124] According to both Mayor Park and the head of the Seoul Human Rights Centre, the passage of the Charter will be at some point revisited, and it remains an important policy goal for the administration.[125]

Finally it should be noted that there have been other interesting attempts to develop new human rights norms at the borough level in Seoul. Seongbuk-Gu, for example, has promulgated a Human Rights Charter, despite the objections of anti-LGBT rights protesters.[126] In addition to those clauses commonly seen in human rights documents, the Seongbuk-Gu Charter also provides specific protection for senior citizens, marriage migrants, sexual minorities, the homeless, persons with infectious diseases, refugees, and North Korean refugees.[127]

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[120] ibid art 12.
[121] ibid arts 4 and 15.
[122] 'Special Human Rights Charter of Mayor Park Won-soon' *The Donga Ilbo* (21 November 2014) <http://english.donga.com/srv/service.php3?biid=2014112157568> accessed 6 January 2016.
[123] Kim Bong-Moon, 'Seoul Calls Off Human Rights Charter' *Korea Joongang Daily* (1 December 2014) <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=2997941> accessed 6 January 2016.
[124] Claire Lee, 'Seoul Mayor Blasted for Human Rights Hold-Up' *The Korea Herald* (4 December 2014) <www.koreaherald.com/view.php?ud=20141204001173> accessed 6 January 2016.
[125] Interview with Park Dongsuk (n 38).
[126] In the end, the Charter's drafters decided to withdraw a clause promoting better acceptance of sexual minorities, while retaining a provision prohibiting anti-LGBT discrimination: Chang Hyun Ahn, '성북구 '주민인권선언' 10 일 발표하지만…성소수자 관련 문구는 논란끝 후퇴' (Seongbuk-Gu to Announce 'Residents Human Rights Charter' on 10th, but Step Back from the Controversial Statement Regarding Sexual Minorities) *Hankyoreh* (9 December 2013) <www.hani.co.kr/arti/society/area/614701.html> accessed 6 January 2016.
[127] Kim Jin-Dong (n 45) 103-04.

VI. Conclusion

In this case study, I have examined the operations of the Seoul Human Rights Ombudsperson Office, one of the first examples of a local human rights ombudsperson institution to be established in East Asia. In particular, I have explored the connections between the Seoul Human Rights Ombudsperson and other governmental and civil society actors, both inside and outside of Korea. In short, my findings show that the establishment of the Seoul Human Rights Ombudsperson was largely the result of local political initiatives grounded in a national political landscape where human rights discourse has taken on a particularly strong relevance. The Ombudsperson Office has accordingly developed fairly independently, with few institutional links to the outside world, although it borrows liberally from human rights norms developed at the national and international levels.

What can we learn from this case study about local human rights implementation in Asia? Firstly, it is clear that given the existence of human rights-friendly leadership, there is room for local human rights mechanisms to make a real difference in peoples' lives, and especially to encourage political actors to take into account the voices of the powerless, such as non-citizens in the discriminatory treatment of Hwagyo and the unregistered migrant childcare cases. These local mechanisms are not necessarily imposed from above or developed according to international standards. Rather, the Seoul Human Rights Ombudsperson shows how a local politician can develop a local human rights system as a result of personal conviction and constituent expectations without significant support from other actors, and in fact can position the office as a response to a perceived weakness in national-level human rights policies. This dynamic is resonant of certain local initiatives in the West, for example the decision by the San Francisco Human Rights Commission to (successfully) promote municipal adherence to the Convention on the Elimination of all forms of Discrimination Against Women, even though the treaty has not been ratified by the US. Local commissions can thus usher in stronger human rights policies in localities that are more progressive than the rest of the country in which they are located.[128]

However, this case study also shows that more work needs to be done to integrate such institutions into a coherent human rights regime. Where there are multiple bodies capable of investigating the same complaint, there should be coordination to ensure that

[128] Columbia Law School Human Rights Institute, 'Implementing Recommendations from the Universal Periodic Review: A Toolkit for State and Local Human Rights and Human Relations Commissions' (2011) <web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/UPR%20Toolkit_0.pdf > accessed 10 March 2017.

forum shopping opportunities are kept to a minimum, and that a consistent human rights jurisprudence can develop among the different concerned entities. While the risk of parallel investigations was perhaps made most clear in the aftermath of the Seoul Philharmonic Orchestra harassment case, the lack of formal guidelines regulating jurisdictional overlap with the NHRCK and ACCRC may in the long run create greater risks of duplicative investigations or forum shopping.

Finally, this case study demonstrates that opportunities exist for local human rights institutions to work towards the implementation and jurisprudential development of both local norms and international norms such as UN treaties and declarations. This normative mix may provide a good opportunity for local human rights institutions to engage in the localisation of human rights norms, meaning, according to one definition, 'the active construction [of new norms] through discourse, framing, grafting, and cultural selection of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices.'[129] This process can facilitate the integration of local voices into the norm-development process and can perhaps produce new norms in areas such as the rights of the elderly that are particularly resonant in East Asian traditions but have been neglected at the global level.[130] Critics might argue that this could lead to a certain degree of fragmentation of international human rights law, but this is not necessarily a bad thing; proponents of localisation accept that a degree of pluralism is both inevitable and welcome in today's world.[131]

Despite the potential benefits of greater local attention to the evolution of human rights norms, it is equally clear from the failed attempt to promulgate a Seoul Citizens' Human Rights Charter that the process of implementing international norms or developing new norms at the local level can be fraught with political risks and the potential for conflict, just as it often is at the national or international levels. Smaller polities do not necessarily provide for a homogeneity of opinions. As local human rights mechanisms mature in Seoul and elsewhere, further research will be necessary to examine the substantive effects of moving the contested process of rights development to the realm of municipal institutions.

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[129] Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58 Int'l Org 239, 245.
[130] Frédéric Mégret, 'The Human Rights of Older Persons: A Growing Challenge' (2011) 11 H R L Rev 37, 37.
[131] Koen de Feyter, 'Localizing Human Rights' (University of Antwerp Institute of Development Policy and Management Discussion Paper 2006/02, January 2006) 23 <https://core.ac.uk/download/pdf/6698800.pdf> accessed 10 March 2017.

Chapter 8

‘National Human Rights Institutions and their Sub-National Counterparts: The Question of Decentralisation’, forthcoming in (2017) 6 International Human Rights Law Review (unpublished draft version).

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National Human Rights Institutions and their Sub-National Counterparts: The Question of Decentralisation

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Abstract: In this article I outline and explore the arguments in favor of and in opposition to the establishment of sub-national human rights institutions (such as state and local human rights commissions, ombudsmen and the like) in nations that already possess national human rights institutions. This analysis will be based on an application of prior research findings in the broader field of administrative decentralisation as tailored to the particularities of human rights implementation. Where relevant I also examine the implications of institutional type for decentralisation, as well as the implication of different attributes of the relevant jurisdiction. As a conclusion, I lay out the circumstances under which the establishment of sub-national human rights institutions will be more or less advantageous.

Keywords: Decentralisation; federalism; subsidiarity; national human rights institutions; ombudsmen; human rights commissions

I. Introduction

For the past twenty-five years, one of the most important human rights questions facing countries around the world has been whether or not they should establish national human rights institutions ('NHRIs'). By and large, this is no longer an issue: the question has been answered in the affirmative. With a handful of (significant) exceptions, NHRIs are now considered as standard features of the modern democratic state.[1] As of August 2016, 117 NHRIs have been accredited by the Global Alliance of National Human Rights Institutions ('GANHRI'), of which 75 were deemed fully compliant with the UN-issued Paris Principles, the authoritative set of standards for the operation of NHRIs.[2]

Within these nations that now possess NHRIs, there has in many cases been an important follow-up question: should analogous human rights institutions also be established at sub-national governmental levels? Many jurisdictions, especially in Europe and the Americas, in fact

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[1] Julie Mertus, Human Rights Matters: Local Politics and National Human Rights Institutions (Stanford U Press 2009) 4; Brice Dickson, 'The Contribution of Human Rights Commissions to the Protection of Human Rights' (2003) Pub L 272, 285 ('a human rights commission is a *sine qua non* of a democratic society'). Major countries that still lack NHRIs include the USA, China, Japan, and Italy.

[2] GANHRI, ICC Sub-Committee on Accreditation, <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx> (accessed 25 October 2016).

have established what I term sub-national human rights institutions ('SNHRIs'), those human rights boards, human rights ombudsman, anti-discrimination commissions, and the like that can be defined as *independent non-judicial governmental institutions that possess a sub-national mandate, and whose mission includes the implementation of human rights norms*.[3] In part, this reflects a strong global trend toward decentralisation of government services in recent decades.[4] In Africa and Asia, SNHRIs remain exceptional, although they are rapidly proliferating in certain countries in those continents, as well.[5]

To date, there has been very little scholarly analysis of this question. Certain European trans-national institutions have recommended the establishment of SNHRIs (or, specifically, local ombudsmen).[6] A number of academics have made arguments that states should promote the implementation of human rights at the local government level,[7] and a few others have studied specific instances of NHRI decentralisation.[8] However, there has been little informed debate regarding the implications of NHRI decentralisation, and its advantages or disadvantages. This article will make a first step towards filling the gap in the literature.

Specifically, in this article I will outline and elaborate upon the arguments in favor of and in opposition to the establishment of SNHRIs in nations that already possess NHRIs and, based on these arguments, very briefly lay out the circumstances under which the establishment of

[3] This definition is elaborated upon and justified elsewhere. See Andrew Wolman, 'Sub-National Human Rights Institutions: A Definition and Typology', forthcoming in (2017) Human Rights Review.

[4] Andrés Rodríguez-Pose and Roberto Ezcurra, 'Does decentralization matter for regional disparities? A cross-country analysis' (2010) 10 J Econ Geog 619, 619-21 ('Over the last 40 years a decentralizing wave has swept the world'); Janne Nijmann, 'Renaissance of the City as Global Actor' ASSER Research Paper 2016-02 (February 2016), 15 ('Decentralisation – the transfer of authority and responsibility from a higher (more central) to a lower level of government – is a world-wide trend since the 1980s.')

[5] In Korea, for example, twenty jurisdictions have established SNHRIs since 2012. Korea Human Rights Foundation, *Report on Local Government and Human Rights* (Gwangju Dev Inst 2014) 218-19.

[6] See, eg, Council of Europe Congress of Local and Regional Authorities, Recommendation 61 (1999) 'On the Role of Local and Regional Mediators/ Ombudsmen in Defending Citizen's Rights', art 22; Council of Europe Congress of Local and Regional Authorities, Resolution 191 (2004) 'On Regional Ombudspersons: An Institution in the Service of Citizens' Rights', art 16. The Parliamentary Assembly of the Council of Europe has asserted that regional and local ombudsmen should be established 'as appropriate'. Parliamentary Assembly of the Council of Europe, Recommendation 1615/2003.

[7] See, e.g., Antoine Meyer, 'Local Governments & Human Rights Implementation: Taking Stock and a Closer Strategic Look' (2009) 3 Pace Diritti Humani 7; Michele Grigolo, 'Incorporating Cities into the EU Anti-Discrimination Policy: Between Race Discrimination and Migrant Rights' (2011) 34(10) Ethnic & Rac Stud 1751; Conrad 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.

[8] See, eg, Teresa Rees and Paul Chaney, 'Multilevel Governance, Equality and Human Rights: Evaluating the First Decade of Devolution in Wales' (2011) 10(2) Soc Poly & Socy 219; Predrag Dimitrijević, 'Do we need local ombudsmen?: Protector of Human Rights' (2005) 3(1) Facta Universitatis: Law and Politics 25.

SNHRIs will be more likely to be appropriate.[9] I will not attempt to provide a definitive answer to the general question of whether sub-national governments should establish SNHRIs (or the related questions of whether national governments should authorize or allow the establishment of SNHRIs). In this respect, I am in accord with Nicolaidis that 'only on an ad hoc basis is it possible to know whether a particular topic or area in a given time and place is more properly regulated at one level of governance'.[10] However, the arguments for and against SNHRI establishment should help inform the decision-makers at any level that are struggling with this question.

The arguments in this article are explicitly built upon the existing research detailing the general implications of decentralising administrative functions, some of which dates back several decades.[11] While the findings from this existing literature are the starting point for my arguments, however, they are not the end of the analysis. The application of findings from general decentralisation research to the question of SNHRIs requires further elaboration, both because human rights implementation differs in certain respects from ordinary service delivery, and because the implications of decentralisation of an independent government watchdog such as an SNHRI are difficult than those of an ordinary agency. I therefore supplement the decentralisation analysis with human rights-specific arguments, both conceptual and in some cases based on empirical observations of NHRI and SNHRI behavior. Where relevant I will also examine the implications of SNHRI type for decentralisation, as well as the implication of different attributes of the relevant jurisdiction.

II. Conceptual Background

As a preliminary to my analysis, this section will introduce the relevant aspects of the most important concepts discussed in this article: namely, decentralisation, deconcentration, and subsidiarity, and discuss how they are relevant to the question of whether or not to establish an SNHRI in a country that already possesses an NHRI.

A. Decentralisation

The term 'decentralisation' has been defined in a number of different ways over the years.[12] At its broadest, it has sometimes been defined to include the delegation of powers,

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[9] While this article will focus on situations where NHRIs already exist (which is the majority of countries), many of the arguments would also apply to decisions regarding whether or not to establish an SNHRI in jurisdictions that lack NHRIs.

[10] Kalypso Nicolaidis, 'Conclusion: The Federal Vision behind the Federal State' in Kalypso Nicolaidis and Robert Howse (eds), *The Federal Vision* (OUP 2002) 446. See also Charles Hankla, 'When is fiscal Decentralization Good for Governance?' (2009) 39(4) Publius 632, 637 ('If there is an overarching theme in the [decentralisation] literature, it is that the impact of strengthening subnational institutions, whether positive or negative, depends sensitively on case-specific details').

[11] See, eg, Charles Tiebout, 'A Pure Theory of Local Expenditures' (1956) 65 J Pol Econ 416; Richard Musgrave, 'Theories of Fiscal Federalism' (1969) 4(24) Pub Finances 521; Wallace Oates, *Fiscal Federalism* (Harcourt 1972).

[12] For an overview of various definitions, see UNDP, Decentralization: A Sampling of Definitions (1999) <http://web.undp.org/evaluation/evaluations/documents/decentralization_working_report.PDF> (accessed 23 October 23, 2016).

divestment/privatization, deconcentration, and devolution to sub-national governments.[13] This paper, however, will use the narrower definition proposed by (among others) the International Center of Human Rights Policy, namely that decentralisation is the 'transfer of power and responsibility from national (or central) government to subsidiary levels, which may be regional, municipal or local'.[14] Decentralisation does not necessarily imply federalism, which commonly refers to 'a constitutionally guaranteed division of competences between territorially defined governmental levels', although there is significant overlap in the research studying decentralisation and the research explicitly focused on federalism.[15] Rather, decentralisation can occur in every nation that has sub-national administrative divisions, which is to say virtually every nation in the world.[16]

In this context, the establishment of SNHRIs where there is already an existing NHRI can be seen as a form of decentralisation, as powers and responsibilities (for human rights implementation by an independent body) that once existed only at the national level will now exist at the sub-national level as well. It is important to emphasize that decentralisation and centralization are not incompatible concepts, in the sense that expanding powers at the sub-national level necessarily implies a reduction or absence of powers at the national level.[17] Indeed, for countries with NHRIs, it is very unlikely that those NHRIs will be fully replaced by SNHRIs, because engagement with the national government and with supra-national bodies are important tasks that at this point are clearly better undertaken by national bodies (and sub-national bodies are in fact actively prevented from full access to the international system by GANHRI rules).[18] Rather, it is more likely that the NHRI and SNHRI will share responsibilities for human rights promotion, monitoring and education in the sub-national jurisdiction, and possibly share jurisdiction for complaint-handling as well. In some cases, however, an SNHRI will be established in an autonomous region where the NHRI previously lacked jurisdiction, or an SNHRI will focus exclusively on handling complaints that the NHRI is not mandated to handle.[19] This would correspond to a non-overlapping jurisdictional arrangement (often called

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[13] UNDP, Decentralized Governance Programme: Strengthening Capacity for People-Centered Development, Management Development and Governance Division, Bureau for Development Policy (1997) 5-6.

