

ADAPTIVE STATES: THE PROLIFERATION OF NATIONAL HUMAN RIGHTS INSTITUTIONS

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National human rights institutions (NHRIs) are government agencies that have proliferated around the world in the last decade. Why do governments create these institutions to promote and protect international norms that they may routinely violate? Why are national human rights institutions similar even across different political and social contexts? What exactly is the impact of these new institutions? The paper opens with an overview of NHRIs, including a discussion of their significance and global proliferation. In the second half of the paper, I examine puzzles relating to the creation and impact of NHRIs in the Asia-Pacific region, focusing on the cases of the Philippines, India, and Indonesia. In particular, I assess the complex impact of India’s National Human Rights Commission in four areas: agenda-setting, rule creation, accountability, and socialization. I argue that NHRIs are being created largely to satisfy international audiences; they are the result of state adaptation. These international origins, however, have the following paradoxical effect: most NHRIs remain too weak to protect society from human rights violations at the same time that they create an unprecedented demand for such protection. I conclude by discussing the implications of this phenomenon for broader human rights reform.

¹ I thank the Pacific Basin Research Center (PBRC) at Harvard University’s Kennedy School of Government, especially its director Jack Montgomery, for supporting this research. I also thank the participants of PBRC-sponsored meetings at Harvard and Laguna Beach, California, as well as Michael Ignatieff and those who attended a Carr Center Fellows’ Colloquium where I presented some of these ideas. Nathan Glazer and Charles Norchi, among others, provided me with valuable contacts in India. Portions of the Asia section will appear in “National Human Rights Commissions in Asia,” *Challenges to Sovereignty*, John Montgomery and Nathan Glazer, eds. (forthcoming).

“If in the 1950s, the status symbol of a developing country was a steel mill, in the 1990s, apparently, it was a human rights commission.”²

Just as the second half of the twentieth century saw the internationalization of human rights norms, the recent proliferation of national human rights institutions (NHRIs) could signal their internalization.³ National human rights institutions are government agencies whose purported aim is to implement international human rights norms domestically. These institutions are a relatively new phenomenon in international relations and law, with the vast majority of them dating only to the 1990s. At first glance, this new tide of institutions affirms that human rights norms – or standards about the way states should treat those under their rule – are quickly becoming global in scope, embedded in both international and national structures of authority. Upon closer examination, however, the emergence of these institutions raises questions about how states attempt to co-opt international norms and government institutions can have unintended consequences for civil society.

The rapid proliferation of these institutions, though widely celebrated, is in many ways puzzling. It is unclear why some governments would create national institutions to implement international norms that they routinely violate. Nor is it self-evident why very different states would create NHRIs that are remarkably similar. Once created, moreover, we know little about the impact of these institutions. Are governments seeking merely to appease international audiences, or do these institutions have an independent impact and, if

² South Asia Human Rights Documentation Center (SAHRDC), *National Human Rights Institutions in the Asia Pacific Region, Report of the Alternate NGO Consultation on the Second Asia-Pacific Regional Workshop on National Human Rights Institutions* (New Delhi, India: SAHRDC, March 1998), 37.

³ For a discussion of the “internationalization” of human rights norms, see Louis Henkin, *The Age of Rights*, 2d ed. (New York: Columbia University Press, 1996).

so, what exactly is the nature of their influence? I argue that highly diverse governments around the world are creating similar NHRIs largely for international reasons: international norms provide standards for national institution building, concrete forms of international assistance facilitate this process, and more diffuse international pressures (including from international economic sources) make nominal human rights improvements highly desirable. The second part of my argument is that the international origins of these national institutions leave an unintended and overlooked legacy. Despite important national differences, many NHRIs have the following paradoxical effect: they are unable to provide effective protection against human rights violations, at the same time that they create an unprecedented high demand for such protection. The ensuing institutional dynamics are far more uncertain than either unbridled optimism or cynical skepticism would suggest.

I examine these propositions by comparing the creation and impact of national human rights commissions (the most prominent type of NHRI) in three countries of the Asia-Pacific region: the Philippines, India, and Indonesia. These countries' human rights institutions, which are the most longstanding in the region, have followed very similar trajectories despite important national differences in political and social structures. As the only region lacking its own human rights treaty or commission, and as an area of the world that has mounted a concerted challenge to Western human rights values, Asia is fertile testing ground for exploring how international norms are implanted domestically.

Despite the rapid growth of these potentially significant institutions in Asia and elsewhere, their creation and impact have yet to be studied systematically. While international lawyers and human rights practitioners have examined NHRIs in some detail, these works have had largely descriptive aims and the subject has altogether escaped the attention of international relations students.⁴ This paper is a first-cut and broad-gauged

⁴ Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commissions in Africa* (New York: Human Rights Watch, 2001); Linda Reif, “Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection,” *Harvard Human Rights Journal* 13 (Spring 2000): 1-69; International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions* (Switzerland: ICHRP, 2000); Anne Gallagher, “Making Human Rights Treaty Obligations a Reality:

attempt to begin filling this gap. In framing the topic, I discuss the significance of NHRIs, given that states remain the principal norm "makers" and "breakers" in international relations. I then offer a comprehensive overview of this new and complex institutional landscape, identifying the various types of NHRIs, surveying statistically which states are most likely to have them, and discussing the particularities of national human rights commissions. The remainder of the paper consists of concrete case studies drawn from the Asia-Pacific context, focusing on the creation and impact of leading human rights commissions in the region. In the conclusion, I speculate critically about the long-term implications of these institutions, especially for the 'bureaucratization' of human rights concerns within the state apparatus. Since the impact of NHRIs may be more mixed than conventional accounts concede, the somewhat puzzling proliferation of these institutions now merits close and critical attention.

Working with New Actors and Partners," in Philip Alston and James Crawford, eds., *The Future of UN Human Rights Treaty Monitoring* (Cambridge: Cambridge University Press, 2000); Paulo Sergio Pinheiro and David Carlos Baluarte, "National Strategies – Human Rights Commissions, Ombudsmen, and National Action Plans," Background Paper for *Human Development Report 2000*; Robert Brian Howe and David Johnson, eds., *Restraining Equality: Human Rights Commissions in Canada* (Toronto: Toronto University Press, 2000); Brian Burdekin and Anne Gallagher, "The United Nations and National Human Rights Institutions," *Quarterly Review of the United Nations High Commissioner for Human Rights* 1 (Spring 1998); John Hatchard, "National Human Rights Commissions in the Commonwealth." Background Paper for the Conference on Commonwealth Human Rights Initiative/ Institute for Public Policy Research (London, 16-17 October 1997); and George Zdenkowski, "The Role of National Commissions on Human Rights," A Paper Presented at a Workshop Organized by the International Bar Association (London: IBA, December 1996).

STATES AS NORM MAKERS AND BREAKERS

One of the principal constraints on international human rights policy, and international politics and law more broadly, is the dual role of states as norm makers and breakers. States are generally both the principal enforcers and violators of international human rights norms. While states are not the only violators of these norms, and private actors certainly commit many human rights abuses, the primacy of state responsibility for human rights crimes is now widely accepted. Under international law, states have duties both to desist from violating international norms as well as to prevent and punish human rights violations.⁵

It is at this nexus of the state as norm maker and breaker that the proliferation of NHRIs acquires its significance for human rights governance. In principle, NHRIs are important precisely because they serve to politicize human rights issues, or inject them into national political discourse and practice. This development is occurring in two key ways. First, NHRIs reflect how governments embed international human rights norms in domestic structures, and thereby reshape state-society relations. Second, NHRIs are forging new transgovernmental networks of human rights bureaucracies, parallel to transnational networks of governmental groups. I discuss briefly each of these innovative trends.

When a government creates a NHRI it is essentially implanting international norms in state structures. These institutions highlight the importance of domestic political structures, beyond the social and legal structures that human rights researchers often emphasize. NHRIs, moreover, are portrayed as being the permanent and local

⁵ An important case in this regard is the *Velasquez Judgment*, Inter-American Court of Human Rights (ser. C), No. 4 (1988).

infrastructure upon which international norms can take root and be implemented; they are not to be confused with temporary institutional arrangements, such as ad hoc truth commissions.⁶ Uniquely situated to mediate between the state and society, these institutions can provide transnational advocacy networks (TANs) with allies inside state bureaucracies.⁷ Insofar as these state institutions give societal groups effective channels to make their claims, the political power of these groups may grow and NHRIs could help transform the domestic human rights context. As the Canadian government has stated, NHRIs are "the practical link between international standards and their concrete application, the bridge between the ideal and its implementation."⁸

National human rights institutions are also forming a new and unprecedented class of international actors. Indeed, the development of trans-governmental networks of NHRIs is a noteworthy departure in a field dominated thus far by transnational advocacy and judicial networks.⁹ Increasingly, formal links among NHRIs announce the emergence of a transnational network of government actors devoted to human rights issues. This paper does not focus on this trend, but the key developments are worth sketching.¹⁰ Throughout the 1990s alone, NHRIs met in six international workshops and a flurry of regional meetings. Regular international meetings of NHRIs were launched in Paris in 1991,

⁶ For a basic introduction to the concept of NHRIs, see United Nations, *National Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (Geneva: United Nations Publications, 1995). Brief historical background on NHRIs is provided in United Nations, *United Nations Action in the Field of Human Rights* (New York: United Nations, 1983), 344-45.