[14] International Council on Human Rights Policy, 'Local Rule: Decentralisation and Human Rights' (2002) 5. The term 'decentralisation' will be therefore used as functionally synonymous with the term 'devolution'. UNDP (n 13) 5-6 ('The transfer of authorities to [autonomous lower-level] units is often referred to as devolution and is the most common understanding of genuine decentralization').

[15] Jan Biela et al, *Policy-Making in Multi-Level Systems* (ECPR Press 2013) 7.

[16] Edward Rubin, 'Puppy Federalism and the Blessings of America' (2001) 574 Annals Am Acad Pol & Soc Sci 37, 39 ('With the possible exception of some postage-stamp states … every nation is decentralized to some extent; they all have territorial subunits exercising some degree of governmental authority').

[17] UNDP (n 13) 1.

[18] See, Andrew Wolman, 'Welcoming a New International Human Rights Actor? The Participation of Subnational Human Rights Institutions at the United Nations' (2014) 20 Global Governance 437, 440.

[19] In Austria, for example, the Länder governments may choose to establish an ombudsman (as two have done) or alternatively to delegate the federal ombudsman the authority to address complaints about

dual federalism, in the context of federal states), but this type of arrangement is relatively rare, both for SNHRIs and for other types of government service providers.[20]

Decentralisation can, in general, be categorized as either a top-down or a bottom-up phenomenon.[21] Top-down decentralisation is initiated by the national government, and normally pursues national-level objectives, such as shifting fiscal constraints to a lower level or increasing national well-being. Bottom-up decentralisation is initiated by local actors, and pursues local objectives such as increasing local innovation or catering to local preferences in government service delivery. Each of these types of decentralisation can be seen with the establishment of SNHRIs. Top-down decentralisation can be seen in the establishment of SNHRIs by national governments in some post-conflict zones, such as Northern Ireland or Mindanao.[22] The SNHRIs established in some so-called 'human rights cities', on the other hand, are typically bottom-up initiatives, as (in general) are the human rights and anti-discrimination commissions of the United States.[23] Other SNHRIs require initiative from both above and below, as is the case in India and Russia, where SNHRIs were first authorized by a central government, but later established by sub-national entities.[24] This paper is not tailored to address one or the other type of decentralisation. However, the strength of the various arguments outlined here will evidently vary according to whether one approaches the issue from a position of national or local power.

B. Deconcentration

Deconcentration can be defined as 'situations in which central government offices are moved to the regions but remain under the control of central government'.[25] In theory, it may be feasible to delineate a bright line between deconcentration and decentralisation. In practice, however, the two lie on either ends of a spectrum between total national control of a local office and total absence of control. In some systems, actual practice lies somewhere in the middle; this is certainly the case with many SNHRIs. To give some examples, in Morocco, the Regional Human Rights Commissions operate independently in responding to complaints, but commissioners are appointed by the National Council for Human Rights, the regional commissions follow national policies for human rights promotion, and the National Council

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administration in that Länder (as seven have done). Linda Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Martinus Nijhoff 2004) 150.

[20] Andrew Wolman, 'The Relationship Between National and Sub-National Human Rights Institutions in Federal States' (2013) 17 Intl J Hum Rts 445, 447-48.

[21] Bernard Dafflon and Thiery Madlès, 'Decentralization: A Few Principles from the Theory of Fiscal Federalism' (2011) Agence Française de Développement Notes and Documents No 42, 4-8.

[22] Northern Ireland Act [UK] 1998, ch. 47; Republic Act 9054 [Philippines] (2001), sec 16.

[23] See, generally, Charlotte Berends et al (eds), *Human Rights Cities: Motivations, Mechanisms, Implications* (University College Roosevelt 2013); Kenneth Saunders K and Hyo Eun Bang, 'A Historical Perspective on US Human Rights Commissions' (John F. Kennedy School of Government 2007).

[24] Protection of Human Rights Act [India] 1993, as amended by the Protection of Human Rights (Amendment) Act 2006 – no. 43 of 2006, ch. V; Constitution of the Russian Federation (1993) art 72; Federal Constitutional Law [Russia] No. 1-FKZ of February 26, 1997.

[25] International Council on Human Rights Policy (n 14) 6.

supervises the regional commissions' development of human rights observatories.[26] In India and Russia, the SNHRIs operate independently, but implement a mandate determined by national-level legislation.[27] In Mexico, the SNHRIs operate independently, but their rulings can be appealed to the Mexican National Human Rights Commission.[28]

This paper does not address the question of whether (or when) NHRI deconcentration is beneficial. In fact, the international community has been quite clear in calling for deconcentration of NHRIs where needed to ensure adequate public accessibility.[29] Thus the Paris Principles mandate that NHRIs shall 'set up local or regional sections'[30] and the GANHRI Sub-Committee on Accreditation has on many occasions suggested that NHRIs open up branch offices in order to comply with the Paris Principles' mandate of accessibility.[31] Amnesty International has likewise recommended that 'local and regional offices are vitally important to the effective functioning of NHRIs in a large country, or a country with isolated and inaccessible centres of population, or where transportation is difficult'.[32] Many NHRIs currently have large numbers of branch offices, while others have none, especially in small countries.[33]

C. Subsidiarity

The principle of subsidiarity also plays an important role in questions of decentralisation for many issue areas, including human rights.[34] There is no universally accepted definition for

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[26] Conseil National des Droits de l'Homme, Présentation, Missions, et Mandat Territorial de Chaque Commission, <http://www.ccdh.org.ma/fr/commissions-regionales-des-droits-de-lhomme/presentation-missions-et-mandat-territorial-de-chaque> (accessed 25 October 2016).

[27] Protection of Human Rights Act [India] (n 24) ch. V; Constitution of the Russian Federation (n 24) art 72; Federal Constitutional Law [Russia] (n 24).

[28] Mónica Beltrán Gaos, La Comision Nacional de los Derechos Humanos de Mexico (Univ Politécnica de Valencia 2005) 249.

[29] According to Carver, the most important element of NHRI accessibility is 'having offices or other points of contact throughout the country, not only in the capital city.' Richard Carver, 'One NHRI or Many?: How Many Institutions does it Take to Protect Human Rights? Lessons from the European Experience' (2011) 3(1) J Hum Rts Practice 116.

[30] United Nations General Assembly, Resolution 48/134, 'Principles Relating to the Status of National Institutions' (1993) sec 3(e).

[31] See, eg, GANHRI, 'GANHRI Sub-Committee on Accreditation Report – May 2016 (Geneva 2016) 13; 17; 21; 23; 31; 36; 39; 46; 49 ('where possible, accessibility should be further enhanced by establishing a permanent regional presence').

[32] Amnesty International, 'National Human Rights Institutions – Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights' (2001) IOR 40/007/2001, §9.1.

[33] For example, the Ethiopian Human Rights Commission has nine branch offices, Venezuela's Defensoría del Pueblo has 33 branch offices, Nepal National Human Rights Commission has eight branch offices, and the South African Human Rights Commission has nine branch offices; one in each provincial capital. Wolman, 'The Relationship Between National and Sub-National Human Rights Institutions' (n 20) 448-50.

[34] See, generally, Paolo Carozza, 'Subsidiarity as a Structural Principle of International Human Rights Law' (2003) 97 Am J Intl L 38.

the concept, and in fact it is a notoriously vague and multi-faceted term.[35] In general, however, subsidiarity has been characterized as 'a presumption for local-level decisionmaking, which allows for the centralization of powers only for particular, good reasons'.[36] Beyond this broad definition, subsidiarity is sometimes divided up into weak or strong versions. Thus, according to Jachtenfuchs and Krisch, weak subsidiarity involves 'an easily rebuttable presumption—a presumption for the local that provides a low threshold and can be overcome by any reason that makes action on a higher level appear advantageous, be it for the sake of efficiency, efficacy, or justice', while a stronger version puts forth a higher threshold, namely 'a presumption in favor of local governance that can be rebutted only by strong reasons in exceptional cases'.[37] At its strongest, subsidiarity has been said to signify that, in the words of Halberstam 'the central government should play only a supporting role in governance, acting only if the constituent units of government are incapable of acting on their own'.[38]

The arguments presented in this paper are relevant to a subsidiarity analysis in two distinct ways. First, to the extent that one finds the arguments in favor of SNHRI establishment to be generally convincing, then these arguments provide a justification for asserting an accordingly strong form of subsidiarity for independent human rights institutions (and conversely, if they do not seem like strong arguments, then only a weak form would be justified). Second, to the extent that one finds the arguments against SNHRI establishment to be convincing in a given concrete situation, this can provide the basis for overcoming the presumption for local governance that lies at the heart of the subsidiarity principle.

III. Arguments in Favor of SNHRI Establishment

In this section, I will outline five of the principal decentralisation arguments that can be used to justify the establishment of an SNHRI in a nation that already possesses an NHRI, namely arguments based on physical proximity, cultural proximity, autonomy, human rights innovation, and robustness.

A. Physical proximity

One obvious argument for the establishment of SNHRIs is that by being located in close proximity to the people that they serve, SNHRIs are able to implement human rights more effectively than centralized NHRIs. Physical proximity to the area being served has always been one of the primary arguments for decentralisation of government services.[39] Physical proximity to local populations conveys informational advantages to local administrators and decision-makers.[40] It also allows for more rapid responses to changing local conditions, and cheaper

[35] Markus Jachtenfuchs and Nico Krisch, 'Subsidiarity in Global Governance' (2016) 79(2) Law & Contemp Prob 1, 5; Pierpaolo Donati, 'What Does "Subsidiarity" Mean? The Relational Perspective' (2009) 12 J Mkts & Morality 211, 211 (2009).

[36] Jachtenfuchs and Krisch, ibid, 1.

[37] Ibid, 8.

[38] Daniel Halberstam, 'Federal Powers and the Principle of Subsidiarity' in Vikram Amar and Mark Tushnet (eds), Global Perspectives on Constitutional Law (OUP 2009) 34.

[39] See, generally, Jesse Newmark, 'Legal Aid Affairs: Collaborating with Local Governments on the Side' (2012) 21 Boston U Public Interest L J 195, 204.

[40] Hayek, F.A., 1948. Individualism and Economic Order. University of Chicago Press, Chicago.

access to local sites. This general argument has been embraced in the realm of human rights implementation by many practitioners and advocates. For example the Council of Europe Commissioner for Human Rights stressed the importance of doing human rights work 'locally, close to the people', because 'geographical and personal proximity between inhabitants and local decision-makers … has obvious advantages'.[41]

There are a number of component claims to the argument that human rights implementation is benefited by physical proximity between the service provider and recipient. One potential claim is that SNHRIS will be more knowledgeable about the local environment because they are physically based there.[42] Another is that human rights monitoring is facilitated by a local presence, because human rights institutions can receive consistent feedback from the local population.[43] A third is that local offices facilitate contact with grassroots NGOs, which in turn improves human rights implementation.[44] A fourth is that victims of human rights violations will be better able to access justice through nearby complaint mechanisms.[45] A final claim is that by having easier access to the local population, SNHRIs will find it easier to effectively engage in human rights promotion and training.[46]

In my view, it would be difficult to rebut this argument. That is to say, while one may certainly argue against SNHRI establishment on other grounds (i.e., cost, independence, effectiveness, etc.), there is no credible argument that human rights are better protected through a lack of proximity to a particular population. The one caveat, though, is that physical proximity provides an equally valid argument for decentralisation and deconcentration. In those jurisdictions that already have NHRI branch offices, the physical proximity argument is no longer a good reason to support the establishment of an SNHRI rather than the support of an existing NHRI.

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[41] Thomas Hammarberg, Commissioner for Human Rights, 'Bringing Human Rights Home: Human Rights Action at the Local Level', Statement before the Council of Europe Congress of Local and Regional Authorities, 22 March 2011, CE Doc CommDH/Speech(2011)3.

[42] Enric Bartlett, 'National and/or Regional/Local Ombudsman', paper presented at the Regional Ombudsman Conference: The Ombudsman in Southeastern Europe (Sofia, Bulgaria, November 28–30, 2003).

[43] Kim Joong-Seop, 'Toward Human Rights in the Local Community: Multiple Approaches for Implementation' (2010) 39(1) Dev & Soc 119, 127; Axel Marx et al, 'Localizing Fundamental Human Rights in the European Union: What is the Role of Local and Regional Authorities, and How to Strengthen It?' (2015) 7(2) J Hum Rts Practice 246, 267.

[44] UN Human Rights Council, 'Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee' (7 August 2015), UN Doc A/HRC/30/49, para 55.

[45] Thomas Hammarberg, 'Recommendation on Systematic Work for Implementing Human Rights at the National Level', CE Doc CommDH(2009)3 (2009) ('[Regional ombudsmen's] geographical proximity to people makes them more available and accessible to people whose rights have been violated'); Bartlett (n 42); Marx et al (n 43) 266.

[46] 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.

B. Cultural proximity

Another argument in favor of decentralisation is that SNHRIs will have a closer socio-cultural proximity to local populations in pluralistic societies, which will improve their ability to promote and protect human rights, in at least three separate ways. First, human rights workers who come from the same socio-cultural background of the communities they serve will likely be more knowledgeable about the human rights issues facing their community. This should lead to human rights implementation that is targeted to those in society most in need.

Second, local populations may be more likely to accept human rights norms as legitimate (and local governments more likely to concede to human rights demands) if those norms are coming from their co-ethnics and social peers, rather than being imposed in a quasi-imperialist manner from a distant capital (or New York or Geneva).[47] This may be especially true of socio-economic rights that involve income redistribution, given evidence that people are most willing to engage in acts of self-sacrifice with respect to people with whom they feel a cultural affinity.[48] A corollary of this argument is that local victims of human rights violations might feel more comfortable approaching SNHRIs when the victims speak the same language and share life experiences with the SNHRI officers.[49]

Third, with decentralisation, services and regulations can be tailored more efficiently and flexibly to community needs, rather than centrally administered in a 'one size fits all' fashion.[50] To the extent that accepted universal norms are being implemented in culturally specific ways so as to have a more beneficial impact on local populations, this would seem to be an unqualified advantage: human rights scholars generally agree that human rights may be legitimately implemented in different ways depending on local conditions, as long as the core content of those rights are respected.[51] The risk, however, it that by implementing human rights in a manner acceptable to the majority in a sub-national jurisdiction, an SNHRI might end up alienating or even oppressing a group that is in the minority; for this reason, tailoring human

[47] Barbara Oomen, 'Rights and the City: Does the Localization of Human Rights Contribute to Equality?' in Marjolein van den Brink et al (eds), *Equality and human rights: nothing but trouble?, Liber amicorum Titia Loenen*, SIM Special no 38, SIM (2015) 407.