⁷ On transnational advocacy networks, see Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1997).

⁸ Fifty-Second Session of the UN Commission on Human Rights (1997). United Nations, *Report of the Secretary-General on National Institutions for the Promotion and Protection of Human Rights* (E/CN.4/1997/41).

⁹ On transnational activism, see also Thomas Risse, Stephen C. Ross, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999). The idea of a trans-judiciary network for human rights is raised by Anne-Marie Slaughter in "The Long Arm of the Law," *Foreign Policy* (Spring 1999): 34-35 and "The Real New World Order," *Foreign Affairs* 76 (September/October 1997): 183-97.

¹⁰ Information for these trends is based on a wide array of UN documents.

followed by Tunis (1993), Manila (1995), Merida, Mexico (1997), and Marrakesh (2000). France, whose national human rights commission dates to 1948 and is the world’s oldest, hosted the first European Workshop on NHRIs in 1994. Africa also hosted a series of regional workshops, beginning with a meeting in Cameroon in 1995. NHRIs in the Asia-Pacific region met seven times in the last decade and even established the Asia-Pacific Forum for National Human Rights Institutions, a permanent regional network.

Trans-governmental activism by NHRIs soared following the creation in the early 1990s of a special post devoted to NHRIs under the UN Office of the High Commissioner for Human Rights.¹¹ In 1994, a Coordination Committee for NHRIs was also established, organizing and overseeing all international and regional links between NHRIs. Within certain international organizations like the United Nations, NHRIs are even beginning to acquire formal participatory rights. Just as NHRIs participated as a group at the 1993 World Conference on Human Rights in Vienna, the UN Commission on Human Rights in 1999 granted NHRIs limited rights to participate in relevant meetings from a special section of the floor devoted to “national institutions.”¹² More important than the actual scope of NHRI participation is the fact that these institutions are now being treated as autonomous and enduring actors in international affairs.

Existing studies of NHRIs have not paid critical attention to these trends. While they have introduced a new phenomenon and have outlined valuable empirical material, most research in this area has remained largely ad hoc and descriptive. In part, this reflects the poor quality of data on NHRIs, which is both incomplete and inconsistent. Most studies, therefore, have restricted themselves to describing and evaluating how these institutions

¹¹ Originally labeled the “Coordinator for National Institutions,” the UN head of NHRIs is now known as the “Special Adviser on National Institutions, Regional Arrangements, and Preventive Strategies.” The broader title reflects growing attention to issues of regionalism and prevention in the human rights field, as well as the adoption of more comprehensive mandates.

¹² UN General Assembly, “National Institutions for the Promotion and Protection of Human Rights,” *Report of the Secretary-General*, 9 September 1999 (A/54/336). Debates nonetheless continue over the exact nature of NHRI membership in the United Nations. Specific disputes exist over whether NHRIs should be direct participants in international bodies, enjoy observer status, or have a status comparable to that of specialized agencies.

can contribute to broader goals, such as treaty implementation and democratic governance.¹³ Few, if any, attempts have been made to assess the impact of these institutions. Instead, the dominant tendency has been to glean the influence of NHRIs from their characteristics. Analysts have inferred, for example, that an institution with limited jurisdiction, weak powers of investigation, or few resources is automatically ineffective. By conflating institutional attributes and impact, researchers in this area have overlooked the possibility that institutional outcomes can be diffuse and unintended. In addition to examining systematically why these institutions are created, we need therefore to begin exploring more fully the impact of NHRIs. This paper does not address fully all of the weaknesses in the nascent literature on NHRIs. Rather, my aim is to provide a preliminary overview of NHRIs, synthesizing a wide array of material and laying the groundwork for more systematic and comparative analysis. I begin by defining some key terms and tracing global trends in the proliferation of NHRIs.

¹³ Gallagher, "Making Human Rights Treaty Obligations a Reality"; and Reif, "Building Democratic Institutions."

THE NEW INSTITUTIONAL LANDSCAPE

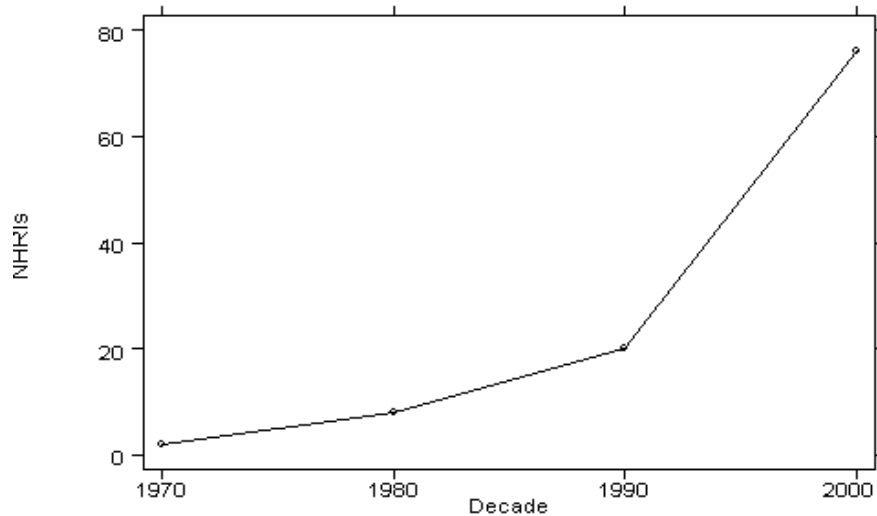
One of the most noteworthy features of NHRIs is the fact that their numbers have grown phenomenally in recent years. While data in this area is only preliminary, there are approximately 300 to 500 NHRIs around the world, not including sub-national human rights institutions. As Figure 1 shows, the number of national human rights commissions alone, which may be the most popular type of NHRI, has at least quadrupled since 1990.¹⁴ No region in the world is exempt from this trend, and very few NHRIs existed before the 1970s.

What explains the sharp proliferation of NHRIs, especially in the last decade? Globally, the growth of national institutions coincides with the end of the Cold War and the strengthening of international human rights mechanisms, what Thomas Risse and Kathryn Sikkink refer to as a change in “world time.”¹⁵ Domestically, some may attribute the rise in NHRIs to a global wave of democratization that has swept international human rights norms into the domestic sphere. While both global and domestic trends have surely facilitated the vast increase in NHRIs, I propose that the diffusion of NHRIs would not have been possible without the active support of a wide range of transnational actors, including the United Nations, international and domestic

¹⁴ This includes both traditional human rights commissions and ‘hybrid’ institutions, which are a mix of standard commissions and offices of the ombudsman. These differences are clarified below.

¹⁵ Thomas Risse and Kathryn Sikkink, “The Socialization of International Norms into Domestic Practices,” in *The Power of Human Rights*.

Figure 1 – The Proliferation of National Human Rights Commissions, 1970-2000



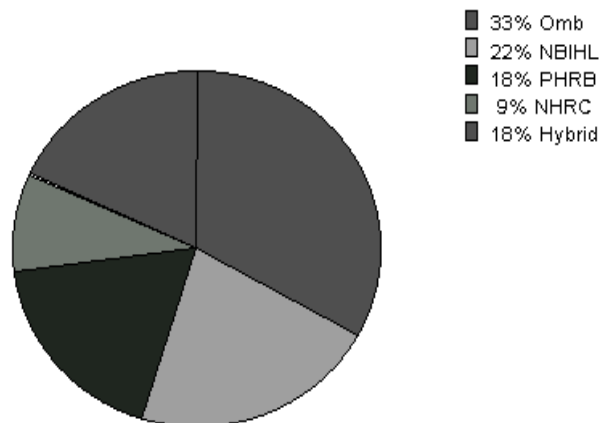
human rights NGOs, as well as foreign governments like Canada and Australia.¹⁶ As subsequent case studies detail, these actors have helped to diffuse national institutions by promoting international standards vigorously and providing concrete technical assistance. In the remainder of this section, I describe the contours of these new institutions.

¹⁶ I review the role of the United Nations in promoting NHRIs in "Global Norms: The United Nations and National Human Rights Institutions," Paper Presented at the Academic Council of the United Nations System/American Society of International Law Workshop, University of Warwick, Summer 2000.

TYPES OF NATIONAL HUMAN RIGHTS INSTITUTIONS

Any analysis of NHRIs should disaggregate the various types of national institutions. Most broadly, NHRIs can include the following bodies: 1) ombudsman offices 2) national human rights commissions 3) hybrid institutions, combining elements of an ombudsman and national commission 4) specialized human rights commissions, devoted to protecting the rights of vulnerable groups like children or indigenous people 5) parliamentary bodies devoted to human rights issues and 6) national bodies devoted to implementing international humanitarian law. Figure 2 uses preliminary data to show a breakdown of the various NHRIs.

Figure 2 – Types of National Human Rights Institutions



Omb. = Ombudsmen
NBIHL = National Bodies for International Humanitarian Law
PHRB = Parliamentary Human Rights Bodies
NHRC = National Human Rights Commissions
Hybrid = Hybrid Institutions (Ombudsmen + NHRCs)

It should be noted that not all observers agree on this categorization of NHRIs. For example, the United Nations classifies NHRIs almost exclusively in terms of national ombudsmen and commissions, while the World Bank also treats parliamentary bodies as NHRIs. But the rationale for differentiating between the five types of NHRIs should be clear from the following brief descriptions.

- The ***national ombudsman*** is the oldest type of institution, predating the rise of international human rights regimes after World War II. In contrast to other NHRIs, ombudsmen do not have explicit human rights mandates. Rather, their principal function is to investigate allegations of “maladministration” by public officials and then play a largely advisory role. There are about 75 ombudsmen in the world.¹⁷
- ***Parliamentary human rights bodies*** can differ widely in their mandates, but they tend to undertake a broad range of functions, including: monitoring human rights conditions, overseeing government implementation of human rights treaties, assisting in the development of national human rights plans, cooperating with local human rights groups, and conducting domestic campaigns. Brazil, for example, has a relatively independent-minded parliamentary human rights committee, one of the earliest and most active in Latin America. In Eastern Europe, Slovenia’s Committee for Petitions works on issues of government compliance as well as social campaigns. There are approximately 50 parliamentary human rights bodies worldwide.¹⁸

¹⁷ Reif, “Building Democratic Institutions”; and information provided by the International Ombudsman Institute at the University of Alberta, Canada.

¹⁸ Inter-Parliamentary Union, *Parliamentary Human Rights Bodies: World Directory 1998* (Geneva: IPU, 1998).

- ***National bodies devoted to international humanitarian law*** typically are not treated as NHRIs, yet a closer look at these institutions suggests that perhaps they should be included in this category. These national bodies tend to be inter-agency advisory organs, which include representatives of the Red Cross and are mandated to apply international humanitarian law. They advise governments, conduct studies and disseminate information, as well as coordinate activities with relevant NGOs. There are over 60 of these institutions in the world, and their proliferation mirrors the broader trend in NHRIs, with most dating to the 1990s.¹⁹ Their recent diffusion is all the more remarkable given the longstanding nature of international humanitarian law.
- ***National human rights commissions*** (NHRCs) are institutions charged explicitly with protecting and promoting human rights norms. To this end, NHRCs can monitor government compliance with international norms, complement the role of the judiciary, as well as investigate and help to resolve human rights claims. Additionally, almost all NHRCs engage in training and education, with the aim of socializing domestic actors and thereby preventing future violations. NHRCs, which number about three dozen, are discussed at much greater length later in the paper.
- ***Hybrid institutions*** are a mixture of national ombudsmen and human rights commissions, sometimes the product of national ombudsmen that have had human rights responsibilities grafted onto their mandates. Examples of these hybrid institutions (or “quasi human rights commissions”) include Ghana’s Commission on Human Rights and Administrative Justice, the Palestinian Citizens’ Rights Commission, and Russia’s Plenipotentiary for Human Rights.

¹⁹ “National Implementation Database,” International Committee of the Red Cross.

Hybrid human rights institutions have been especially prevalent in Latin America and Iberia. Both Spain (1978) and Colombia (1991), for example, have hybrid human rights institutions that carry the name of *Defensores del Pueblo*, or Defenders of the People. Adding to the confusing terminology, some institutions, such as Mexico's National Human Rights Commission, are considered hybrid institutions, even though their names suggest they are standard commissions. Complicating the picture even further, some organizations, including those in Hong Kong, Pakistan, and Kenya, go by the name of a human rights commission but are in fact non-governmental bodies. There are perhaps over 60 hybrid institutions.²⁰

Some of the confusion over categorizing NHRIs stems from the fact that several national institutions can co-exist in the same country. In both South Africa and New Zealand, for example, ombudsman offices exist alongside national human rights commissions. South Africa has, in addition to an ombudsman and a national commission, a "public protector" and two parliamentary human rights bodies. Further afield, Bosnia-Herzegovina has a Human Rights Ombudsman as well as a Human Rights Office (i.e., commission), while Hungary has a Parliamentary Commissioner for Civil Rights and another one for "national and ethnic minority rights." Some national commissions, such as the Indian and Canadian National Human Rights Commissions, are federal systems with a complex web of sub-national commissions.

The plethora of NHRIs presents both opportunities and challenges for the domestic implementation of international norms. On the one hand, the rise of these new human rights actors raises the domestic profile of human rights issues. On the other hand, the proliferation of often overlapping institutions introduces a host of coordination problems

²⁰ Hatchard, "National Human Rights Commissions in the Commonwealth"; and Reif, "Building National Institutions." In the remainder of the paper, information about specific NHRIs is from a variety of sources, unless otherwise specified.

for local authorities. Thus, it is not surprising that many of the debates surrounding the creation of NHRIs often concern questions of jurisdiction and institutional overlap. In Cambodia, for example, an ongoing debate over creating a human rights commission revolves largely around the extent to which the country needs yet another national institution. In a country that already has human rights commissions in the national assembly and senate, as well as an executive national human rights committee — institutions that are all more or less politicized and ineffective — local observers cannot help but question why they should create a national commission *per se*.²¹ Other national debates have surfaced over the compatibility of overlapping NHRIs. The United Kingdom, for example, debated the desirability of having a national commission in an already cluttered institutional landscape. Largely out of concern for older and related institutions like the Equal Opportunities Commission and the Commission for Racial Equality, that country rejected a proposal in the late 1990s to create a broad-based national human rights commission.²²

Where does the United States fit into this scheme? The United States does not have a national institution devoted to protecting and promoting international human rights norms domestically. Local human rights commissions do exist (including in Alaska, Illinois, and New York), as do civil rights commissions, but these institutions tend to have a relatively narrow mandate and focus primarily on issues of non-discrimination.²³ New York City’s Commission on Human Rights, for example, has existed since 1962, is procedurally similar to other human rights commissions, and receives regular visitors from the United Nations and international human rights NGOs.²⁴ Apart from local commissions, the United States

²¹ Kek Galabru, “Is It Time for an Independent Rights Commission?” *Phnom Penh Post* (7-20 January 2000).

²² I thank Christine Chinkin for drawing my attention to this debate.

²³ See, for example, Claude Defour, “State and Local Human Rights Commissions: Symbolic or Effective Institution? The Case of Sexual Orientation,” Paper delivered at the Annual Meeting of the American Political Science Association (Washington, D.C., August 1997).

²⁴ The institutional precursor to New York’s Commission was founded in 1955.

does have the equivalent of national human rights bodies — namely the State Department's Bureau of Democracy, Human Rights, and Labor and the House of Representatives' Subcommittee on International Operations and Human Rights — although these institutions are devoted almost entirely to promoting human rights through foreign rather than domestic policy.

GLOBAL DYNAMICS

Which types of countries are most likely to have an NHRI? If human rights institutions are proliferating globally, are certain states more likely than others to create these institutions? I examined the role of eleven factors that might affect the creation or impact of NHRIs: level of state repression, protection of women’s rights, human rights NGOs, democratic governance, rule of law, trade dependence, respect for economic and social rights (human development), national economic strength (gross national product), population size, human rights treaties ratified, and the rate of state reporting to treaty bodies.²⁵ These factors represent a broad range of variables, often considered to be key determinants or indicators of human rights behavior. The findings reported below reveal which factors are related most closely to NHRIs.

I collected basic data on most NHRIs of the world, including national human rights commissions and ombudsman offices, parliamentary human rights bodies, and national bodies for international humanitarian law. For each country of the world, and using data from 1998, I recorded whether any type of NHRIs existed. I then determined the average score (prior to 1998) for each of the eleven factors listed above, comparing states with and without NHRIs. Table 2 shows the difference in these average scores between countries with and without NHRIs, as well as the results of a test of statistical significance. For purposes of comparison, Table 2 also provides a basic index figure. This figure measures the difference in average scores between countries with and without NHRIs as a proportion of the maximum score for any given factor. The smaller the index figure, the less consequential the variable and vice versa.

²⁵ Data on women’s rights is from the “Women’s Economic and Social Human Rights Index” (Clair Apodaca); ‘level of repression’ is from the widely used Purdue University Political Terror Scale (PTS); data on human rights NGOs is from Human Rights Internet (Ottawa); ‘degree of democracy’ is based on the Polity Data Project; ‘the rule of law’ is a six-point index provided by the International Country Risk Guide; human rights treaties ratified and data on state reporting is from the United Nations Human Rights Database; the Human Development Index

Table 1 — National Human Rights Institutions: Potential Sources

	Gap between States with Without NHRIs^a	Comparative Index
<i>Level of Democracy</i> (10-point scale)	3.04**	.30
<i>Treaty Ratification</i> (Maximum = 6)	1.60**	.27
<i>Submission of State Reports (%)</i>	20.08**	.20
<i>Population Size</i> (log) ^b	1.52**	.19
<i>National NGOs</i> (log)	1.15**	.18
<i>Trade Dependence</i> (10-point scale)	.98**	.10
<i>Gross National Product</i> (\$ per capita)	3149.68**	.07
<i>Protection of Women's Rights</i> (7-point scale)	.39**	.06
<i>Human Development Index</i> (1-point scale)	.07**	.01
<i>Level of Repression</i> (5-point scale)	.07	—
<i>Rule of Law</i> (10-point scale)	.51	—

^a Since the various factors examined are all measured in different units, a comparative index is provided. For details on the data, consult sources in f.n. 25.