[48] Leslie Wexler, 'The Promise and Limits of Local Human Rights Internationalism' (2010) 37 Fordham Urban L J 599, 625-26.

[49] Derrick McKoy and Yvonne Stone, 'The Ombudsman and Effective Local Public Administration: A Case Study', Report of the Meeting of the OAS Program of Cooperation in Decentralization, Local Government and Citizen Participation (Kingson, Jamaica 1998) ('The greatest advantage to be derived from localised politics and localised public administration, is that it reduces the alienation that people sometimes feel when they confront the state'.)

[50] Oates (n 11). The matching of public services to local needs is sometimes referred to as 'allocative efficiency'.

[51] Jack Donnelly, Universal Human Rights in Theory and Practice (2d edn Cornell Univ Press, 2003) 119; Morten Kjaerum, 'Universal human rights: between the local and the global' in Kirsten Hastrup (ed), *Human Rights on Common Grounds* (Kluwer 2001) 83-87.

rights implementation to local needs is perhaps most effective in local jurisdictions that are not themselves heterogeneous (within countries that are heterogeneous).[52]

More controversially, SNHRIs that share a socio-cultural proximity to the people that they serve would seem to be better placed (relative to NHRIs) to engage in the normative development implicit in the localization of human rights norms, defined as the 'active construction of [new norms] through discourse, framing, grafting, and cultural selection of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices'.[53] As stated more concisely, local human rights implementation by SNHRIs 'gives meaning to human rights'.[54] Some scholars argue that by drawing upon local traditions, localization will enhance the legitimacy and effectiveness of the universal human rights regime.[55] Of course, the idea of localization is controversial; some see pluralism as dangerous to the human rights project.[56] This objection will be discussed in more depth below, in the section on human rights fragmentation.

To a certain extent, socio-cultural proximity between an NHRI and local populations can be arranged through deconcentration as well as decentralisation, for example where local offices are staffed with local hires. However, deconcentration will almost necessarily be less effective in this regard, as NHRI policy priorities and ultimate decisions will be made at a central level, even if local office hires reflect the cultural make-up of the community.[57]

C. Administrative Autonomy

Perhaps the strongest argument for the establishment of SNHRIs (rather than the mere deconcentration of NHRIs) is that SNHRIs are the best (or perhaps the only) way to influence

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[52] This situation, however, will rarely be fully realised. See Edward Rubin and Malcolm Feeley, 'Federalism: Some Notes on a National Neurosis' (1994) 41 UCLA L Rev 903, 939 ('Political communities can be coextensive with affective communities, but this is rarely the case in advanced societies').

[53] Amitav Acharya, *Whose Ideas Matter? Agency and Power in Asian Regionalism* (Cornell U Press, 2009) 15. In the human rights context, De Feyter characterizes localization as the process 'whereby local human rights needs inspire the further interpretation and elaboration of human rights norms at levels ranging from the domestic to the global, and serve as a point of departure for human rights action.' Koen De Feyter, 'Localising Human Rights' in Wolfgang Benedek et al (eds), *Economic Globalisation and Human Rights* (CUP 2007) 89.

[54] Columbia Law School Human Rights Institute, 'State and Local Human Rights Agencies: Recommendations for Advancing Opportunity and Equality Through an International Human Rights Framework' (2009) 5.

[55] De Feyter, ibid 71-72; Emilie Hafner-Burton, *Making Human Rights a Reality* (Princeton U Press 2013) 175.

[56] Besselink argues that human rights pluralism would undermine universality, and 'is tantamount to positing that fundamental rights are not really fundamental rights'. Leonard Besselink, 'Entrapped by the Maximum Standard: On Fundamental Rights, Pluralism and Subsidiarity in the European Union' (1998) 35 Common Mkt. L. Rev 629, 639.

[57] William Riker, Federalism: Origin, Operation, Significance (Little, Brown 1964) (arguing that appointed officials are likely to forsake the preferences of local populations in order to please their bosses in national government).

local government policy in jurisdictions that have a significant level of administrative or legislative autonomy. This argument has been made at times by the Council of Regions and other actors with an interest in preserving sub-national political authority.[58] The argument progresses as follows. First, advocates for decentralisation will point out that local authorities are intimately involved in human rights protection and implementation, and in particular are generally heavily involved in developing and implementing policies that can impact social and economic rights, such as public health, housing, social welfare, education, employment, urban planning and environmental protection.[59] However, there is sometimes insufficient attention paid to local government's impact on human rights, due to a systematic bias among human rights advocates and scholars to monitor developments at the national or supra-national level.[60] Therefore, given the relevance of local government activities to human rights, and the relative lack of supervision, it is desirable for an HRI of some sort to monitor local government activities and provide appropriate recommendations when its laws or policies have violated or threaten to violate human rights. In countries where there is no NHRI, this means that an SNHRI should be established to fill the gap. Where there is an NHRI, the establishment of an SNHRI might still be necessary, because the NHRI might be legally prohibited from interfering with the actions of regional and municipal authorities when administration is divided into federal, autonomous, or highly decentralised jurisdictions.[61] Even where it would be legally permissible for a national-level body to pass judgment on the work of a lower-level autonomous governmental entity, it is worth bearing in mind that NHRI opinions are (in general) non-binding, and therefore only effective in as much as their addressee takes them into consideration and follows their recommendations.[62] If an autonomous entity would be systematically less likely to follow recommendations from a NHRI than from a local SNHRI due to autonomy concerns, then an SNHRI would end up as the more effective body for influencing local authorities.

The argument in favor of SNHRI establishment due to sub-national autonomy concerns is strong. There are a few other considerations, however. First, in many countries, lower administrative divisions are commonly subject to national oversight, and therefore autonomy

[58] See, eg, Ansari and Schudi (n 46) ('In cases of regional autonomy and self-government, the solution of appointing a regional ombudsman is preferable by far to the solution of extending the national ombudsman's competence to the regional authorities'); Bartlett (n 42) ('The Regional Ombudsman makes sense in federal or political decentralised states where its entities have legislative competence.'); Martin Haas, The Role of Mediators/Ombudsmen in Defending Citizens' Rights, Council of Europe Congress of Local and Regional Authorities Explanatory Memorandum CG (6) 9 part II, para 11.

[59] See, eg, Klaus Starl, 'Human Rights and the City: Obligations, Commitments and Opportunities. Do Human Rights Cities Made a Difference for Citizens and Authorities? Two Case Studies on Freedom of Expression', in Barbara Oomen et al (eds), Global urban justice: The Rise of Human Rights Cities (CUP 2016) 215; International Council on Human Rights Policy (n 14) 1.

[60] International Council on Human Rights Policy (n 14) 2; James Tierney, 'Alternative Visions of Local, State and National Action, Papers Published from the Eleventh Annual Liman Colloquium at Yale Law School (2008) 169 ('As many contributors note, local government, in particular, is too often ignored [by activists]').

[61] Ansari and Schudi (n 46).

[62] See Carver (n 29) 19.

concerns would be relatively muted.[63] Second, this argument is only valid to the extent that NHRIs focus their attention on influencing sub-national governments. Thus, for ombudsman-type institutions that are generally focused on offering citizens a venue for appealing government human rights (and other) abuses, the establishment of SNHRIs may offer the optimal solution, as has been noted by Council of Europe experts.[64] However, if a Commission-type NHRI is more interested in human rights promotion, research, training and the like (such as, arguably, the German Institute for Human Rights), then even strongly federal or autonomous administrative structures present little barrier to operation throughout the country.

Third, the appropriateness of SNHRI establishment in an autonomous or decentralised region will to some extent depend on the nature of the SNHRI's mandate, and specifically the sources of law which it draws from. Where SNHRIs implement human rights norms that have been either developed at the national level (in the form of constitutions or legislation) or accepted at the national level (by treaty ratification), then the SNHRIs are to some extent being delegated administrative authority, or the 'right to act' (in Braun and Keman's terminology), rather than political authority, or the 'right to decide'.[65] In fact, the sub-national entity's 'right to decide' in other policy areas may be limited by SNHRI pressure to comply with rights norms that were developed or accepted at the national level, leading to a de facto reduction in relative decision-making powers at the sub-national level. Of course, this de facto reduction in autonomy may be considered an advantage or a disadvantage, depending on the situation, and one's perspective.

Fourth, the establishment of an SNHRI in an autonomous region may serve as a symbolic indication of 'national' legitimacy, especially where it acts like an NHRI, for example by participating in UN mechanisms. The Scottish National Human Rights Commission, Somaliland National Human Rights Commission, and Kurdistan Human Rights Commission (none of which are based in recognized 'nations' in the international law sense) are good examples of this dynamic. Evidently, observers will differ as to whether these elements of symbolic nationhood are normatively desirable or not, but it is an element that should be considered in some cases.

D. Human rights innovation

One classic argument in favor of decentralisation is that it promotes innovation at the sub-national level, as sub-national actors face an incentive to adopt best practices and invest in policy innovation in the face of mobile citizens who have an ability to choose which jurisdiction to live and work in.[66] A corollary of this argument that is often cited in the US is Judge Brandeis'

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[63] Thus, in Azerbaijan, Ireland and Slovenia, for example, the national ombudsperson office can investigate complaints against local government authorities. UN Human Rights Council, 'Role of local government' (n 44) para 40.

[64] Ansari and Schudi (n 46).

[65] See Keman, H. (2000). Federalism and policy performance: A conceptual and empirical inquiry. In U. Wachendorfer-Schmidt (Ed.), *Federalism and political performance* (pp. 196-227). London, UK: Routledge and Braun, D. (2000). *Public policy and federalism*. Aldershot, UK: Ashgate. Of course, this distinction is never complete, acting always involves decision-making.

[66] Charles Tiebout, 'A Pure Theory of Local Expenditures' (1956) 65 J Pol Econ 416. This reasoning can be taken farther to argue that decentralisation to municipal levels of government is optimal, because it

famous claim that states are 'laboratories of democracy' that can experiment with policies that, if successful, can then be adopted in other states or even at the national level.[67] These innovations also come with decreased risk, as failure would be limited to a relatively small area rather than the entire nation.[68] The innovation argument is also a product of sub-national heterogeneity, as discussed in the previous section, however in this case it is dependent not on cultural or ethnic differences, but rather in a variability in willingness to accept human rights norms and structures.

In the realm of human rights implementation, proponents of decentralisation have highlighted the importance of states and localities as laboratories for rights innovation.[69] According to Chaney, 'international literature suggests that regional governance may foster policy divergence and instances of innovation in equality and human rights practice'.[70] In some cases, especially in 'human rights cities', much of this innovation has been structural or procedural in nature, involving the establishment of new committees, requirements of human rights budgeting or assessment, or public consultation processes.[71] Elsewhere, sub-national entities, including SNHRIs, have engaged in more substantive human rights innovation, by embracing and, at times, attempting to operationalize rights norms that were not yet accepted at the national level. In perhaps the best-known example of this phenomenon, dozens of US cities have passed resolutions in support of the Convention on the Elimination of all forms of Discrimination Against Women ('CEDAW') and the Convention on the Rights of the Child, despite the US not being a party to either treaty, with San Francisco, Berkeley and Los Angeles going a step further to actually enact CEDAW principles into law.[72] At times, SNHRIs have encouraged such policies.[73] Another example has been the gradual sub-national embrace of LGBT rights in recent decades.[74] While national jurisdictions and supra-national bodies have in many cases been slow in embracing LGBT rights protections, some SNHRIs have been speaking

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offers 'more realistic options for voting with one's feet'. Heather Gerken, 'Federalism All the Way Down (2010) 124 Harvard L J 4, 23.

[67] New State Ice Co v Liebmann, 285 US 262, 311 (1932) (Brandeis, J, dissenting). The argument evidently holds true for cities and towns, as well, which Joshua Douglas has recently called 'test tubes of democracy'. Joshua Douglas, 'The Right to Vote under Local Law', forthcoming at 2017 (85) GW Univ L Rev.

[68] Brandeis, ibid.

[69] Risa Kaufman, '"By Some Other Means": Considering the Executive's Role in Fostering Subnational Human Rights Compliance' (2012) 33 Cardozo L Rev 1971, 2000.

[70] Paul Chaney, 'Quasi-Federalism and the Administration of Equality and Human Rights: Recent Developments and Future Prospects – A Preliminary Analysis from the UK's Devolution Program' (2011) 27 Pub Pol and Admin 69, 70.

[71] See, Charlotte Berends et al (eds), *Human Rights Cities: Motivations, Mechanisms, Implications* (University College Roosevelt 2013).

[72] Risa Kaufman, 'State and Local Commissions as Sites for Domestic Human Rights Implementation', in Shareen Hertel and Kathryn Libal (eds), *Human Rights in the United States: Beyond Exceptionalism* (CUP 2011) 101.

[73] ibid

[74] Ernest Young, 'A Research Agenda for Uncooperative Federalists' (2013) 48 Tulsa L Rev 427, 429.

out on the issue for many years, even in areas that are not normally thought of as socially progressive, such as Michigan or the Basque Country.[75]

There are different potential reasons why SNHRIs may desire to go beyond what an NHRI might undertake in the field of rights. In part, they may represent particularly progressive polities with broader conceptions of human rights. They may also be involved in 'branding' their jurisdictions as human rights-friendly, as a way of standing out from their peers or in order to attract new inhabitants. They may simply be more nimble and creative because they are smaller or less bound by detailed legislative mandates or oversight. From a human rights perspective, a stronger sub-national human rights commitment has been lauded as a way not only to improve conditions at the local level, but potentially also to place pressure on national governments or sub-national peers to improve their rights practices.[76]

There are a few qualifications to this argument, however. Some would argue that human rights protections should be equal for every person throughout a country; this claim will be discussed in detail below. Second, it is in theory possible that the opposite dynamic could also occur, and SNHRIs could choose to interpret human rights norms more restrictively than they are interpreted by NHRIs.[77] Third, the development of stronger human rights norms at the sub-national level is of course not dependent on the establishment of an SNHRI. Many sub-national entities have legislatively embraced rights norms that go beyond those at the national level, obvious examples being the constitutional rights enacted by US states and Canadian provinces, or the municipal human rights laws or human rights declarations passed by cities and town councils around the world. However, while SNHRIs are not the only venue for normative development, they do provide certain advantages in that respect. Namely, SNHRIs are normally composed of human rights experts, are able to progressively develop norms through continuous attention to an issue (rather than the necessarily episodic law-making process), and are arguably able to go farther in their advocacy of rights norms because their independence acts as a shield from political backlash.

E. Robustness

A final general argument in favor of decentralisation is that it is a way of providing robustness and resiliency in national and sub-national service provision.[78] In the current context, this means that the establishment of SNHRIs can provide for greater robustness in human rights service delivery, in particular by introducing a hedge against situations where the local

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[75] Michigan Department of Civil Rights, 'Report on LGBT Inclusion under Michigan Law' (28 January 2013) 5 (discussing statements as far back as 1983 promoting legal protections against LGBT discrimination); Marx et al (n 43) 257 (discussing Ararteko actions regarding discrimination on the grounds of sexual orientation and gender identity).