^b Population size and NGOs are both logged (i.e., the natural logarithm) to take into account the effects of a skewed distribution.

** p < .01 (one-tailed test)

is provided by the United Nations Development Program; data on population size, trade dependence (trade openness index), and GNP per capita are all from World Bank sources.

There are several noteworthy findings. Of all the factors examined, only two proved to be statistically *insignificant*: level of repression and rule of law. These variables do not differ across states with and without NHRIs. Put differently, both highly repressive states and those with weak rule of law systems create NHRIs. In stark contrast, the level of democracy was the most important factor examined. In a widely used ten-point democracy index, countries with NHRIs scored three points higher than those without NHRIs. Likewise, states with NHRIs have ratified about one-third more international human rights treaties than states without NHRIs. And on average, states with NHRIs submit more reports to human rights treaty bodies, with a reporting rate that is 20 percent higher than states lacking an NHRI.

Several economic factors were also significant. Just as states with NHRIs generally have larger populations than those without NHRIs, states with a human rights institution depend more heavily on foreign trade. Population size nonetheless remains more closely related to NHRIs than trade dependence. Additionally, national economic power (measured in terms of gross national product per capita) is significant, although somewhat less so than trade dependence. Countries with NHRIs tend to have a GNP per capita that is over 3000 dollars higher than countries without NHRIs. Given the vast disparities in GNP per capita, however, this difference is not substantial.

Other potentially significant factors include the number of human rights NGOs in a country and the level of protection for women’s rights. States with NHRIs, versus those without these institutions, have a higher number of NGOs devoted to human rights issues. States with NHRIs also tend to protect women’s economic and social rights to a greater extent than other states. Likewise significant, though less so, is a country’s level of human development, which students of human rights use as an indicator of respect for economic and social rights. In fact, the difference in the Human Development Index for states with and without NHRIs was minimal, scoring less than one percent.

Since data on NHRIs is limited, these findings are mostly suggestive. They identify which factors may be causally important; but they do not establish a causal relationship between these factors and the creation of NHRIs. The findings do provide clues about the relative importance of different factors. In particular, the dominant role of democracy is striking, since much of the literature on NHRIs focuses on the democratizing *effects* of NHRIs. This research shows instead that states that create NHRIs are, on balance, already more democratic. This does not mean that less democratic states do not create NHRIs. Indeed, over 13 percent of all states in the world with NHRIs rank in the bottom third of the democracy scale. Nor do the findings suggest that NHRIs cannot bolster existing processes of democratization. These dynamics only caution us to realize that, if democratization often follows rather than precedes the creation of NHRIs, arguments about how NHRIs enhance democratic governance may in some cases be more spurious than real.

The findings therefore reveal, on the one hand, that states creating NHRIs share the following characteristics: they tend to be more democratic, have ratified a greater number of treaties, report more frequently to treaty bodies, and show greater respect for social and economic rights, especially those of women. On the other hand, the findings do reveal that even highly repressive states and those with weak rule of law systems create NHRIs. Still more broadly, states with NHRIs tend to have a higher concentration of human rights NGOs; and they are larger, wealthier, but also depend more heavily on foreign trade. In sum, states have an interest in creating NHRIs, whether because they face human rights pressure (in the case of repressive states) or because their domestic institutions already converge with international human rights norms.

THE SCOPE OF NATIONAL COMMISSIONS

I focus in the remainder of this paper on national human rights commissions (NHRCs) and hybrid institutions. In addition to dealing most directly with human rights issues, national commissions have become key targets of international activity in this area.²⁶ While conforming largely to international standards, NHRCs can vary along several dimensions. Both the United Nations and some NGOs, for example, have adopted explicit criteria to evaluate NHRCs. They have emphasized how NHRCs can differ in terms of their independence, jurisdiction, accessibility, external relations, operational efficiency, and accountability. Building on these criteria, I review below three distinct ways in which NHRCs can vary: authority, mandate, and functions.

National commissions derive their formal authority from a range of organizational sources. These commissions are created more often than not by statutory law or a national constitution, although some originate in presidential decrees. National commissions can even be the product of internationally brokered peace deals. The UN-sponsored peace agreement in El Salvador in 1992 opened the way for including NHRCs in peace-building initiatives. Subsequently, the Dayton Agreement and the Paris Peace Accords of 1995 stipulated that NHRCs be created in Bosnia-Herzegovina. Parallel efforts characterized the Guatemala peace accords of 1996, the Good Friday Agreement of 1998 for Northern Ireland, as well as the Lome Peace Agreement for Sierra Leone in 1999. In a similar vein, both the

²⁶ I exclude the traditional ombudsman because this is a much older institution that does not necessarily address human rights issues directly. I also exclude specialized commissions, since these are too narrow in their focus and may not be permanent bodies. Likewise, I omit national bodies dealing with international humanitarian law because of their frequent overlap with national commissions, strong ties to the International Committee of the Red Cross, and their noteworthy absence in discussions of NHRI.

United Nations Mission in East Timor (UNTAET) and the OSCE Mission in Kosovo included NHRCs in their agendas.²⁷

National human rights commissions can also vary in their mandate, or jurisdiction, which often reflects the prevailing human rights abuses in a country. Some human rights commissions focus narrowly on issues of equal opportunity and non-discrimination. Examples of these institutions are found mostly in Commonwealth countries and include New Zealand's Human Rights Commission (1971), the Canadian Human Rights Commission (1978), and Australia's Human Rights and Equal Opportunity Commission (1986).²⁸ Other institutions, such as the Philippines' Commission on Human Rights, address all internationally recognized human rights norms. Still others limit the scope of their activities in very specific ways. For instance, both the Canadian and Mexican National Human Rights Commissions exclude land disputes from their jurisdictions, while this issue comprises the bulk of cases handled by Indonesia's National Human Rights Commission. Traditionally NHRCs, like most international human rights bodies, have focused on civil and political rights, but increasingly — and spurred by a 1998 U.N. document outlining the role of NHRCs in this area — attention is being paid to the role of NHRCs vis-à-vis economic, social, and cultural rights.²⁹

Finally, human rights commissions can differ depending on how well they fulfill their key functions of protecting and promoting human rights norms. Though these functions tend to be defined broadly, a survey of U.N. and other documents reveals that they can be classified according to whether they are regulative or constitutive.³⁰ Regulative

²⁷ Reif, "Building Democratic Institutions," 13-16.

²⁸ On the Canadian Commission, see John Hucker, "Antidiscrimination Laws in Canada: Human Rights Commissions and the Search for Equity," *Human Rights Quarterly* 19 (1997): 547-571.

²⁹ UN Economic and Social Council, "The Role of National Human Rights Institutions in the Protection of Economic, Social, and Cultural Rights, 10 December 1998 (E/C.12/1998/25).

³⁰ These dual functions are based on the distinction between regulative and constitutive types of norms. For the application of this distinction in international relations, see David Dessler, "What's at Stake in the Agent-Structure Debate?" *International Organization* 43 (Summer 1989): 454-58; and Friedrich Kratochwil, *Rules, Norms,*

functions are those that focus on eliciting conformance with international norms and rules. Constitutive functions are those intended to transform the identity of state or societal actors. On the regulative side, all national institutions undertake multiple and often overlapping functions in three important spheres: government compliance (agenda-setting), relations with the judiciary (representation and rule creation), as well as independent investigation (accountability). On the constitutive side, the list of functions is shorter but perhaps more fundamental, comprised of domestic socialization and international cooperation. International standards thus provide NHRCs with an impressively vast, some might say overly vast, array of activities.

AGENDA-SETTING

In eliciting government compliance, NHRCs can help to redefine the political agenda. Accordingly, they can serve as general advisers on human rights issues, encourage governments to ratify treaties, and review proposed legislation. NHRCs also assist governments in preparing state reports for treaty bodies. Rather than drafting these reports directly, which would undermine their requisite independence, NHRCs tend to share their own reports and expertise with governments. Still more broadly, NHRCs often cooperate with governments in devising national human rights action plans.

REPRESENTATION AND RULE CREATION

A related task of national institutions is to complement other branches of government, especially the role of the courts. In this regard, NHRCs engage in both representation and rule creation. In representing the interests of human rights victims, NHRCs can assist victims in seeking legal redress, refer human rights cases to national tribunals, and contribute to national human rights jurisprudence. In some cases, NHRCs may receive evidence in affidavits and participate in legal proceedings, including litigation. In still other

and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs (Cambridge: Cambridge University Press, 1989).

cases, NHRCs are empowered to issue codes with statutory force and to submit amicus briefs. Some national commissions thus create rules that other state agencies are required to follow. While not all NHRCs engage in both representation and rule creation, they all supplement the work of other state agencies in implementing international norms.

ACCOUNTABILITY

NHRCs can also play an independent role in regulating compliance. One of the key ways in which they do this is by holding the government accountable for existing or past violations. This entails, above all, accepting and investigating complaints of human rights abuse. In the course of investigating complaints, many NHRCs can inspect facilities, compel documents or information to be produced, and examine witnesses. When broader types of abuse, such as those involving economic and social rights are at stake, NHRCs sometimes initiate a general public inquiry in lieu of a specific investigation. Following an investigation, NHRCs can mediate between parties in a human rights conflict or perhaps submit the dispute to arbitration. Some national institutions can even issue binding resolutions (e.g., Uganda Human Rights Commission) and award victims compensation (e.g., the Australian Human Rights and Equal Opportunities Commission). Almost all NHRCs compile regular reports detailing their work and broader state practices.³¹

SOCIALIZATION AND COOPERATION

NHRCs perform two basic sets of constitutive activities. The first consists of socialization, namely attempts to diffuse international human rights norms domestically by means of the media, grassroots campaigning, and educational forums. This can include training agents of the state apparatus. Socialization also consists of establishing and strengthening ties with domestic NGOs, a task that many NHRCs increasingly emphasize even while neglecting it in practice. A second set of constitutive activities moves beyond local socialization to

³¹ I draw on a variety of sources in this section, but have benefited most from the work of Hatchard, "National Human Rights Commissions in the Commonwealth."

address issues of international cooperation. The objective here is to forge common interests with, and links to, other NHRCs around the world. Both sets of constitutive functions are premised on the assumption that socially sanctioned NHRCs, and the human rights culture they help engender, can prevent human rights abuses and lead to sustainable human rights reform.

Comparing NHRCs raises important questions about institutional creation and influence. Given their potentially far-reaching and transformative influence, why are so many governments around the world bothering to create these institutions, especially governments engaged in persistent and even egregious human rights violations? Furthermore, since governments can limit their authority and mandate, what is the actual impact of these institutions? I turn now to these questions in an examination of NHRCs across the Asia-Pacific region.

THE ASIAN CONTEXT

Asia is unique in the domain of international human rights law: it is the only major region of the world that does not have a multilateral human rights treaty or commission.³² This anomaly notwithstanding, the region has seen in recent years the proliferation of NHRCs. By mid-2001, there were eight of these national commissions in the Asia-Pacific region: the Philippines (created in 1987), India (1993), Indonesia (1993), Sri Lanka (1997), Fiji (1999), Malaysia (2000), Nepal (2000), and Thailand (2000). Concrete plans were underway in at least six other Asian countries to establish similar commissions: Bangladesh, Cambodia, Japan, Mongolia, Papua New Guinea, and South Korea. Within the region, a strong network of national human rights commissions was formed, propelled by the creation in 1996 of the permanent Asia-Pacific Forum for National Human Rights Institutions. This Forum is comprised of the region's commissions and is devoted to enhancing regional cooperation among NHRIs.

Despite a global rise in national human rights commissions since the 1990s, their emergence in Asia may appear surprising. In addition to being the only region without a human rights treaty or commission, the human rights debate in Asia has traditionally questioned the appropriateness of Western standards for a non-Western context. This 'Asian values debate' has included, for example, disagreements over the primacy of social, economic, and cultural rights versus civil and political rights.³³ Yet the sharp rise of national

³² Sidney Jones, "Regional Institutions for Protecting Human Rights in Asia," *Australian Journal of International Affairs* 50 (1996): 269-77.

³³ Daniel A. Bell, *East Meets West: Human Rights and Democracy in East Asia* (Princeton: Princeton University Press, 2000); and Joanne R. Bauer and Daniel Bell, eds., *The East Asian Challenge for Human Rights* (New York: Cambridge University Press, 1999).

human rights commissions in Asia challenges conventional assumptions about cultural relativism, or the compatibility of international human rights norms across cultural contexts. In contrast to other regions, the spread of national commissions suggests that the preferred response of national leaders in Asia to a human rights challenge has been to alter domestic political structures. Put differently, they seem to have conceded “domestic” sovereignty at the same time that they have been reluctant to accept a loss of “Westphalian” sovereignty, and the jurisdiction of regional structures of authority that might entail.³⁴

I examine primarily the human rights commissions of the Philippines, Indonesia, and India. In addition to being the longest standing national human rights commissions in the region, the creation of all three commissions has been strikingly similar despite important differences in national structure. After assessing the international origins of these commissions, I probe their impact by zeroing in on India’s National Human Rights Commission (NHRC).

³⁴ Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).

INTERNATIONAL ORIGINS OF NATIONAL INSTITUTIONS

It is part of the conventional, though unexamined, wisdom that human rights commissions have been created in Asia mostly to appease international audiences. The Asian Legal Resource Center noted before the UN Human Rights Commission in mid-1999 that governments in the region have used national commissions largely to enhance their international images.³⁵ Another Asian NGO has observed that, "whether for good or ill, setting up a National Human Rights Commission is clearly in fashion for the Governments of the region."³⁶

As the first three national human rights commissions created in the Asia-Pacific region, NHRCs in the Philippines, Indonesia, and India have existed long enough to evaluate them meaningfully. Perhaps more importantly, these three countries are very different domestically, varying in terms of both their political regimes and social histories. The Philippines created its human rights commission in the 1980s, in the context of democratization, and India's has unfolded under the aegis of a longstanding democracy; Indonesia, in turn, is an example of an authoritarian regime that has created and supported a human rights commission. These countries also vary substantially in terms of "national culture," evident in their diverse religious traditions and colonial histories. While the Philippines is a predominantly Catholic country, India is largely Hindu and Indonesia stands as the world's most populous Muslim country. Regarding colonial legacies, Spanish

³⁵ Sanjeewa Liyanage, Asian Legal Resource Center, Statement before the U.N. Commission on Human Rights. United Nations Press Release, 21 April 1999, HR/CN/99/51.

³⁶ South Asia Human Rights Documentation Center (SAHRDC), *National Human Rights Institutions in the Asia Pacific Region: Report of the Alternate NGO Consultation on the Second Asia-Pacific Regional Workshop on National Human Rights Institutions* (New Delhi: SAHRDC, 1998), 2.

rule over the Philippines and British dominance in India contrast with Dutch control of Indonesia.

Yet despite these important differences in political and social context (Table 2), differences that observers often link to national human rights practices, the international origins of all three commissions have been remarkably similar. International actors, in particular, have portrayed the establishment of national human rights institutions as desirable and viable options for a wide range of states. It is highly unlikely, as I will argue, that in the absence of several interlocking international factors — international standards defining what a national commission is and what it should look like, international actors promoting the concept of a human rights institution and equipping states with relevant technical resources, as well as diffuse linkages between international economic relations and human rights concerns — we would be witnessing the proliferation of these commissions. My argument, however, is not that international actors alone can explain all aspects of the creation and strengthening of NHRCs. On the contrary, I contend that domestic factors played a critical role in this process. A change in government, the individual commitment of national leaders, and the presence of non-state human rights groups all facilitated the development of these commissions. Different regime types, as I discuss below, may have faced incentives to structure their commissions in diverse ways, endowing them with different measures of authority and types of mandate (Table 2). While the particular international-national dynamics that I discuss do not explain the creation of all NHRCs, they do suggest why even states with strong records of human rights violations create these commissions.

Table 2 — A Comparison of National Human Rights Commissions in Asia

Criteria	The Philippines	Indonesia	India
<i>Date of Creation</i>	1987	1993	1993
<i>Political Regime</i>	Democratizing	Non-Democratic	Democratic
<i>Social Context</i>	Catholic majority; former Spanish & American colony	Muslim majority; former Portuguese & Dutch colony	Hindu majority; former British colony
<i>Source of Authority</i>	National constitution	Presidential decree	Legislative statute
<i>Mandate/ Jurisdiction</i>	Full range of human rights	In principle, full range of rights; in practice, mostly economic and social rights	Civil & political rights mostly; excludes military from jurisdiction

THE PHILIPPINES

International actors were influential both in creating the Philippine Commission on Human Rights in 1987 and in initiating its major reform in 1998. While human rights issues were central to President Corazon Aquino’s campaign platform, her public commitment alone cannot explain why a national human rights commission was one of the key ways her administration implemented that agenda. After all, her first choice was to create a Presidential Committee on Human Rights, the principal purpose of which would be to investigate abuses committed by the Marcos regime. The eventual Human Rights Commission that the 1987 constitution established, in turn, strongly resembled international guidelines for the creation of such institutions.³⁷

The Philippine Commission was created before the dramatic and global increase of national human rights institutions in the 1990s, yet there is strong evidence that the idea for creating a human rights *commission* rather than another type of institution, was driven largely by international norms. While there is no direct evidence that committee members charged with drafting the constitution were aware of these norms, the structure and functions of the Philippine Commission were designed in a way that all too closely resembled international guidelines. Not only did the functions and structure of the new Philippine Commission mirror the model outlined in the 1977 Geneva Principles on national human rights institutions, but its language also resembled the standards raised in a UN

³⁷ Francisco Nemenzo, “People’s Diplomacy and Human Rights: The Philippine Experience,” in James T.H. Tang, ed., *Human Rights and International Relations in the Asia-Pacific Region* (London: Pinter, 1995); SAHRDC, *National Human Rights Institutions in the Asia Pacific Region*, 47-52; Paulynn Sicam, “The Work of the Philippines Commission on Human Rights,” Workshop on Human Rights Education and National Institutions (Jakarta, 18-21 March 1997); and Anja Jetschke, “Linking the Unlinkable? International Norms and Nationalism in Indonesia and the Philippines,” in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

General Assembly resolution issued the previous year in December 1986 (Resolution 41/129), a resolution that was the most important UN statement on the subject of national human rights institutions in years and one that was issued at the precise moment when the Philippines' new constitution was being drafted. The decision to create the Commission also followed the formation only a year earlier of Australia's National Commission, one of its regional neighbors, a development that may have made constitutional drafters aware of this institutional option.