[76] Oomen, 'Rights and the City' (n 47) 407.

[77] In 1964, the political scientist William Riker famously stated that "if in the United States one disapproves of racism, one should disapprove of federalism." William Riker, Federalism: Origin, Operation, Significance (Little, Brown 1964) 155.

[78] See, eg, Robert Cover, 'The Uses of Jurisdictional Redundancy: Interest, Ideology, and Innovation' (1981) 22 William & Mary L Rev 639; Jenna Bednar, 'Subsidiarity and Robustness: Building the Adaptive Efficiency of Federal Systems' in James Fleming and Jacob Levy (eds) NOMOS LV: Federalism and Subsidiarity (NYU Press 2014).

population lacks sufficient human rights protection because the NHRI is ineffective or lacks independence. As Ghai notes, 'if government at one level is not supportive of rights, citizens can go to the other level for protection.'[79]

In fact, there are a number of situations where the establishment of a SNHRI has been justified (before or after the fact) with reference to the deficiencies of a relevant NHRI. I have elsewhere demonstrated how the establishment of Korean SNHRIs coincides with (and arguably results from) a period of decreased independence at Korea's National Human Rights Commission.[80] In Indonesia, the Yogyakarta Ombudsman's effectiveness has been contrasted with the declining effectiveness of that country's national ombudsman.[81] In a somewhat different context, Carver too noted that an argument in favor of multiple issue-specific human rights institutions in the UK was that 'poor leadership of a single institution can have deleterious consequences on the human rights protection system as whole'.[82]

A similar argument can be made in favor of establishing SNHRIs in jurisdictions where NHRIs do not hear complaints, in which case sub-national outlets may be the only non-judicial recourse. Even when NHRIs do hear complaints, they may be slow, ineffective or overly conservative in their rulings. SNHRIs can in these cases provide access to a better quality of justice. For example, a comparison of fair housing complaints handled by the US federal government with complaints handled by state and local human rights commissions found that southern commissions were more likely to provide an outcome favorable to the complainant, thus providing a justification for SNHRI complaint-handling (and perhaps countering expectations concerning local reluctance to enforce anti-discrimination laws in the southern US).[83]

IV. Arguments against the Establishment of SNHRIs

Next, I will outline five principal arguments against the establishment of SNHRIs in countries that already possess NHRIs, based on general arguments against decentralisation. As is the case with the arguments in favor, these arguments will be more or less convincing depending on the circumstances in a particular jurisdiction, the normative preferences of the decision maker, the type of SNHRI in question, and many other factors.

A. Redundancy

Oftentimes, the first argument against decentralisation leading to shared jurisdiction over the same tasks is that the ensuing redundancy would be wasteful and overly complex in practice.

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[79] Yash Ghai, 'The Structure of Human Rights in Federations' in Kamal Hossain et al (eds) *Human Rights Commissions and Ombudsman Offices: National Experiences* (Kluwer 2000) 51. See, also, Robert Schapiro, Polyphonic Federalism: Toward the Protection of Fundamental Rights (U Chicago Press 2009) 167-68.

[80] Andrew Wolman, 'Human Rights between the Local and Global: A Case Study of the Seoul Human Rights Ombudsperson' forthcoming in (2017) Asia Pac J Hum Rts & L.

[81] Melissa Crouch, 'The Yogyakarta Local Ombudsman: Promoting Good Governance through Local Support' (2007) 2 Asian J Comp L 1, 2.

[82] Carver (n 29) 9.

[83] Charles Bullock III et al, 'Fair Housing Enforcement in the South and Non-South' (2015) 96(4) Soc Sci Q 941, 951.

As Warner noted almost a century ago, 'the existence of two independent systems of governmental activity causes expensive duplication and endless conflicts.'[84] This argument may apply to the establishment of SNHRIs in countries that already possess NHRIs, because an SNHRI's functions are, at least in large part, often already carried out by an existing NHRI.[85] Furthermore, proponents of this argument would claim that the redundant nature of SNHRIs where NHRIs already exist has real costs. Creating SNHRIs could take away (often local) funding that could be better used on education, parks, or other social programs. SNHRIs could draw public attention away from an NHRI that may already be struggling to closely engage with local populations. The existence of SNHRIs and an NHRI could also cause confusion in the complaint-handling process, as victims of human rights abuses will be uncertain which venue to approach, and other societal actors will be unsure of how to act in the event of divergence between an NHRI and SNHRI.[86]

There are a few possible replies to this argument. First, in some cases (as noted above), there will be little if any overlap or redundancy between SNHRIs or NHRIs, as the NHRI will be prevented from intervening with sub-national governments due to autonomy concerns.[87] Where overlapping mandates do exist, they can be managed through coordination, as already occurs in several countries. This can involve regular meetings between the NHRI and SNHRIs, as occurs in Russia, India and Mexico; an annual conference including NHRI and SNHRIS as occurs in Spain; NHRI and SNHRI membership in a common networking association, as in Australia, Canada and Argentina, formal MOUs between an NHRI and SNHRIs, as occurs in Spain and Mexico, or informal consultations, as occurs in Korea.[88]

Second, there are also scholars who view redundancy as a desirable feature of decentralisation.[89] It can promote reliability, because (as discussed above with respect to inefficient or non-independent NHRIs) if one part of government fails, another can step in to

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[84] Kenneth Warner, 'Australian Federalism at the Crossroads' (1931) 4(2) Pac Aff 120, 120. See also Gough Whitlam, 'The Cost of Federalism' in Allen Patience and Jeffrey Scott (eds), *Australian Federalism Future Tense* (OUP 1983).

[85] In formal terms, a concurrently operating NHRI and SNHRIs could lead, depending on the situation, to cases of 'overlap', meaning a situation of more than one level of government operating in the same policy domain or of 'duplication', meaning 'a situation where more than one level of government provides the *same* goods and services to the *same* clients'. Robyn Hollander, 'Rethinking Overlap and Duplication: Federalism and Environmental Assessment in Australia' (2009) 40(1) Publius 136, 138 (citing Gordon Brown, 'Canadian Federal-Provincial Overlap and Presumed Government Inefficiency' (1994) 24(1) Publius 21).

[86] According to Bartlett, this includes the risk that citizens will use a complaint to the national ombudsman as a de facto second bite at the apple if they disagree with a decision of the local ombudsman. Bartlett (n 42).

[87] Ibid ('if every administration only has relations with a single Ombudsman for specific matters, as for example in the Belgian and Dutch systems, the problem is more theoretical than real.')

[88] Wolman, 'The Relationship Between National and Sub-National Human Rights Institutions' (n 20) 456; Interview with Lee Eun Sang, Seoul City Human Rights Ombudsperson (Seoul, Korea, 18 November 2015).

[89] See, Cover (n 78).

provide services.[90] Martin Landau asserts that 'redundancy serves many vital functions ... it provides safety factors, permits flexible responses to anomalous situations and provides a creative potential'.[91] At least in the US context, there is empirical evidence that the existence of a sub-national human rights complaint procedure alongside a national one has a beneficial effect from an access to justice perspective, by increasing the total number of human rights complaints as compared with a solely national complaint system, even when the legal mandate is identical at both levels. In a 2008 analysis of anti-discrimination complaints in Kentucky, researchers compared the number of housing discrimination complaints filed in counties that had human rights commissions (and thus, the option of filing complaints either at the local or federal level) with the number of complaints in counties that lacked local human rights commissions (and thus could only file such complaints at the federal level).[92] The study found that counties with local human rights commissions saw a significant increase in the number of disability discrimination complaints filed, with the odds of complainant success being identical at the local and federal levels. A similar study in North Carolina found that the presence of local commissions significantly increases the total number of rental housing complaints.[93]

Finally, it should be noted that the strength of the redundancy argument will depend to a certain extent on the level of NHRI deconcentration. If an NHRI is highly centralized, it may have relatively few promotional, monitoring and protective activities in localities far from the capital, and there would thus be relatively little overlap with the activities of local SNHRIs.

B. Economies of scale

One common argument in favor of administrative centralization is that it is cheaper due to the benefits of economies of scale. According to proponents of this argument, central service delivery is normally more efficient due to savings arising from reduced bureaucratic spending on policy design and implementation, as well as overhead, bulk purchasing, and other types of cost savings.[94] This general argument has also been made with respect to SNHRIs in particular. According to Bartlett, 'A single institution can be, at least in theory, cheaper for the public budget than ten of them, with their corresponding ombudsmen and deputies'.[95] While arguing for one NHRI instead of several focused on different rights issues, Carver claims that 'a single human rights institution is able to make economies that allow it to be considerably more cost-effective than multiple institutions', in part because 'the overwhelming majority of the budget of

[90] Hollander (n 85) 139.

[91] Martin Landau, 'Redundancy, Rationality, and the Problem of Duplication and Overlap' (1969) 29(4) Pub Admin Rev 346, 356.

[92] Kentucky Advisory Committee to the United States Commission on Civil Rights, 'Fair Housing Enforcement in Kentucky' (August 2008).

[93] North Carolina Advisory Committee to the United States Commission on Civil Rights, 'Fair Housing Enforcement in North Carolina' (November 2008).

[94] Iwan Barankay and Ben Lockwood, Decentralization and the Productive Efficiency of Government: Evidence from Swiss Cantons (2007) 91 J Pub Econ 1197, 1212.

[95] Bartlett (n 42).

these institutions thus goes on staff costs and office and information technology infrastructure, and only a very small proportion on projects or programme activity'.[96]

The main rebuttal to this argument is that as an empirical matter, it is unclear whether economies of scale can really result from any given centralization experience; some doubt whether this is normally the case. As Prud'homme notes, 'the prevailing view is that there are few local public services for which economies of scale imply nationwide supply'.[97] There are other countervailing considerations that might make SNHRIs more affordable, such as NHRIs' 'elongated chains of command/supervision, [and] remoteness from the scene of action'. [98] Among other factors, the precise activities undertaken by a particular SNHRI and NHRI will impact whether economies of scale potentially apply. While human rights research, the development of human rights training modules, and engagement with international mechanisms (among other tasks) may be more affordable when conducted by a single large NHRI rather than many small SNHRIs, human rights monitoring and complaint investigation necessarily involve significant periods on the ground in local areas (when done well), and, for these functions, the costs of travel back and forth from a distant capital may outweigh any savings from economies of scale.

C. Administrative Ineffectiveness

A third general argument against decentralisation is that sub-national administration tends to be less effective than administration at the national level due to inferior human, financial or technical resources at the sub-national level.[99] According to this line of thought, SNHRIs are likely to be systematically less effective than NHRIs (or NHRI branch offices). There are different elements of this claim. One problem could be that SNHRIs may be unable to attract employees with human rights education or expertise, especially in small or poorer jurisdictions. Staffing challenges has been generally claimed as a potential downside of decentralisation by some scholars, both because lower tiers of government may pay relatively lower salaries, but also because national governments may offer more desirable careers, with 'greater diversity of tasks, more possibilities of promotion, less political intervention, and a longer view of issues.'[100] In the human rights field, SNHRI staffing concerns may be even more pronounced, in part because many SNHRIs operate on shoestring budgets or with volunteer personnel, and in part because human rights law often requires an advanced education and is studied by relatively few

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[96] Carver (n 29) 13.

[97] Rémy Prud'homme, 'The Dangers of Decentralization' (1995) 10(2) World Bank Res Obs 201, 209.

[98] Keith Miller, 'Advantages and Disadvantages of Local Government Decentralization', Speech to Caribbean Conference on Local Government and Decentralization, Georgetown, Guyana (June 2002), 12, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.134.5990&rep=rep1&type=pdf> accessed 17 October 2016.

[99] See, eg, James Manor, *The Political Economy of Democratic Decentralization* (World Bank 1999); Anwar Shah, 'Fiscal Decentralization in Transition Economies and Developing Countries'in Raoul Blindenbacker and Arnold Koller (eds), *Federalism in a Changing World: Learning From Each Other* (McGill-Queens Univ Press 2003). Others counter this argument by claiming that because of their small size and resulting lack of bureaucratic inertia, local governments can in fact have greater administrative effectiveness. Newmark (n 39) 207.

[100] Prud'homme (n 97) 209-10.

people in some regions. As an empirical matter, adequate staffing has been noted as a problem for SNHRIs in India and Serbia.[101]

Another issue could be that a lack of sufficient funding at the sub-national level could harm the effective administrative functioning of an SNHRI.[102] This has arguably been the case in locations as disparate as India and Michigan.[103] Lack of resources has also been used to argue against the establishment of local ombudsmen in Jamaica, where there is an ombudsman institution at the national level.[104] Of course, this issue could be overcome if sufficient funding is provided by national-level sources to sustain adequate offices, and may not be a major issue in relatively wealthy jurisdictions.

Finally, one common argument against decentralisation holds that local levels of government may be less effective because they are more likely to be corrupt[105] or come under the control of local private interests.[106] An analogous argument has also been made regarding SNHRIs; namely, that they are more susceptible to pressure from local elites, and therefore are less likely than national-level institutions to be fully independent.[107] There are, however, many opponents to the general claim of greater corruption and co-option by local elites.[108] Empirical research on the issue (as is so often the case in the decentralisation debate) is inconclusive.[109]

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[101] Predrag Dimitrijević, 'Do we need local ombudsmen?: Protector of Human Rights' (2005) 3(1) Facta Universitatis: Law and Politics 25, 29 ('In small and poorer municipalities it is very difficult to find the suitable specialist personnel, since the role of ombudsman supposes, first of all competence, work experience, reputation etc.'); Preeti Mehra, 'Commission and their Omissions' The Hindu (4 March 2014) <http://www.thehindu.com/opinion/op-ed/commissions-and-their-omissions/article5747146.ece> accessed 17 October 2016 (describing staffing challenges of Indian State Human Rights Commissions).

[102] UN Human Rights Council, 'Role of local government' (n 44) para 22 ('It should be particularly emphasized that, whatever powers that are conferred upon local authorities, they would not be effective if no financial resources were available to carry them out'); Bartlett (n 42) (in small towns with minimal administrative structures, 'the lack of technical resources can be a handicap in exercising functions.')

[103] National Human Rights Commission of India, 'NHRC Convenes a Meeting of State Human Rights Commissions', <http://www.nhrc.nic.in/disparchive.asp?fno=2138> accessed 17 October 2016; Michigan Department of Civil Rights (n 75) 55-56 (describing local agencies that are 'ill-equipped to investigate complaints').

[104] McKoy and Stone (n 49).

[105] Prud'homme (n 97) 211

[106] Pranab Bardhan, 'Decentralization of Governance and Development' (2002) 16(4) J Econ Persp 185, 202; Olivier Blanchard and Andrei Shleifer, 'Federalism With and Without Political Centralization: China versus Russia' (2001) IMF Staff Papers 171.

[107] Bartlett (n 42) ('The last point that I can think of in which a National Ombudsman would be an advantage is that distance makes him/her less vulnerable to pressure').