To be sure, the creation of a national commission in 1987 was an idea that resonated nationally. In the aftermath of human rights atrocities committed under the Marcos government, human rights issues served as the coalitional glue holding Aquino's regime together. Nor can domestic initiative be discounted entirely, since at the time of its creation no other national human rights commission in the world was constitutionally mandated. Indeed, when the Philippine Commission on Human Rights was created it was viewed as ushering in "a new phase in the growth of national institutions in developing countries."³⁸ Furthermore, the strength of civil society in the Philippines may explain why the Commission has emphasized its promotional functions. As observers elsewhere have noted, the donor-driven nature of many Philippine NGOs, might also account for why the Commission has been relatively successful in co-opting them.³⁹

Unlike in other countries, moreover, it is true that international actors did not define a human rights problem for the regime and then provide it with a solution in the form of a human rights commission. International actors instead offered standards that were deemed appropriate for the country's return to democratic rule. Yet the underlying logic for creating a human rights commission was the same: in the absence of international standards and support for national human rights institutions, there is little reason to think that the Philippines would have created a national commission when it did.

³⁸ Canadian Human Rights Foundation, *Working with National Human Rights Institutions Overseas: The Role of Canadian Expertise and Resources* (Ottawa: CHRF, 1998), 8.

³⁹ Ravi Nair, Personal Interview (New Delhi, March 2001).

Democratization itself may have mattered, but perhaps it explains best the Commission’s broad mandate. Just as some scholars argue that the need on the part of democratizing states to reduce uncertainty over future political outcomes leads them to undertake greater international human rights cooperation, different types of regimes may face incentives to structure national commissions in varied ways.⁴⁰ As members of a democratizing regime that emphasized human rights issues, Philippine leaders may have decided to reduce future uncertainty by giving the Commission a broad mandate, far broader than that enjoyed by the commissions of either democratic India or authoritarian Indonesia. Such a mandate would help the regime consolidate its human rights agenda while enhancing the credibility of national leaders.

Beyond playing a substantial role in the Commission’s creation, international actors were essential in eliciting subsequent reform, including shaping the content of the 1998 Commission on Human Rights Act. Only two years earlier, Amnesty International had issued a critical report on the inadequacy of the national commission, especially regarding ‘disappearances.’⁴¹ Again, the substance of the 1998 reform mirrored closely the specific criticisms raised by international actors like Amnesty. For example, just as Amnesty emphasized the failure of the Commission’s “quasi-judicial functions,” the 1998 Act extended the Commission’s powers to “give teeth to its quasi-judicial functions.”⁴² The reform coincided with a change in government, and occurred only after a substantial reduction in armed conflict earlier in the decade, but the particular content of the reform law matched international recommendations too closely to be coincidental.

There were also international economic incentives for the Philippines to adopt a national commission. In fact, at every juncture, when the regime has faced a choice to create

⁴⁰ Andrew Moravcsik, “The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe,” *International Organization* 54 (Spring 2000): 217-52.

⁴¹ Amnesty International, *The Philippines — Not Forgotten: The Fate of the “Disappeared”* (London: Amnesty Publications, 1996).

⁴² House of Representatives, Republic of the Philippines, House Bill No. 5039 (Manila, 1998), Section 9.

a national commission or to strengthen its existing one, international economic pressures have constrained the government's options. In the 1980s, the new Aquino regime depended on the United States and international actors both for legitimacy and foreign funds, and was in the process of negotiating with international financial institutions like the International Monetary Fund.⁴³ Similarly, in the 1990s, as the country's economy was deteriorating under the weight of the Asian financial crisis, institutionalizing human rights norms certainly could not have hurt the regime internationally. Doing so by creating a political commission permitted the regime to play a leadership role vis-à-vis this emerging institutional form while retaining national control over human rights issues.

The alternative argument that Aquino was the principal architect of the Commission itself is overdrawn. In fact, President Aquino appears to have preferred creating a presidential human rights committee with a much narrower mandate. Indeed, when the Human Rights Commission failed to live up to its hopes, she returned in 1989 to her initial option of creating a Presidential Committee on Human Rights.⁴⁴ The president's personal commitment was certainly a strong factor in the creation of a national commission, but in the absence of international factors — manifest in the close similarity between the structure and functions of the Commission on Human Rights and international norms; crucial regional and international developments at the time, such as Australia's creation of a national commission and an important UN document; and the Philippines' dependence on international economic sources — a national commission would not have been created in 1987 nor reformed in the particular way that it was ten years later. Significantly, the Philippine regime had other options that it chose to forego when it created and strengthened the National Commission. Governments in the Philippines may have welcomed a national commission as a tool of democratization, but the idea for a national commission was borrowed directly from the international context.

⁴³ Nemenzo, "People's Diplomacy and Human Rights."

⁴⁴ International Commission of Jurists, "Commission and Committees on Human Rights," in *The Failed Promise: Human Rights in the Philippines since the Revolution of 1986* (Geneva: ICJ, 1991), 250-51.

INDONESIA

In Indonesia, there is little doubt that the creation of the National Commission on Human Rights (or Komnas-HAM, *Komisi Hak Asasi Manusi di Indonesia*) was aimed largely at an international audience. After all, the government of Indonesia announced the creation of the Human Rights Commission at a UN-sponsored human rights workshop in Jakarta in June 1993, exactly one week before the government expected to face criticism at the upcoming World Conference on Human Rights in Vienna. The announcement also came on the heels of the first U.N. Human Rights Commission resolution targeting Indonesia and supported by the United States, as well as following a well-publicized and critical report by the Lawyers Committee for Human Rights. More broadly, the government announced the creation of the National Commission in the aftermath of the November 1991 massacre in Dili, East Timor and an ensuing wave of international human rights pressure that included threats by major aid donors. As one researcher commented, “In response to the increasing pressure from ‘above and below,’ tactical concessions and instrumental adaptation as response began to dominate the action repertoire of the Indonesian government in 1992 to 1993 which restricted its available options for action.”⁴⁵

While observers often trace the creation of the Indonesian commission to the Dili massacre, what is perhaps most interesting about this case is that, even before the massacre, international actors had identified a national human rights institution as an option for the regime. When the massacre presented the regime with an international human rights image problem, the response was to draw on the options that international actors had defined beforehand. Indeed, representatives of the United Nations began calling for the creation of a national commission at a human rights workshop held jointly by Indonesia’s Department

⁴⁵ Jetschke, “Linking the Unlinkable?” 156.

of Foreign Affairs and the United Nations in January 1991, almost eleven months before the events of November 1991.⁴⁶ Observers have claimed that the human rights commission was modeled on a National Commission of Inquiry (*Komisi Penyelidikan Nasional*) that Suharto had set up to investigate Dili and that he did so to fight factionalism within the military.⁴⁷ This may well be correct, but it still overlooks the fact that the United Nations promoted and defined the creation of a human rights institution as a viable option in the first place, and that widespread international condemnation then made the creation of such an institution even more desirable. Furthermore, it was the minister of *foreign* affairs that convened the committee establishing the national commission.⁴⁸

One cannot disregard the non-democratic nature of Indonesia's regime, but this factor may have mattered most in constraining the Commission's role rather than inspiring its initial creation and key changes. Authoritarian rule may explain the principal weaknesses of the Commission, including its conspicuous lack of pluralism, weak regional network, and attachment to a state ideology (*Pancasila*) that in some respects is antithetical to international human rights norms.⁴⁹ While these issues have shaped the Commission in important ways, they alone cannot account for the course of institutional change.

Indeed, international actors played an essential role in efforts to reform Indonesia's Human Rights Commission. Reminiscent of what occurred eight years earlier, the regime in 1999 responded to renewed international pressure following another human rights crisis in East Timor, including the introduction of a UN peacekeeping force, by issuing a Presidential Decree to reform the Commission. The decree, which coincided with continued efforts to

⁴⁶ National Human Rights Commission of Indonesia, "Komnas Ham History," *Annual Report 1994* (Jakarta: Komnas Ham, 1995).

⁴⁷ SAHRDC, *Komnas HAM — The Indonesian Human Rights Commission: The Formative Years* (New Delhi, SAHRDC, 2000), 36-37.

⁴⁸ International Council on Human Rights Policy, "Indonesia," in *Performance and Legitimacy: National Human Rights Institutions* (Switzerland: ICHRP, 2000), 22.

⁴⁹ SAHRDC, *Komnas HAM*.

rebound from financial crisis, called for creating human rights tribunals to try those alleged to have committed gross human rights abuses. While the Decree has since been rejected by Indonesia’s parliament in favor of more comprehensive reform, it is noteworthy that the Indonesian government announced reform of the Commission only after it attracted widespread international condemnation. It is also significant that ongoing efforts to amend the Commission reflect measures that international groups like Amnesty International have advanced. These proposals include re-constituting the Commission according to legislative statute rather than presidential decree and providing the Commission with stronger powers of investigation.⁵⁰

The Indonesian Commission, moreover, has received substantial international assistance, aimed specifically at strengthening the institution. For example, Australia’s Department of Foreign Affairs and Trade has assisted Indonesia’s Commission, especially through projects aimed at strengthening the Commission’s capacity to promote public awareness. Likewise, the Canadian Human Rights Foundation (an NGO) has teamed up with Canada’s governmental Human Rights Commission, to implement a project on institutional human rights capacities in Indonesia, also targeting the Commission’s promotional functions. More broadly, the Commission has benefited from formal contacts with other human rights commissions, such as those of Canada and India, and from meetings with several foreign delegations, including various U.N. representatives. All told, international standards and assistance have left an indelible mark on the creation and strengthening of Indonesia’s human rights commission.

⁵⁰ Amnesty International, *Indonesia: An Audit of Human Rights Reform* (London: Amnesty Publications, March 1999).

INDIA

Many observers have viewed the creation of a national human rights commission in India as an attempt to appease international actors. In 1991 and 1992, as international groups leveled criticisms on the basis of earlier fact-finding missions, and international economic donors referred explicitly to deteriorating human rights conditions, the Indian government began to debate the creation of a national commission, as did major political parties in their bid for parliamentary elections. Important precedents already existed for doing so. India's parliament had created two related national commissions in 1990 (a National Commission for Scheduled Castes and Scheduled Tribes and a National Commission for Women), as well as a National Commission on Minorities in 1992.⁵¹ The state of Madhya itself had erected a human rights commission in 1992.⁵² Regionally, the Philippines had the only human rights commission, but more promised to follow in the wake of the 1993 Vienna Conference on Human Rights.

Both social advocates and government opponents in India viewed the National Commission as internationally inspired. Prominent human rights advocate Ravi Nair portrayed the government's motive in creating the Commission as an effort "to circumvent international scrutiny by stating that they have adequate national institutions to investigate these charges."⁵³ Likewise, a Tamil-based lawyer, Rajeev Dhavan, emphasized the "threat

⁵¹ Charles H. Norchi, "The National Human Rights Commission of India as a Value-Creating Institution," in John Montgomery, ed., *Human Rights: Positive Policies in Asia and the Pacific Rim* (Hollis, NH: Hollis Publishing, 1998), 113.

⁵² V. Vijayakumar, "The Working of the National Human Rights Commission: A Perspective," in C.J. Nirmal, ed., *Human Rights in India: Historical, Social, and Political Perspectives* (Oxford: Oxford University Press, 2000), 215.

⁵³ Ravi Nair, *The New York Times*: A10. Cited in Norchi, "The National Human Rights Commission of India," 114.

that international economic decisions will carry human rights conditionalities.”⁵⁴ India, after all, was considering creating a national commission at the same time that it was negotiating an agreement with the IMF. India’s Home Minister, S.B. Chavan, similarly declared in March 1992 that the proposed Commission would “counter the false and politically motivated propaganda by foreign and civil rights agencies.”⁵⁵ Along the same lines, the Congress Party described the Commission’s potential findings as “a corrective to the biased and one-sided reports of the NGOs” as well as “an effective answer to politically motivated international criticism.”⁵⁶ More colorfully, in a seminar organized by India’s Bar Council to debate the Commission’s creation, Justice V.R. Krishna Iyer described the instrumental nature of the Commission as “an optical illusion, cosmetic coloration, opium for the people at home and brown sugar for countries abroad, a legislative camouflage, a verbal wonder which conceals more than it reveals.”⁵⁷

While India has led the way for other national human rights commissions, both regionally and internationally, it has also benefited from its extensive ties to international actors. Throughout its existence, it has established formal links to groups like Amnesty International, Human Rights Watch, the International Committee of the Red Cross, the International Commission of Jurists, the UN Commissioner for Human Rights, and UNICEF. The Commission regularly receives delegates from various European parliaments, the United States Congress, and Commonwealth human rights institutions.

⁵⁴ Rajeev Dhavan, “More Is Not Always More: Unto Us a Human Rights Commission is Given — But Why?” *Working Paper* No. 18, Public Interest Legal Support and Research Centre New Delhi, May. Cited in Norchi, “The National Human Rights Commission of India,” 116.

⁵⁵ Ministry of Home Affairs, Government of India (n.d.), “Background Note on Setting up of a National Commission on Human Rights—Issues and Tentative Framework.” Cited in Norchi, “The National Human Rights Commission of India,” 116.

⁵⁶ S.B. Chavan, “India: The National Human Rights Commission Bill, 1993,” Report of the Lawyers Committee for Human Rights (New York: Lawyers’ Committee for Human Rights.” Cited in Norchi, “The National Human Rights Commission of India,” 116.

⁵⁷ Vijayakumar, “The Working of the National Human Rights Commission,” 216.

India also cooperates formally with other government commissions, as evident for example in its Memorandum of Understanding with Canada's National Human Rights Commission.

It is true that India has long sought institutional solutions to its human rights problems, but in the absence of international pressure, norms, and cooperation, it is unlikely that India would have created a national human rights commission *per se*.⁵⁸ The Commission's basic standards have mirrored in large part recommendations by both the United Nations and Amnesty International, actors at the forefront of promoting international norms in this area. The democratic and strong legal foundations of the Indian state helped to stack the Commission with a committed and independent set of members, the majority of whom come from the judiciary. Yet strong international influence, in the absence of full governmental commitment and ongoing armed conflict, has meant that India's Commission remains in some ways weak, even in a country with a long tradition of democratic rule.

⁵⁸ Norchi, "The National Human Rights Commission of India as a Value-Creating Institution," 113-14.

OTHER CASES

Similar international-national dynamics are evident in other commissions throughout the region. Nepal announced its intention to create a national human rights commission in 1996, following its suppression of a Maoist uprising and subsequent international criticism.⁵⁹ In Malaysia, none other than the Minister of Foreign Affairs announced in April 1999 that the government would create a national human rights commission. Likewise, the Sri Lankan government announced the creation of a national commission at the United Nations Human Rights Committee in July 1995, when the Committee was reviewing Sri Lanka’s third periodic report on its compliance with the International Covenant on Civil and Political Rights. More recently, in April 1999, the government chose the UN Commission of Human Rights as its forum for announcing a plan to increase the resources and strength of the National Human Rights Commission.⁶⁰

International actors have influenced Sri Lanka by challenging its commitment to human rights norms and offering specific advice about the functioning of its Human Rights Commission. Amnesty International was especially vocal in calling for both the formation and strengthening of the Commission. Following Sri Lanka’s announcement that it would establish a Commission, Amnesty issued a report recommending specific international standards. Immediately after Sri Lanka created the Commission in mid-1996, Amnesty responded to some of the perceived weaknesses of the new Commission by issuing another

⁵⁹ SAHRDC, *National Human Rights Institutions in the Asia Pacific Region*, 2.

⁶⁰ Amnesty International, *Sri Lanka: Torture in Custody* (London: Amnesty Publications, 1999); AI, *Sri Lanka: Scrutiny by the Human Rights Committee* (London: Amnesty Publications, 1995); Mario Gomez, “Sri Lanka’s New Human Rights Commission,” *Human Rights Quarterly* 20 (May 1998): 281-302; SAHRDC, *National Human Rights Institutions in the Asia Pacific Region*, 53-57; and Commonwealth Human Rights Initiative, *The Human Rights Commission of Sri Lanka — The First Year* (New Delhi: CHRI, 1999).

report on Sri Lanka's "wavering commitment" to human rights.⁶¹ The creation of the commission itself benefited from direct technical assistance by the United Nations, which advised Sri Lanka's government on relevant legislative matters. In an effort to reform the young Commission, the United Nations Committee Against Torture also recommended that it be strengthened.⁶²

Likewise, the United Nations Development Program has been assisting the government of Bangladesh since 1996 in laying the foundations for a national human rights commission. This has included providing consultants to assist in drafting legislation and organizing symposia on the subject. Amnesty International has issued reports that call on Bangladesh to apply international standards in creating a national commission. While it remains too early to draw any firm conclusions, international standards and assistance are likely to shape a future human rights commission in Bangladesh.⁶³

In general, international actors have played a crucial role in creating and strengthening national human rights commissions in Asia. Not only have they set and promoted international standards, which have found their way into all national commissions, but they have undertaken an intensive set of activities that includes providing experts, organizing seminars, and offering training in several related areas (e.g., human rights investigation, conflict resolution, and the preparation of studies and evaluations). This support has involved the provision of financial, technical, and organizational skills, or the exact resources that countries seeking to create these institutions often lack.

National human rights commissions may be popular in part because international actors have defined them broadly and on multiple levels: as democratic institutions, signs of commitment to international norms, and emblems of membership in a liberal community of states. By tapping into a cross-section of more basic state interests, national human rights

⁶¹ Amnesty International, *Sri Lanka: Wavering Commitment to Human Rights*, and Amnesty, *Sri Lanka* (1999).