[108] For example, Parlow argues that 'because citizens are closer to and more in touch with their local governments, they can better … mitigate against the capture of their local government by special interest groups." Matthew Parlow, 'Progressive Policy-Making at the Local Level: Rethinking Traditional Notions of Federalism (2008) 17 Temple Pol & Civ Rts L Rev 371, 374.

[109] Ruben Enikolopov and Ekaterina Zhuravskaya, 'Decentralization and Political Institutions' (2007) 91 J Pub Econ 2261, 2263.

Presumably, outright corruption would be somewhat less of an issue with SNHRIs than with many other government offices, though, because SNHRIs would not normally be in charge of the distribution of expensive goods and services.

D. Spillover effects

Another well-known risk of decentralisation is that sub-national decision-making could lead to spillovers, or negative effects outside of a particular jurisdiction, because sub-national officials (unlike national officials) will not have an incentive to take into account the desires of the rest of the country.[110] Spillovers are common in some issue areas, and far less common in others. In general, human rights implementation is likely to be an area with relatively few negative spillover effects, but there are (arguably) still some issues that could arise, which could be used as arguments against SNHRI establishment.

For example, an SNHRI in a largely indigenous area could press for greater indigenous rights to control or use certain territories or goods. This would inevitably imply a reduction in power for external actors over such territory or goods. Or, to give another example, an autonomous region could argue that the right to self-determination implies greater local control over resources (or even secession), either of which would inevitably have significant effects on the rest of the country, effects that many would consider negative. Perhaps most controversially, an SNHRI could provide greater rights for undocumented immigrants, leading to (some would argue) the spillover effect of weakening a nationwide policy of deporting undocumented workers, and acting as a pull factor for irregular immigration.[111]

Of course, in most circumstances, none of these spillover effects would be seen as particularly likely to occur, and at any rate SNHRIs might have limited influence to affect the debate with such high-profile political issues. In contrast, positive spillover effects would arguably be more likely to stem from SNHRI's work to implement greater human rights protections. Free speech in one jurisdiction can be enjoyed across the country; due process rights are enjoyed by defendants regardless of their origin, and affordable tertiary educational opportunities are not usually restricted to the residents of a sub-national jurisdiction, to give just three examples of human rights issues with beneficial extra-jurisdictional effects.

E. Fragmentation

One of the classic arguments against decentralisation is that it can lead to greater inequalities or disparities among sub-national units.[112] As Besley and Ghatak state, 'there is clearly a tension between pursuing goals of equality in service provision and greater decentralisation and choice'.[113] In general, the focus of criticism in this regard has been that

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[110] See Richard Musgrave, 'Theories of Fiscal Federalism' (1969) 4(24) Pub Finances 521; Oates (n 11).

[111] See, generally, Rose Cuison Villazor, '"Sanctuary Cities" and Local Citizenship' (2010) 37 Fordham Urb L J 573; Corrie Bilke, 'Divided We Stand, United We Fall: A Public Policy Analysis of Sanctuary Cities' Role in the "Illegal Immigration" Debate' (2009) 42 Indiana L Rev 65.

[112] See, eg, Prud'homme (n 97). Some go further to argue that decentralisation can undermine the unity of diverse nations and lead to political instability. See, eg, Daniel Treisman, 'Political Decentralization and Economic Reform: A Game-Theoretic Analysis' (1999) 43(2) Amer J Pol Sci 488.

[113] Timothy Besley and Maitressh Ghatak, 'Incentives, Choice and Accountability in the Provision of Public Services' (2003) 19 (2) Oxf Rev Econ Policy 235, 245.

wealthier (or more administratively capable) sub-national jurisdictions will deliver a given service better than their peers, as for example with locally run schools.[114] Disparities in the quality of human rights service delivery may be an issue for SNHRIs, at least to the extent that it contributes to other disparate outcomes; as Oomen notes, 'a movement in which some cities become human rights cities and others do not runs the risk of contributing to inequality *between* cities'.[115] However, there are two somewhat different aspects of fragmented human rights implementation that are more relevant for the decision on whether to establish SNHRIs.

First, there is the desire to avoid individuals within a single nation enjoying different types of human rights implementation. There is already evidence of distinctive sub-national human rights development in the context of UK devolution.[116] While differences in the nature (as opposed to the quality) of services delivered may be of little concern (or even desirable) in certain issue areas, some would argue that human rights are different, and that it is important that all persons within a country enjoy the same human rights, in order to ensure that all citizens are treated as equals. In the Australian context, for example, one argument has been that 'within a federation, the principle of equality between polities and the importance of consent suggest that matters such as rights protection, which lie at the heart of arrangements for the governance of the federation, ought to be dealt with on a national uniform standard'.[117] Carver has also argued that the existence of a consistent standard for all individuals is a reason to favor the establishment of one NHRI instead of multiple issue-specific human rights institutions.[118]

Second, there is the broader concern that the proliferation of rights interpreting institutions implied by the establishment of SNHRIs could increase the fragmentation of an international human rights regime that depends on its universalism for it normative power. According to this argument, as the number of authoritative interpreters of human rights increases, the chances of divergences and even contradictions among them will naturally increase, as well, to the point that it will be difficult to say there is one corpus of international human rights law that apply to all humans.[119] This is arguably an even greater risk with regards to sub-national actors, who may tend to have more particularistic perspectives on some rights issues, or engage in localization. As Parrish states, a 'universalistic outlook is in tension with the idea of states as laboratories, each developing its own novel version of human rights', and the greater the number

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[114] See OECD Secretariat, 'Governance, complexity and futures' (2006) 5; Andrés Rodríguez-Pose and Roberto Ezcurra, 'Does decentralization matter for regional disparities? A cross-country analysis' (2010) 10 J Econ Geog 619, 622.

[115] Oomen, 'Rights and the City' (n 47) 407.

[116] Chaney (n 70) 84.

[117] Justin Gleeson, 'A Federal Human Rights Act: What Implications for the States and Territories?' (2010) 33(1) Univ New South Wales L J 110, 111 (citing Cheryl Saunders, 'Protecting Rights in the Australian Federation' (2004) 25 Adelaide Law Review 177, 209-10).

[118] Carver (n 29) 13.

[119] William Burke-White, 'International Legal Pluralism' (2004) 25 Mich J Intl L 963, 967 ('Some have viewed this expansion of international tribunals and the increasing frequency of international claims in national courts as indicative of the fragmentation of the international legal system.')

of sub-national actors interpreting human rights, the greater the fragmentation of human rights law.[120]

Each of these arguments would be heavily contested, however, for a variety of reasons. In the domestic context, many would deny that human rights protection need be the same everywhere in a given country. Every nation's political culture is different with regard to what is considered fundamental to citizenship, and in many autonomous or semi-autonomous jurisdictions, different rights are seen as important to a particular sub-national identity.[121] At the global level, some legal pluralists would deny the existence of a universal body of human rights norms.[122] Others would accept that universal standards exists but deny that local interpretations pose a threat, arguing instead that universal norms allow for some variation in content so as to make those norms locally relevant,[123] or that it is possible to establish a compatibility between different interpretations due to the existence of networks or interpretative structures.[124] Others might even accept that fragmentation due to a proliferation of authoritative institutions is a threat to universal norms, but deny that SNHRIs are likely to be authoritative enough to make a real difference, given that their judgments are normally non-binding, and their jurisprudence is (with a few possible exceptions) usually little-noted, even within a given jurisdiction.

It is also worth noting that to the extent that one considers fragmentation to be a real danger, either at the domestic or international levels, there are ways that SNHRIs can be established so as to minimize the risk. For example, there can be appeals permitted of SNHRI decisions, either in the ordinary court system or to a particular NHRI. This would provide at least one mechanism for ensuring a level of conformity within a given nation. In addition, the degree to which fragmentation would be an issue may depend somewhat on the SNHRI's normative mandate; a mandate that specifies the implementation of certain treaties or national constitutional rights would presumably lead to somewhat fewer jurisprudential divergences from international or national norms than a mandate that simply directed an SNHRI to implement 'human rights' without further guidance. Lastly, an SNHRI that focuses on human rights promotion or monitoring rather than complaint-handling may have fewer opportunities to issue authoritative opinions on issues of human rights interpretation.

V. Conclusion

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[120] Austen Parrish, 'State Court International Human Rights Litigation: A Concerning Trend?' (2013) 3 UC Irvine L Rev 25, 42

[121] Examples would include the right to speak French in public spaces in Quebec or the right to engage in whaling in some indigenous communities.

[122] Calos Iván Fuentes, René Provost and Samuel Walker, 'E Pluribus Unum – Bhinneka Tunggal Ika? Universal Human Rights and the Fragmentation of International Law' in René Provost and Colleen Sheppard (eds) *Dialogues on Human Rights and Legal Pluralism* (Springer 2013) 67 (human rights law is 'composed of fragmented, multiple, overlapping sets of norms').

[123] Koen De Feyter, 'Localising Human Rights' in Wolfgang Benedek et al (eds), *Economic Globalisation and Human Rights* (CUP 2007) 71. See also Carozza (n 34) 73 ('in principle the idea of fundamental and universal human rights is compatible with local decisions over their scope and application).

[124] Achille Skordas, 'Treaty Interpretation and Global Governance' in Helmut Aust and Georg Nolte (eds), The Interpretation of International Law by Domestic Courts (OUP 2016) 299-301.

Based on the arguments outlined above, it would of course be impossible to make a general conclusion that the establishment of an SNHRI is always desirable or never desirable in a jurisdiction that already contain an NHRI. One can, however, come to certain conclusions about the circumstances under which SNHRIs would be more desirable, and, presumably, more likely to be established, as follows.

First, where the NHRI in a given country is presently weak or ineffective, then the robustness argument in favor of NHRIs becomes much stronger, as the human rights system in a given country is evidently not functioning appropriately. Conversely, the arguments that an SNHRI would be redundant or less effective than the NHRI would be less convincing if an NHRI has already demonstrated that it is not doing its job effectively.

Second, in federal countries, or autonomous regions where there is an NHRI that lacks legal authority to engage with sub-national governments, then the establishment of SNHRIs would also seem more appropriate. In fact, as I have elsewhere described, this seems borne out empirically, as nine out of sixteen federal nations with NHRIs also have established SNHRIs at the highest sub-national level.[125] To a certain extent, however, this conclusion depends on the justifications for a federal system in a given country; in nations such as Austria and Germany that utilize federalism primarily as a means of promoting administrative efficiency (rather than as a way to encourage locally appropriate responses to a heterogeneous population), then the autonomy-based argument for SNHRIs may be somewhat weaker.[126]

Third, in countries that are particularly large or lack rapid transportation links with the capital, the physical proximity argument in favor of the establishment of SNHRIs becomes more convincing (with the caveat that this argument applies to deconcentration as well).

Fourth, the establishment of SNHRIs is more likely to be appropriate in large or prosperous sub-national jurisdictions, because SNHRIs in such jurisdictions are more likely to be large enough that they will be able to themselves take advantage of certain economies of scale, and they will be less likely to suffer from administrative ineffectiveness due to financial or technical deficiencies.

Fifth, in heterogeneous countries with locally distinct communities, the establishment of SNHRIs will make sense if one values the benefits of local innovation and cultural affinity more than the dangers of negative spillover and fragmentation. This will normally be the case where the initiative to establish the SNHRI starts at the sub-national level, as spillover and fragmentation (by their nature) are largely externalized costs, while innovation and localization are benefits enjoyed by the sub-national entity itself.

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[125] Wolman, 'The Relationship Between National and Sub-National Human Rights Institutions' (n 20) 452.

[126] Michael Burgess and G Alan Tarr, 'Introduction: Sub-National Constitutionalism and Constitutional Development' in Michael Burgess and G Alan Tarr (eds), *Constitutional Dynamics in Federal Systems: Sub-National Perspectives* (McGill-Queens U Press 2012) 13-14.

Chapter 9: Conclusion

9. Conclusion

9.1 Research Findings

Each article in this thesis addresses a series of closely related research questions, with the conclusions and accompanying discussion provided at the end of each individual article. When looked at as a whole, however, certain broad conclusions can be drawn. First, in response to my first (descriptive) research question regarding how SNHRIs currently interact with other elements of the international human rights system, it is clear that SNHRIs do not exist in isolation from the broader international human rights regime. They engage in a variety of ways with both international norms and international bodies, including through filing reports to the Human Rights Council or treaty bodies, acting as independent mechanisms under the Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention against Torture, and engaging with the special procedures of the UN Human Rights Council. They also interact in differing ways with NHRIs and other domestic bodies, although these interactions do not always go smoothly, as was evident in my case study of the Seoul Human Rights Ombudsperson. I also find that SNHRIs commonly apply international norms in their work, including through their responses to individual complaints, provision of advice to government actors, public promotion of rights norms, and engagement with human rights litigation, and monitoring. The use of international norms is often explicitly mandated, but in some cases SNHRIs have decided for themselves to use international norms despite the lack of a clear mandate to do so in their organic legislation. While SNHRIs also engage with their peer institutions, these relationships are less robust and provide fewer benefits than the analogous networks of NHRIs. These conclusions run contrary to the common view of state and local human rights commissions in the United States (and to a perhaps lesser extent in other common law jurisdictions such as Canada and Australia) as purely local institutions, addressing local concerns, based on norms that may coincide with international human rights norms but are sourced from local or national texts.

My second research question explores the potential implications of SNHRI interaction with other actors and norms in the international system. Overall, I find that integration into the international system presents significant benefits for SNHRIs, as well as for other existing actors. Greater interaction with their peers through SNHRI networks can lead to a convergence of international standards, greater information sharing, acculturation, and the prospect of legitimation through an accreditation process. The use of international norms by SNHRIs can lead to the localisation of international human rights norms and the increased visibility of international norms at the local level. Meanwhile, SNHRI participation in UN mechanisms is likely to improve SNHRI effectiveness by increasing SNHRI familiarity with global human rights norms and techniques. Conversely, international bodies also could benefit from SNHRI engagement, for example by gaining greater access to independent information on local human rights conditions. Participation of SNHRIs in international mechanisms is also likely to increase the amount of attention paid to particular human rights norms that may be systematically under-emphasised by nation-state representatives, such as the right to self-determination or the rights of indigenous persons.

As for the prescriptive element of my research – how can the relationship between SNHRIs and other international human rights actors be improved – I propose a number of specific measures in my articles. I argue that the UN should work towards increasing SNHRI

engagement by, for example, providing more explicit guidance to the various human rights bodies as to how SNHRIs can be included in various situations and providing capacity-building assistance to SNHRIs in developing countries. I also propose certain measures that NHRIs can take to promote better SNHRI integration into the international system: namely, NHRIs should consult with SNHRIs where relevant prior to engaging with UN mechanisms, and NHRIs should play a more proactive role in training SNHRIs in their home country on how to best interact with international bodies.

Perhaps most controversially, I suggest that a new version of the Paris Principles be drafted that can apply specifically to SNHRIs.[1] Then, SNHRIs could be accredited in the same way that NHRIs currently are, and those that comply with the terms of these new principles could be granted membership in the Global Alliance of National Human Rights Institutions ('GANHRI'). This would at once provide qualifying SNHRIs with the considerable socialisation benefits and increased international access that NHRIs receive through GANHRI membership, while also providing a clear incentive for SNHRIs to maintain their independence, pluralism, and effectiveness, in order to qualify for full GANHRI accreditation. This proposal, along with the importance of standards more broadly, will be discussed in greater depth below.

9.2 Practical Implications: How should SNHRIs Interact with other Actors?

In addition to the specific prescriptive elements discussed in the articles themselves, there are also some broad recommendations that I believe can be drawn from the research in this thesis. In this section, I therefore suggest a few practical ways forward, while bearing in mind that although SNHRIs may form a discreet group of institutions, they also encompass significant variety within their ranks, so one size fits all proposals for how SNHRIs should interact with the broader human rights regime are unlikely to be useful.

9.2.1 Focus on the Local

Analogising from the language of international trade, governance scholars examining federal and decentralised systems sometimes attempt to identify which level of government has a 'comparative advantage' in the provision of particular administrative services.[2] Given the limited resources available to devote to human rights services, it would be most efficient to deploy those resources where they are most useful. As Hafner-Burton notes, '[m]aking the whole system-international law as well as the actions of stewards that support legal norms-work better requires a comprehensive strategy that deploys resources where they will be most effective'.[3] Without

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[1] The Paris Principles have been generally embraced by the human rights community, and activists have been reluctant to discuss revisions due to a fear that opening the Paris Principles up to renegotiation would risk leading to their weakening rather than strengthening. On the other hand, several human rights scholars and activist organisations have criticised the Paris Principles for being vague, unworkable, or weak, and have suggested either revising them or replacing them with new criteria. See, eg, Raj Kumar, 'National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights' (2003) 19 Amer U L Rev 259; International Council on Human Rights Policy, 'Assessing the Effectiveness of National Human Rights Institutions' (2005) 7-8; Benaifer Nowrojee, *Protectors or Pretenders? Government Human Rights Commissions in Africa* (Human Rights Watch 2001).

[2] See, eg, Aehyung Kim, *Decentralization and the Provision of Public Services* (World Bank 2008) 19; Jacques Cremer et al, *The Decentralization of Public Services* (World Bank 1994) 40.

[3] Emilie Hafner-Burton, *Making Human Rights a Reality* (Princeton U Press 2013) 191.

delving into this analogy too deeply, the basic concept is worth drawing out with respect to the work that SNHRIs conduct in the human rights system.

To the extent that SNHRIs have a 'comparative advantage' over NHRIs or inter-governmental actors in human rights implementation, to a large extent this advantage relates to their greater familiarity with local conditions, the greater ease with which they can monitor human rights in local areas, the greater comfort that local populations are likely to have in approaching SNHRIs, their greater authority with respect to local government institutions, and the greater facility with which SNHRIs can localise universal human rights norms, so as to make them legitimate in local communities while maintaining their fundamental universality. In short, their connections with the local is what makes SNHRIs important. SNHRIs should make the most of this advantage in their interactions with other actors in the human rights system.

Specifically, SNHRIs should ensure that their contributions effectively highlight their local expertise and perspectives, rather than duplicating (or contradicting) the general work already being done by other actors. One example of this (as discussed in chapter 4) would be the submission of reports by US state and local human rights commissions to the US State Department on local implementation of the International Covenant on Civil and Political Rights, Convention Against Torture, and Convention on the Elimination of Racial Discrimination, for inclusion in the US state reports to the respective treaty bodies.[4] This local information is not necessarily readily accessible to the US federal government, and certainly not to the UN treaty bodies. Another example (also discussed in chapter 4) would be the complaint submitted by the Navajo Nation Human Rights Commission to the UN Special Rapporteur on the Rights of Indigenous Peoples on the state and federal government's violation of the right to access a sacred site, a concern that national-level actors might be less likely to be aware of or take seriously.

9.2.2 Maintain Independence

By the same token, when dealing with other local actors, whether in government or civil society, the main SNHRI advantage is not its 'localness', but rather its independence. This is the key to the benefits that SNHRIs can bring to local discourse, just as it is for NHRIs on the national level. At the national level, however, there is considerable research showing that the independence of NHRIs is often threatened, and in some cases is in fact taken away, such that NHRIs become little more than shills for those in power.[5] While there is very little research on independence of SNHRIs, it is clear that in some circumstances they, too, might face threats to their independence, because of pressures from powerful forces at either the sub-national or national level.[6] In fact, there is some reason to believe (based on the general research on

[4] Risa Kaufman, 'State and Local Commissions as Sites for Domestic Human Rights Implementation', in S Hertel and K Libal (eds), *Human Rights in the United States: Beyond Exceptionalism* (CUP 2011) 98.

[5] See, eg, Nowrojee (n 1); Catherine Renshaw et al, 'Implementing Human Rights in the Pacific through National Human Rights Institutions: The Experience of Fiji' (2009-2010) 40 Victoria U Wellington L Rev 251; Meg Brodie, 'Uncomfortable Truths: Protecting the Independence of National Human Rights Institutions to Inquire' (2015) 38 U New South Wales L J 1215.

[6] As is the case with NHRIs, SNHRIs must maintain their independence with respect both to government and civil society, while at the same time being accountable to the state for their actions and spending, and deriving public legitimacy by responding to public concerns, interacting with civil society, and being accountable to stakeholders. See Anne Smith, 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?' (2006) 28 Hum Rts Q 904, 906.

decentralisation discussed in chapter 8) that SNHRIs may have more difficulty maintaining their independence than would NHRIs.

Thus, maintaining SNHRI independence should be a primary objective for those interested in assuring that SNHRIs can add value to the existing human rights system. There is no secret formula for SNHRIs to maintain their independence. Some of the methods suggested with respect to NHRIs would no doubt be helpful for SNHRIs as well, such as creating the institution through a legislative or constitutional mandate and providing adequate funding (as recommended by the Paris Principles)[7] and providing staff with sufficient salaries and resources (as recommended by Amnesty International).[8]

In the context of the subject of this thesis, however, I would argue that one of the primary roles that other human rights actors can play vis a vis SNHRIs is to assist them in maintaining their independence. There are many different ways that this can take place, a number of which are highlighted in this thesis. Outside funding can be provided to help maintain financial independence from the state; although there are some examples of this, it is still rare.[9] Capacity building assistance can be provided, either by NHRIs or other actors, to allow SNHRIs to function effectively in an atmosphere of countervailing pressures from the state.[10] While this too is uncommon, there are some examples of helpful engagement from states,[11] regional organisations,[12] and the UN.[13] It should be noted that capacity building assistance was critical in

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[7] See United Nations General Assembly, Resolution 48/134, 'Principles Relating to the Status of National Institutions' (1993) [Paris Principles], sec B(2)-B(3).

[8] Amnesty International, 'National Human Rights Institutions – Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights', IOR 40/007/2001 (1 October 2001) sec 2.5-2.6.

[9] One example of this is the European Union's funding of training projects by the Mexico City Human Rights Commission. Emilio Alvarez Icaza Longoria, 'Address at the Executive Session on Human Rights Commissions and Criminal Justice' (12 May 2006) 32 <http://www.hrccj.org/pdfs/emilio_alvarez_transcript1.pdf> accessed 17 October 2016.

[10] There is no doubt a normative element to this type of interaction too; when a national or international actor provides funding or training, it is also likely to involve exposure to national or international values.

[11] One example is the work of the Danish Institute for Human Rights in supporting the regional ombudsmen of Arkhangelsk, Kaliningrad and Mari El, in the Russian Federation. Unfortunately, these projects are currently under review due to the increased difficulty of maintaining constructive partnerships with Russian state and regional authorities. Danish Institute for Human Rights, 'Danish Institute for Human Rights in the Russian Federation' (2015) <http://www.humanrights.dk/sites/humanrights.dk/files/country_notes/13_russia_country_note_june_2015.pdf> accessed 7 November 2016.

[12] Regarding Council of Europe work with the Kaliningrad human rights ombudsman, see Yulia Gradskova, 'Regional Ombudsmen, Human Rights and Women – Gender Aspects of the Social and Legal Transformation in North-West Russia (Based on Ombudsman Reports)' (2012) 39 Sov & Post-Sov Rev 84, 105.

[13] UNHCHR has participated in capacity building projects for local *Personeros* in Colombia. See Procuraduría General de la Nación, 'Programa Nacional de Capacitación en Derechos Humanos dirigido a Personeros y Personeras Municipales' (2014) <http://www.procuraduria.gov.co/iemp/capacitacion-personeros.page> accessed 7 November 2016.

helping independent NHRIs proliferate during the 1990s.[14] Other actors can also help confer legitimacy on SNHRIs by allowing them to participate at the national and international levels, which in turn will strengthen SNHRIs in the face of challenges to their independence, just as it does for NHRIs at the national level.[15] Finally, trans-governmental SNHRI networks can step in to support members whose independence is threatened, as the regional and global NHRI networks have done with respect to NHRIs on many occasions.[16]

9.2.3 Improve Coordination

One of the themes running through the articles in this thesis is that coordination between SNHRIs and other human rights actors is important for the effective attainment of common goals. Redundancy has costs, and localisation is only a desired outcome to the extent that it is consistent with the universal values underpinning the human rights movement. This does not necessarily mean that coordination (or cooperation) is necessarily the optimal strategy for interactions between SNHRIs and other parts of the state; as is the case with NHRIs, there will often be times when cooperation is worthwhile, and often times where confrontation is needed when faced with governments that refuse to follow their human rights obligations.

Examples of successful coordination with other human rights actors include SNHRIs working together with their home-state NHRI to contribute information for human rights reports to treaty bodies, as has been done in Australia and Belgium, or SNHRIs acting as preventive mechanisms under the Optional Protocol of the Convention Against Torture, thus engaging in the types of visits to detention facilities that UN actors are ill-equipped to undertake. The use of norms developed by other human rights actors can also be seen as a desirable type of cooperative behaviour, even if it takes place without explicit coordination, as was often the case with the use of international law norms by SNHRIs. On the other hand, without successful coordination, SNHRIs can become involved in turf wars, as has occurred in Catalunya, or (what is more likely) see a loss of influence and general dismissal by more powerful actors, as has occurred in Korea with the Park Hyun-jung case (described in chapter 7), or in India, where State Human Rights Commissions have been dismissed with disdain by the more powerful and respected National Human Rights Commission.[17]

This coordination has been effectuated in a wide range of different ways. Some SNHRIs interact with their peers and NHRIs through trans-governmental organisations, however as discussed in chapter 5, these organisations are often regional or national rather than global, and limited to particular institutional types (such as ombudsmen). For other SNHRIs, conferences

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[14] Katerina Linos and Thomas Pegram, What happens when soft law hardens? National human rights Institutions and the international human rights system 6, https://www.law.berkeley.edu/php-programs/faculty/facultyPubsPDF.php?facID=14278&pubID=6> accessed 7 November 2016.

[15] Ibid, 17; Meg Brodie, 'Pushing the Boundaries: The Role of National Human Rights Institutions in Operationalising the 'Protect, Respect and Remedy' Framework' in Radu Mares (ed), *The UN Guiding Principles on Business and Human Rights* (Martinus Nijhoff 2012) 252.

[16] See Gauthier De Beco, *Non-Judicial Mechanisms for the Implementation of Human Rights in European States* (Bruylant 2010) 146; Morten Kjaerum, *National Human Rights Institutions Implementing Human Rights* (Danish Inst for Hum Rts 2003) 7.

[17] National Human Rights Commission of India, 'NHRC Convenes a Meeting of State Human Rights Commissions', <http://www.nhrc.nic.in/disparchive.asp?fno=2138> accessed 17 October 2016.

have been important venues for exchanging information on best practices and diffusing norms; one example of this is the annual World Human Rights Cities Forum, that has been held in Gwangju, Korea since 2011, and has contributed to the spread of the idea of the 'human rights city' in Korea, as discussed in chapter 6. At the purely domestic level, some SNHRIs interact with their domestic peers and home country NHRI through regular meetings, an annual conference, as in Spain or Argentina, or formal MOUs between an NHRI and SNHRIs, as occurs in Spain and Mexico. These mechanisms are discussed in chapter 3. Still other SNHRIs coordinate domestically through purely informal consultations, as was the case with the Seoul Human Rights Ombudsman office and Korea's National Human Rights Commission.

Other human rights actors can play a role in facilitating this coordination, either by allowing SNHRI participation in already-existing forums (as I have proposed for GANHRI), or alternatively by helping develop new forums. One example of the latter was the involvement of the Council of Europe Commissioner of Human Rights in co-organising the Round Table for Regional European Ombudsmen in Barcelona in 2004.[18] Whether in formal or informal ways, however, SNHRIs should have a seat at the table where human rights norms that affect their localities are being discussed, developed, or implemented.

9.2.4 Develop Standards

Finally, this thesis has highlighted the absence of an authoritative set of standards that can be applied to SNHRIs. This is relevant to the interactions between SNHRIs and the rest of the human right system in two ways. First, such standards can be used to guide SNHRIs in their interactions with other actors. Second, other human rights actors could employ standards to evaluate or accredit SNHRIs. The Paris Principles play both roles vis a vis NHRIs. In fact, it is hard to over-emphasise the importance of the Paris Principles in the evolution of NHRIs.[19] However, the Paris Principles are by their terms (and according to their intent) inapplicable to sub-national bodies.[20]

I argue in chapter 5 that a new version of the Paris Principles could be one solution that would not only provide helpful functional guidance but also an incentive to achieve best practices in order to be accredited. What would this new version look like, and how would it be arrived at? Regarding the negotiation process, it would as a primary matter be necessary to

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[18] At this time, the Congress of Local and Regional Authorities called on the Council of Europe to 'facilitate the setting up and support of national and European networks of regional ombudspersons with a view to facilitating the exchange of experience and the sharing of information and good practice' and 'give consideration to starting a network of Europe's regional ombudspersons'. Council of Europe Congress of Local and Regional Authorities, 'Regional Ombudspersons: An Institution in the Service of Citizens' Rights', Resolution 159 (2004) art 24.

[19] According to Linos and Pegram, the Paris Principles and the system of peer review and monitoring that is based upon them are 'critical to explaining the proliferation and strengthening of NHRIs worldwide'. Linos and Pegram (n 14) 3.

[20] Some SNHRIs nevertheless are mandated to follow the Paris Principles or explicitly look to the Paris Principles for guidance. See, eg, Bermuda Human Rights Commission, '2010 Annual Report' 22 <http://parliament.bm/uploadedFiles/Content/Home/HRC%20Annual%20Report%20%202010.pdf> accessed 12 November 2016; Ontario Human Rights Commission, 'Guiding Principles' <http://www.ohrc.on.ca/zh-hant/node/9767> accessed 12 November 2016; Estado de Chiapas, Decreto no 233, Ley de la Comisión Estatal de los Derechos Humanos (19 Aug 2013).

ensure that the SNHRIs themselves take the lead in standard development, just as NHRIs did in the negotiation of the Paris Principles. Of course, not all SNHRIs would be interested in this type of project (or abide by any eventual standards), but many would undoubtedly want to participate in the negotiation process. Second, the process should be transparent and allow for the participation in some respect of other important human rights actors, namely civil society groups, NHRIs (both individually and collectively), GANHRI, and the UN. It would be especially important that the UN and GANHRI are in favour of the eventual standards, because ideally they could be used by GANHRI to provide accreditation, and by the UN to provide privileged access (to accredited SNHRIs).

The substance of the new set of standards should ideally emerge out of a consensus of the negotiating parties, but I argue in chapter 5 that the eventual standards should hew closely to the Paris Principles themselves, so that they don't emerge as a competing set of norms. Certainly, the existing Paris Principles standards should not be watered down. Three types of changes would be likely. First, negotiators would need to delete Paris Principles sections that are deemed inapplicable, such as, for example, the requirement to address human rights issues 'in any part of the country' and (probably) the requirements to encourage treaty ratification (which can, after all, only be done by national rather than sub-national authorities).[21] Second, new clauses would need to be added to address issues specific to sub-national institutions. One example could be a requirement that SNHRIs contribute local information to national reports to treaty bodies. Finally, there could be substantive updates that are not necessarily related to administrative level. To a certain extent, these updates could emerge from the interpretations that the GANHRI Sub-Committee on Accreditation has developed over the years, in its NHRI accreditations. Thus, for example, the new principles could clarify that human rights ombudsman institutions qualify as SNHRIs (and how pluralism objectives apply to them), even though the original Paris Principles is ambiguous on this point with respect to NHRIs, because the Sub-Committee on Accreditation has developed relatively consistent and well-accepted rulings on the issue.

Aside from a Paris Principle-based global set of norms, there may be other types of standards and best practice guidelines that would be useful for particular types of SNHRIs, such as ombudsman institutions, anti-discrimination commissions, or human rights cities' committees. These standards can usefully be produced outside of UN-based institutions, either in regional bodies such as the Council of Europe Congress of Local and Regional Authorities, or in trans-governmental networks such as the International Ombudsman Institute (at the global level) or the various regional ombudsman groupings. While these ombudsman networks already do issue resolutions and reports on best practices and standards, they tend to be focused at national-level rather than sub-national level institutions, thus pointing to the need for more effective trans-national organising for SNHRIs (or particular types of SNHRIs).

9.3 Theoretical Implications

In addition to having important practical implications, the articles in this thesis engage with a number of different theoretical concepts and research findings, most conspicuously with those associated with global governance, localisation, and decentralisation. This section will take a closer look at how my studies have contributed to these three theories (or, otherwise put, to these three research programs, as there would be disagreement among scholars regarding the

[21] Paris Principles (n 7) sec 3(a)(4) and 3(c).

extent that one can or cannot refer to a coherent global governance theory, localisation theory, or decentralisation theory; in part, this disagreement is due to a lack of agreed-upon definition of each concept).[22] I will also discuss how these three theories (or research perspectives) could be useful for further research into SNHRIs.

9.3.1 Global Governance

The articles in this thesis in large part address SNHRIs through the global governance perspective described by Dingwerth, Pattberg and others.[23] SNHRIs are viewed not as stand-alone local institutions, but rather as nodes of a broader international human rights regime, that must be viewed through their dynamic relationship with other institutional actors and norms that may have arisen at the national or supra-national levels, or indeed through the work of non-state actors. As is commonly the case with global governance research, these articles look beyond a purely analytical or descriptive lens to address the normative question of what policies should be put into place so as to improve SNHRI coordination with existing actors and norms.

These articles also build upon a number of specific research strands that can loosely be categorised as global governance research. Chapter 5, for example, utilises concepts of trans-governmental networking that have been developed by Anne-Marie Slaughter, Kal Raustiala, and others. Slaughter defines trans-governmental networks as 'pattern[s] of regular and purposive relations among like government units working across … borders'[24] and has touted the potential of these links to improve cooperation and compliance with international standards.[25] Another research theme investigates the transmission of international norms through processes of socialisation. While national governments are critical in the formal acceptance of international human rights norms and in the passage of laws implementing those norms, the research of Thomas Risse, Stephen Ropp and Kathryn Sikkink questions when nations actually internalise

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[22] For the theoretical nature of 'global governance' see Matthias Hofferberth, 'Mapping the Meanings of Global Governance: A Conceptual Reconstruction of a Floating Signifier' (2015) 43(2) Millennium J Intl Stud 598. Regarding decentralisation as a theory, see UNDP, Decentralization: A Sampling of Definitions (1999) 1 <http://web.undp.org/evaluation/evaluations/documents/decentralization_working_report.PDF> (accessed 23 October 23, 2016) ('decentralization is not so much a theory as it is a common and variable practice in most countries to achieve primarily a diverse array of governance and public sector management reform objectives'), but *cf* Diana Conyers, 'Future Directions in Development Studies: The Case of Decentralization' (1986) 14(5) World Dev 593, 600 (noting that decentralisation theory 'provides the basic framework' for empirical studies in the field).

[23] Klaus Dingwerth and Philipp Pattberg, 'Global Governance as a Perspective on World Politics' (2006) 12 Global Governance 185. Other terms such as multi-level governance or polycentric governance are sometimes used to describe closely related concepts (or perspectives or theories). While the terms and research agendas differ to some extent, they have in common a view of governance that does not see the sovereign state as the sole relevant actor, but rather sees interactions of various influential actors and institutions. See, eg, Michael Zürn, 'Global Governance as Multi-level Governance', in *Handbook on Multi-level Governance*, eds Henrik Enderlein et al. (Northampton: Edward Elgar 2010), 80–102.

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

[25] 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.

those norms, and emphasises the role of other governmental and societal actors in this process.[26] Ryan Goodman and Derek Jinks have drawn on both these research tracks in their work, which posits three distinct mechanisms of social influence driving state behaviour: material inducement, persuasion, and acculturation.[27]

At the broadest level, the articles in this thesis can be seen as helping to fill a gap in the global governance perspective on human rights by integrating SNHRIs as a new (or at least under-theorised) building block into the so-called 'architecture' of the human rights regime.[28] Too often, global governance in the human rights arena has been discussed as an essentially supra-national phenomenon, and the international human rights regime as stretching from the nation-state upwards to regional and global levels, but seldom downward to cities or provinces. Thus, human rights governance is too often conceptualised as a two-player game of the national and the international, of the self-interested sovereign that abuses the individual and the public good-minded supra-national body (UN, Council of Europe, etc.) that protects the individual.[29] To a certain extent, the proliferation of NHRIs has complicated this picture. As my thesis shows, the proliferation of SNHRIs does so as well.

Another interesting way that my research can be seen to contribute to global governance theories is by filling out the previously (conceptually) unoccupied space in a global *independent* human rights system. That is to say, where it has previously been common to talk about NHRIs primarily as (one of several) domestic governmental organs for human rights implementation, now we can perhaps look from a different perspective as to whether NHRIs, SNHRIs, regional human rights commissions, UN human rights treaty bodies, and perhaps even supra-national ombudspersons (like the European Ombudsman or the Office of the Ombudsperson to the ISIL and Al Qaeda Sanctions Committee) comprise a separate system of independent organs, and if so, how they interact with each other, challenge each other, preserve their independence – which is their defining feature – and collectively maximise their impact on improving human rights practices.

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[26] See, eg, Thomas Risse, Stephen Ropp, and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (CUP 1999).

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

[28] See, eg, Frank Biermann et al, 'The Fragmentation of Global Governance Architectures: A Framework for analysis' (2009) 9(4) Global Environ Politics 14 (2009) 15 (defining governance architectures as 'the overarching system of public and private institutions, principles, norms, regulations, decision-making procedures and organizations that are valid or active in a given issue area of world politics.') Previously, SNHRIs were oftentimes ignored (as too unimportant to be relevant), treated simply as components of (or footnotes to) other domestic institution, such as NHRIs, or, occasionally, dealt with as individual entities, but not as representatives of a larger conceptual group of SNHRIs.

[29] See, eg, James Nickel, 'Human Rights' in *Stanford Encyclopedia of Philosophy* (2010) 9 ('the most basic idea of the human rights movement is... the idea of regulating the behavior of governments through international norms'); Charles Beitz, *The Idea of Human Rights* (OUP 2009) 13 ('the central idea of international human rights is that states are responsible for satisfying certain conditions in their treatment of their own people and that failures or prospective failures to do so may justify some form of remedial or preventive action by the world community or those acting as its agents.')

The integration of SNHRIs into global governance theories opens up a range of new research agendas, both in line with traditional global governance perspectives (some of which I address in this thesis), but also in line with the emerging frameworks that form part of what Ruggie dubs 'new governance theory'.[30] Put simply, architecture affects outcome, so changes of architecture require a reevaluation of how systems function.[31] One of the most intriguing new frameworks to examine this is Abbott and Snidal's theory of orchestration.[32] Under this theory, orchestration applies when a focal actor known as the orchestrator enlists a third-party actor known as an intermediary to address a shared governance objective in a separate administrative realm, known as the target.[33] Orchestration occurs when three conditions are met: '(1) the orchestrator seeks to influence the behaviour of the target indirectly via intermediaries, and (2) the orchestrator does not exercise control over the intermediary, which, in turn, (3) cannot compel compliance of the target'.[34] The use of orchestration can help magnify the influence of international organisations; in Ruggie's words, orchestration can help 'achieve greater normative and regulatory coherence, larger-scale effects, and more robust outcomes.'[35] It also can be used as an explanatory mechanism for the success or lack of success of global governance agendas.[36] While originally elucidated with respect to global economic governance, orchestration theory has also been applied by Pegram and others to the international human rights regime.[37]

By introducing a new building block into the architecture of the human rights regime, this thesis has opened the way for new studies of whether or how orchestration is occurring as a descriptive matter, and whether it makes sense as an analytical lens to view the role of SNHRIs. Due to their independence (in principle) from state control, SNHRIs would seem well-placed to act as intermediaries.[38] Thus, one question would be whether international human rights actors (such as the UN) can be considered orchestrators and SNHRIs can be considered intermediaries in the shared objective of influencing State behaviour, either at the sub-national or (less

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[30] John Ruggie, 'Global Governance and "New Governance Theory": Lessons from Business and Human Rights' (2014) 20 Global Gov 55.

[31] Thomas Pegram, 'Governing Relationships: The New Architecture in Global Human Rights Governance' (2015) 43(2) Millennium J Intl Stud 618, 627 ('Evaluating the relationship between political units within global governance architectures is … essential to understanding outcomes'.)

[32] See, eg, Kenneth Abbott and Duncan Snidal, 'Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit' (2009) 42 Vand J Transn'l L 501; Kenneth Abbott et al, *International Organizations as Orchestrators* (CUP 2015).

[33] Kenneth Abbott et al, 'Orchestration: Global Governance Through Intermediaries' in Kenneth Abbott et al, *International Organizations as Orchestrators* (CUP 2015).

[34] Pegram, 'Governing Relationships' (n 31) 628.

[35] Ruggie (n 30) 12.

[36] Pegram, 'Governing Relationships' (n 31) 638.

[37] ibid; Thomas Pegram, 'Global Human Rights Governance and Orchestration: National Human Rights Institutions as Intermediaries' (2015) 21(3) Eur J Intl Rel 595. See also Xinyuan Dai, 'Orchestrating Monitoring: The Optimal Adaptation of International Organizations' in Kenneth Abbott et al, *International Organizations as Orchestrators* (CUP 2015).

[38] Pegram, 'Governing Relationships' (n 31) 638.

frequently) national administrative level.[39] In chapters 4 and 6, my research provides some evidence of the linkages between SNHRIs and UN actors and norms that would be the prerequisite for such orchestration. However, more empirical study would be necessary to develop this theory. Another, perhaps more interesting possibility, would be whether national governments could be considered orchestrators and SNHRIs intermediaries, with the shared governance objective of ensuring sub-national compliance with human rights norms (or, perhaps, with the shared objective of restricting the scope of sub-national autonomy to introduce policies at variance with national objectives). In each of these cases, a follow-up question would be what type of orchestration that SNHRIs are involved in, among the four possible dynamics identified by Pegram.[40]

9.3.2 Localisation

The articles comprising this thesis are essentially engaged in an institutional analysis of SNHRIs and their relationships with other actors. They do not engage in a socio-legal or anthropological analysis of SNHRI impact on the ground, as characterises much of research into localisation, which has been defined by Acharya as 'the active construction [of new norms] through discourse, framing, grafting, and cultural selection of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices'.[41] Nevertheless, the research findings on localisation and vernacularisation influence the way in which the articles in this thesis analyse the implications of SNHRI implementation of international norms (in chapter 6) and the implications of establishing an SNHRI (in chapter 8), and form the broader backdrop for why SNHRIs matter, or matter in a different way than national or global human rights institutions. The most important way in which this thesis extends localisation theories is by shifting the field away from its traditional focus on civil society as the locus of localisation processes, as best exemplified by the research of Acharya, De Feyter, Merry and others.[42]

Over the last few years, this original focus on civil society has been supplemented by a number of studies of the role that NHRIs can play in norm localisation.[43] According to Hafner-

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[39] Thus, sub-national governments would most commonly be the 'target' in Abbott's terminology.

[40] Pegram, 'Governing Relationships' (n 31) 621 (these are simple orchestration, competitive orchestration, cascade orchestration, and reverse orchestration).

[41] Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (2004) 58 Intl Org 245.

[42] See, eg, Amitav Acharya, 'Local and Transnational Civil Society as Agents of Norm Diffusion', Paper Presented to the Global Governance Workshop, University of Oxford (1-3 June 2012); Sally Merry et al, 'Law from Below: Women's Human Rights and Social Movements in New York City' (2010) 44(1) L & Soc Rev 101; Koen De Feyter, 'Localizing Human Rights', University of Antwerp Institute of Development Policy and Management, Discussion Paper 2006/02, (2006); Allison Glass, *The Role of Non-Government Organizations in Norm Diffusion: Experience from Odhisha, India*, (Bhubaneswar, Orissa: Madhyam Foundation, 2012); Zvika Orr, 'The Adaptation of Human Rights Norms in Local Settings: Intersections of Local and Bureaucratic Knowledge in an Israeli NGO' (2012) 11 J Hum Rts 243.

[43] Andrew Wolman, 'National Human Rights Commissions and Asian Human Rights Norms' (2013) 3(1) Asian J Intl L 77; Hafner-Burton (n 3); Ranita Ray and Bandana Purkayastha, 'Challenges in Localizing Global Human Rights' (2012) 7(1) Societies Without Borders 29.

Burton, 'NHRIs are particularly intriguing [localisation actors] because these institutions have formal roles in national governance processes, and thus might be particularly effective conduits between international pressures and national policy and behavior'.[44] It is a natural extension of this research strand to also consider the role that SNHRIs can play in norm localisation. One point of agreement among localisation researchers is that the identity of the localising agent (sometimes dubbed the 'mediator' or the 'translator') matters.[45] According to Acharya, it is the agency role of local actors that is in fact the ultimate key to localisation.[46] Thus, there are likely to be considerable implications to SNHRIs (instead of NGOs or NHRIs) engaging in human rights localisation. As Merry notes, translation 'takes place within fields of unequal power' and translators' work is 'influenced by who is funding them; their ethnic, gender, or other social commitments; and institutional frameworks that create opportunities for wealth and power'.[47]

So far, however, scholars have largely overlooked the potential role of SNHRIs, the one exception that I am aware of being Ray and Purkayastha's study of localisation by state human rights commissions in India.[48] This thesis highlights that SNHRIs should also be closely considered for the implications of their involvement with human rights localisation. My research affirms that SNHRIs can (and often do) closely engage with both international-level human rights norms and norms of domestic origin in their work, sometimes implementing both at the same time, as was common with the jurisprudence of the Seoul Human Rights Ombudsperson Office. My research also shows that SNHRIs exist within and interact with a network of local, national and international human rights bodies, which has been posited to be a prerequisite for human rights localisation.[49]

More research is necessary, however, to gain a full understanding of the topic, and how SNHRIs may differ from local grass-roots organisations (or NHRIs) in their roles as localising agents for human rights. One key issue to examine is the nature of the relationship between SNHRIs and civil society. The mere fact that SNHRIs are established at a local administrative level does not necessarily mean that they retain close relationships with grass roots organisations,

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[44] Hafner-Burton (n 3) 175.

[45] Sally Engle Merry, *Human Rights & Gender Violence: Translating International Law into Local Justice* (U Chicago Press 2006) 39; Amitav Acharya, *Whose Ideas Matter? Agency and Power in Asian Regionalism* (Cornell U Press 2009) 15.

[46] Acharya (n 45) 15.

[47] Sally Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108 Amer Anthropologist 38. 40.

[48] Ray and Purkayastha (n 43). Oomen and her associates have broached the topic of localisation with respect to human rights cities, but her work has so far not focused on SNHRIs in particular, but rather on the full panoply of policies that human rights cities embrace, and has tended to define the term 'localisation' in a broader way to refer generally to the local implementation of universal rights. See Barbara Oomen, 'Rights and the City: Does the Localization of Human Rights Contribute to Equality?' in Marjolein van den Brink et al (eds), *Equality and human rights: nothing but trouble?, Liber amicorum Titia Loenen*, SIM Special no 38, SIM (2015); Charlotte Berends et al (eds), *Human Rights Cities: Motivations, Mechanisms, Implications* (University College Roosevelt 2013) 11 (localising human rights 'means applying these universal principles in local settings').

[49] Gaby Oré Aguilar, 'The Local Relevance of Human Rights: A Methodological Approach', in *The Local Relevance of Human Rights* (CUP 2011) 115.

local unions, women's groups and the like. In fact, it is possible that civil society has fewer direct links to SNHRIs than to NHRIs, given that NHRIs generally have an explicit mandate to interact with civil society groups and (usually) have sufficient personnel and funds to reach out to such groups, neither of which may be the case for SNHRIs. It is also possible that different SNHRI types relate differently to civil society. Classic ombudsperson institutions, for example, may be less likely to interact with civil society groups or see them as stake holders, when compared to local human rights or human relations commissions. If some SNHRIs do lack strong links to civil society, then their potential utility for norm localisation would be lessened, and to the extent that one favours human rights localisation, one should attempt to cultivate greater linkages between civil society and SNHRIs.

Apart from further socio-legal or anthropological research into the linkages between SNHRIs and civil society and other actors, a localisation research agenda may also benefit from a more classic legal or textual analysis of the various policy recommendations, decisions on complaints, and annual reports published by SNHRIs. These methodologies are often less feasible for research on civil society organisations that do not engage in explicit and official norm interpretations. One may, for example, be able to establish how SNHRIs develop a particular rights norm over time by closely examining the evolution of their jurisprudence on that issue when resolving individual complaints.

A final important issue for further localisation research is the extent to which economic and social rights norms are effectively addressed by SNHRIs (or by different types of SNHRIs, as it is certainly possible that local ombudsperson institutions are less engaged with economic and social rights than are human rights commissions, especially those established as parts of 'human rights cities'). While there are different conceptions of localisation in the literature, to the extent that it is envisioned as a response to economic globalisation, then a reluctance by SNHRIs to engage with economic and social rights norms could limit their potential as localising agents.[50]

9.3.3 Decentralisation and Subsidiarity

Theories of decentralisation have long played an important role in political debates about the appropriate administrative level for delivering government services. Until recently, human rights scholars have largely steered clear of this debate, with a few notable exceptions.[51] First some researchers have broadly examined how local governments can best implement human rights norms, sometimes (but not always) in the context of decentralisation debates.[52] Second, within the political science literature, there are a number of examinations of the human rights implication of certain types of federal structures.[53] Third, several authors have advocated a

[50] Regarding localisation as a response to economic globalisation, see De Feyter (n 42).

[51] International Council on Human Rights Policy, 'Local Rule: Decentralisation and Human Rights' (2002) 37 ('the wide and varied literature on decentralisation makes almost no reference to human rights).

[52] Kim Joong-Seop, 'Toward Human Rights in the Local Community: Multiple Approaches for Implementation' (2010) 39(1) Dev & Soc 119; Charlotte Berends et al (eds), *Human Rights Cities: Motivations, Mechanisms, Implications* (University College Roosevelt 2013); International Council on Human Rights Policy, 'Local Rule' (n 51).

[53] Matthew Parlow, 'Progressive Policy-Making at the Local Level: Rethinking Traditional Notions of Federalism (2008) 17 Temple Pol & Civ Rts L Rev 371; Yash Ghai, 'The Structure of Human Rights in

decentralisation of the human rights movement, by re-focusing attention towards human rights implementation at the local rather than the national or supranational levels.[54] Fourth, a few scholars have conducted case studies of the human rights implications of decentralisation in particular national circumstances.[55]

Alongside these studies, which are often characterised by empirically grounded case studies of decentralised polities, there is also a line of more theoretically oriented human rights research that has examined issues of decentralisation (or centralisation) through the lens of 'subsidiarity', a principle that has been characterised as 'a presumption for local-level decision-making, which allows for the centralisation of powers only for particular, good reasons'.[56] However, while subsidiarity as a structuring principle has been utilised at the domestic level in certain contexts, human rights discussions of subsidiarity have tended to concentrate on the somewhat different question of whether supranational or national bodies are best for setting human rights policy and adjudicating human rights disputes.[57]

There has not been much attention so far to the specific question of whether (and when) the provision of independent human rights services themselves are best provided at the local, national, or supra-national level (ie by SNHRIs, NHRIs, or regional or global human rights commissions). There has also been little attention to the interactions between the different levels in a decentralised system of independent human rights implementation.

In this thesis, I contribute to theories of decentralisation by addressing each of these two questions. In chapter 8, I explicitly apply the theoretical findings from generations of research

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Federations' in Kamal Hossain et al (eds) *Human Rights Commissions and Ombudsman Offices: National Experiences* (Kluwer 2000) 51. See, also, Robert Schapiro, Polyphonic Federalism: Toward the Protection of Fundamental Rights (U Chicago Press 2009)

[54] Barbara Oomen, 'Rights and the City: Does the Localization of Human Rights Contribute to Equality?' in Marjolein van den Brink et al (eds), *Equality and human rights: nothing but trouble?, Liber amicorum Titia Loenen*, SIM Special no 38, SIM (2015); Antoine Meyer, 'Local Governments & Human Rights Implementation: Taking Stock and a Closer Strategic Look' (2009) 3 Pace Diritti Humani 7; Michele Grigolo, 'Incorporating Cities into the EU Anti-Discrimination Policy: Between Race Discrimination and Migrant Rights' (2011) 34(10) Ethnic & Rac Stud 1751; Conrad 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.

[55] This research has tended to be empirical, but can help provide the data for theory-building in the field. See, eg, Teresa Rees and Paul Chaney, 'Multilevel Governance, Equality and Human Rights: Evaluating the First Decade of Devolution in Wales' (2011) 10(2) Soc Poly & Socy 219; Joe Oloka-Onyango, 'Decentralization Without Human Rights? Local Government and Access to Justice in Post-Movement Uganda', HURIDEC Working Paper 12 (2007); Nancy Thede, 'Decentralization, Democracy and Human Rights: A Human Rights-based Analysis of the Impact of Local Democratic Reforms on Development' (2009) 10(1) J Hum Dev & Capab 103.

[56] Markus Jachtenfuchs and Nico Krisch, 'Subsidiarity in Global Governance' (2016) 79(2) Law & Contemp Prob 1, 1.

[57] See, eg, Samantha Besson, 'Subsidiarity in International Human Rights Law: What is Subsidiary about Human Rights?' (2016) 61(1) Am J Juris 69; Alastair Mowbray, 'Subsidiarity and the European Convention on Human Rights' (2015) 15 (2) Hum Rts L Rev 313; Jorge Contesse, 'Contestation and Deference in the Inter-American Human Rights System' (2016) 79(2) L & Contemp Prob 123.

into decentralisation to an analysis of the advantages and disadvantages of independent human rights implementation at the sub-national level compared to independent human rights implementation at the national level. As far as I know, this is the first time that this exercise has been attempted. In chapter 3, I examine in depth the interactions, hierarchical and otherwise, between NHRIs and SNHRIs in federal states, in order to gain insights into the precise ways in which decentralisation is operationalised in the specific context of human rights institutions. My research highlights the fact that the relation of SNHRIs to decentralisation is multifaceted and complex. On the one hand, SNHRI establishment can be an example of decentralisation; moving human rights implementation down to the local level. On the other hand, SNHRIs can operate as a check on the negative effects of decentralisation, by ensuring that decentralised government administrations abide by norms which (often) have been either drafted or ratified by national-level actors.

This research thus serves as the launching point for a number of different research agendas that can further our understanding of decentralisation and subsidiarity. At the practical level, it provides a framework for the application of a decentralisation (or subsidiarity) analysis to questions related to the establishment of a particular SNHRI. At the more theoretical level, by detailing the advantages and disadvantages of decentralised human rights implementation, my research can be used to justify (or reject) the application of the principle of subsidiarity to the provision of independent human rights services at the domestic level. Of course the answer to that question will depend on the objectives one posits for the provision of human rights services, which can range from maximising utility to international human rights law compliance, democratic accountability, service affordability, systemic coherence, or some combination of goals. Finally, my research opens up the door for a broader subsidiarity analysis of human rights implementation that includes not only local and national but also supra-national (regional or global) administrative levels. This would essentially combine the two existing questions that have dominated the discourse on subsidiarity in a way that has not yet been seriously attempted, but is entirely consistent with current understandings of the principle of subsidiarity.

9.4 SNHRIs and the Need for Data

Obtaining more data on SNHRIs should be considered a prerequisite for conducting the type of research projects that would further our general understanding of the role that SNHRIs play (or could play) in global governance, localisation, decentralisation, or other theoretical models. To date, there have only been a small number of SNHRI case studies (whether from a sociological, political science, or legal perspective), and even less research on SNHRIs using quantitative methodologies.

At the most basic level, future research into SNHRIs would benefit from the development of a data set encompassing those currently existing SNHRIs, along with the basic typological information that I outline in chapter 2 (administrative level, institutional form and breadth of mandate) and perhaps other potentially useful data, such as date of establishment or geographical location. While there are some data on SNHRI quantity in certain jurisdictions, there is nothing approaching a comprehensive worldwide set. Such a dataset would facilitate quantitative social science research that would be able to take advantage of the large number of SNHRIs to potentially arrive at more robust conclusions regarding (for example) the conditions that lead to the establishment of SNHRIs, the factors influencing which types of SNHRIs are established, and the reasons for SNHRI success or failure. To a certain extent, the potential avenues for quantitative research are highlighted by the studies that have taken advantage of similar datasets

of NHRIs or truth commissions to introduce a 'second generation' of methodologically sophisticated studies into those institutional forms.[58] Unfortunately, developing an SNHRI dataset would be a much more difficult task, when compared to developing datasets for NHRIs and truth commissions, as there are far more SNHRIs operating, and far more possible places one would have to look for them (namely, all sub-national administrations). While compiling a list of all SNHRIs in the world may be unrealistic, even a non-comprehensive dataset would promote new types of research in the area.

Further qualitative data in the form of case studies and comparative analyses would also be very helpful in order to answer some of the important questions related to SNHRIs that are highlighted (but not answered) by my thesis. For instance, additional qualitative research can help determine the advantages and disadvantages of different SNHRI types, and, indeed, whether there may be an 'ideal type' of SNHRI. As discussed in chapter 2, SNHRIs currently come in a wide variety of institutional types, including many examples of institutions that are unique to a particular locality or country, such as the *Ararteko* in the Basque region of Spain, *Personeros Municipales* in Colombia, and municipal human relations commissions in the United States. This variety of forms contrasts, to a certain extent, with NHRIs, which have experienced a high degree of isomorphism in recent years, due largely to the effects of international accreditation based upon the Paris Principles.[59] Each of these patterns has plausible advantages and disadvantages. Isomorphism allows for easier evaluation and transfer of best practices, however a one-size-fits-all solution may be impractical and ineffective given the wide variety of local administrative cultures, levels of development, and funding situations of SNHRIs around the world.

More data on SNHRIs would also allow for greater empirical investigation (whether quantitative or qualitative) into SNHRI effectiveness, and in particular questions such as 1) how can SNHRI effectiveness best be measured?; 2) what are the institutional attributes associated with SNHRI effectiveness?; and 3) why are some SNHRIs more effective than others? To some extent, analogous studies have been conducted regarding NHRI effectiveness, although these studies have tended to revolve around questions of the suitability of the Paris Principles and GANHRI accreditation process, which are at best secondary questions for most SNHRIS.[60] Stronger evidence regarding the effectiveness (or lack of effectiveness) of SNHRIs would contribute greatly to further research on some of the questions addressed in this thesis, such as

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[58] NHRI datasets have been compiled by Conrad, Demeritt and Moore. See National Human Rights Institutions Data Collection Project, at <http://nhridata.weebly.com/> accessed 18 July 2016. Truth commission datasets exist through the Transitional Justice Database Project (<http://www.tjdbproject.com/> accessed 18 July 2016) and the dataset compiled by Dancy et al. See Geoff Dancy, Hunjoon Kim and Eric Wiebelhaus-Brahm, 'The Turn to Truth: Trends in Truth Commission Experimentation, (2010) 9(1) J Hum Rts 45.

[59] Thomas Pegram, 'Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions' (2010) 32(3) Hum Rights Quart 729, 749.

[60] See, eg, International Council on Human Rights Policy, 'Assessing the Effectiveness' (n 1); Rachel Murray, 'National Human Rights Institutions: Criteria and Factors for Assessing their Effectiveness' (2007) 25(2) Neth Q Hum Rts 189; Ryan Goodman and Thomas Pegram (eds) *Human Rights, State Compliance, and Social Change* (CUP 2012).

the conditions under which the establishment of an SNHRI makes sense or the best way that SNHRIs can engage with international mechanisms.

9.5 Conclusion

If there is one thing that the human rights movement has learned over the past twenty-five years, it is the importance of human rights implementation on the ground. Norms simply are not enough, without an empowered civil society that is willing to insist on its rights and without the governmental institutions that are willing and able to hold the state accountable. This thesis has focused on the work of one institutional type – the sub-national human rights institution – and how it interacts with other actors and norms in the international human rights system. Sub-national human rights implementation is an under-studied topic, and the articles in this thesis contribute to an increased attention to the topic. The articles are innovative in two principal ways. First, they address SNHRIs as a conceptually relevant group, rather than dealing separately with particular types such as human rights ombudsmen or municipal human rights commissions. Second, they do not simply focus on SNHRIs as local bodies in isolation from the rest of the international human rights regime, but rather examine the inter-connections within the regime, both as they exist today, and as can develop over time. The articles are intended to help develop academic study of SNHRIs, but they can also be of practical interest to policy-makers, advocates, and human rights officers working towards ensuring that SNHRIs interact optimally with other important human rights actors and add value to the existing human rights architecture.

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