⁶² United Nations, Office of the High Commissioner for Human Rights. [Http://www.unhchr.ch/](http://www.unhchr.ch/)

commissions appeal even to highly diverse states. These commissions thus resonate with democratizing states, such as the Philippines, which are undergoing regime change and seeking to develop their institutional capacities in the area of human rights. At the same time, they appeal to fully democratic and non-democratic states alike, such as India and Indonesia, which violate international human rights norms but want to portray themselves as committed to these norms. International factors therefore explain why even very different states have created such similar national institutions.

⁶³ Amnesty International, *Bangladesh: Proposed Standards for a National Human Rights Commission* (London: AI Publications, 1997); SAHRDC, *National Human Rights Institutions in the Asia Pacific Region*, 4-6; and United Nations, Office of the High Commissioner for Human Rights.

INSTITUTIONAL IMPACT

The international origin of national human rights commissions has shaped their subsequent influence. The three national commissions examined have been unable to enforce their recommendations in the face of concerted government opposition, despite basic differences in organizational authority and mandate. Perhaps most surprising, however, all three commissions have proved to be more influential than initially expected, despite their comparable international origins and weaknesses. By offering a critique of the state from within the state, national commissions are helping to redraw the boundaries of state-society relations.

In all three cases, national governments have curtailed the power of NHRCs, albeit to varying degrees. When government officials have not had an interest in implementing the recommendations of these Commissions, they simply have not done so. And in the context of counter-insurgency campaigns, the military in all three countries has at various times been able to obstruct or ignore the work of the national commissions. Likewise, there have been serious questions about the credibility of individual commissioners, and all three national commissions have failed to hold government officials fully accountable for past violations, despite their public commitment to the contrary. While in some cases they have compensated human rights victims or their families, more often than not they have failed to provide comprehensive forms of redress. Problems of independence, transparency and relations with NGOs bedevil all three commissions.⁶⁴ These basic weaknesses have been common to all three national commissions, cutting across differences in political, social, and organizational structures.

At the same time, NHRCs like India's have been influential, in some cases surprisingly so; but this influence has taken very specific forms. In the remainder of this

⁶⁴ SAHRDC, *National Human Rights Institutions in the Asia Pacific Region*.

section, I focus on the impact of India’s NHRC. India’s Commission illustrates both the difficulties faced by a national commission and its potential contribution to the advancement of human rights. The Indian government, after all, has engaged in a relatively high level of violations while enmeshed in a system of democratic governance and rule of law. Not surprisingly, perceptions of the impact of India’s NHRC tend to be sharply polarized. Supporters assert that the national commission is well equipped to promote human rights norms from within the state. Detractors insist that it is an extension of the same state apparatus that engages in human rights violations, hence its lack of enforcement power. A close examination of the NHRC suggests that its impact is more complex than either its supporters or critics contend. I examine the NHRC’s role in agenda-setting, rule creation, accountability, and socialization.⁶⁵

AGENDA-SETTING

By elevating the status of a given issue, national commissions can shape the boundaries of the state’s human rights agenda. India’s NHRC has helped to enhance the profile of a broad spectrum of issues, ranging from questions of deaths in custody and prison conditions to the rights of the mentally ill and problems of child labor. Part of shaping the state’s agenda has entailed the NHRC inserting or at least promoting new ideas into state discourse, including proposals for “systemic” reform of the police and a “paradigm shift” away from punishing to rehabilitating prisoners.⁶⁶ Even if such ideas do not take root, it is significant that they have become politically salient.

More specifically, India’s Commission places or elevates human rights issues on the state’s agenda through several means. It can make strongly worded, condemnatory

⁶⁵ While the NHRC does represent human rights victims, I do not elaborate on it since its work in this area is relatively straightforward. I also exclude the NHRC’s role in promoting international cooperation, since I am most concerned here with the domestic effects of such commissions.

⁶⁶ National Human Rights Commission, *Human Rights Newsletter* and *Annual Report* (New Delhi: NHRC, multiple issues, 1990s-present).

statements; issue specific recommendations; direct state agencies to take concrete action; call for guidelines to be elaborated; and promote uniform national standards. To an even greater extent than India's NHRC, a consensus exists that the strength of Indonesia's Human Rights Commission has been its hard-hitting statements, including on controversial issues like state-sponsored 'disappearances' and abuses in East Timor.⁶⁷ India's NHRC has also put issues on the agenda by questioning the government's commitment to human rights. The Commission noted recently, for example, that unless the government empowers it to inquire more effectively into human rights violations by the armed forces, it may "erode the credibility of the Government of India in its commitment to respect human rights."⁶⁸

Critics may be correct to note that the NHRC targets local authorities more than the central government, colludes with the government in keeping certain national security issues off the agenda, and often follows rather than leads human rights initiatives. As an ever growing number of issues come to the attention of the NHRC, moreover, members of the Commission are hard-pressed to decide which issues to prioritize.⁶⁹ However accurate, these concerns overlook a potentially significant dynamic. The existence of a national commission can allow the state to save face by crediting the commission, an indigenous rather than international actor, with a shift in policy. Thus, following pressure from the NHRC in 1997, India's prime minister convened a high-level meeting to discuss the country's accession to the Convention Against Torture. Regardless of the actual motives propelling India to sign the treaty shortly thereafter, the NHRC's role was portrayed as crucial. Likewise, after the government tabled a proposal to introduce a terrorism prevention bill in 2000, which the NHRC had opposed publicly, the prime minister referred

⁶⁷ SAHRDC, *Komnas HAM*; and ICHRP, "Indonesia."

⁶⁸ NHRC, *Human Rights Newsletter* (New Delhi, January 2001).

⁶⁹ NHRC Members, Personal Interviews (New Delhi, March 2001).

to the significant role played by the Commission, although opposition to the draft bill had emanated from various quarters.⁷⁰

Shaping the state’s agenda consists of redefining the government’s priorities and goals. However innocuous the dynamics of agenda-setting may seem, at a minimum they can create greater political space for other actors (including non-governmental and international ones) to confront the state more forcefully. Consequently, in the give-and-take of agenda-setting, national human rights commissions can reorient state discourse. As a leading NGO activist remarked, perhaps the most noteworthy contribution of India’s NHRC is that the subject of human rights is no longer perceived as being “anti-national.”⁷¹

RULE CREATION

One of the prerogatives of any sovereign state is to organize itself domestically as it sees fit, including the right to create its own rules. The Commission has challenged the state’s authority to make adequate rules by issuing its own regulations and guidelines for state agencies to follow. The NHRC then disseminates these rules across the state apparatus.

Many of the rules created by India’s NHRC have focused on issues of criminal justice, such as custodial deaths and police arrests.⁷² Rule creation sometimes has consisted, for example, of helping to devise forms for state officials to use in reporting human rights abuses. The Commission has also facilitated the creation of new rules by using its statutory power of taking certain issues before the Supreme Court; thus new guidelines were developed in recent years for interpreting the widely abused Armed Forces (Special Powers) Act. In other instances, the Commission has helped to establish new state institutions, such

⁷⁰ NHRC, *Human Rights Newsletter* (New Delhi, July and August 2000); and NHRC Members, Personal Interviews (New Delhi, March 2001).

⁷¹ Ravi Nair, Personal Interview (New Delhi, March 2001).

⁷² NHRC, *Human Rights Newsletter* (New Delhi, multiple issues, 2000).

as the formation in 1999 of human rights units within various police headquarters. The NHRC promoted the idea of these units and then issued guidelines, compatible with international human rights norms, for how these offices should function.⁷³

Rule creation is clearly not rule implementation, but what is important is that the Commission has reframed the context in which the broader state apparatus can operate. Thus, the NHRC has enacted several rules regulating deaths in custody at the same time that the number of these deaths appears to have risen. Concurrently, the Commission has issued guidelines requiring state authorities to change their standard operating procedures: state authorities must report any deaths in custody within 24 hours as well as submit post-mortem reports to the Commission, and they are to do so on forms prepared by the Commission.⁷⁴ National human rights commissions are pushing the state to make self-binding rules.

ACCOUNTABILITY

India's NHRC is also beginning to hold government officials accountable for human rights violations. It does this in two major ways: investigating state practices and recommending government compensation of victims. When it investigates allegations of human rights abuse, the NHRC calls into question the authority of any state agent to commit violations. According to the NHRC, "the provision of an investigating mechanism of its own in the Commission gives it the advantage of not being required to rely on the State machinery for inquiring into complaints of violation of human rights when the allegation of violation is against the State machinery itself."⁷⁵ The investigatory reach of the NHRC, which has included cases of illegal detention and severe torture, essentially challenges the state's efforts to evade transparency.

⁷³ NHRC, *Human Rights Newsletter* and *Annual Report* (New Delhi, multiple issues, 1990s-present).

⁷⁴ NHRC, *Annual Report* (New Delhi, multiple issues, 1990s-present).

⁷⁵ NHRC, *Human Rights Newsletter* (New Delhi, September 2000).

It is significant that the Commission derives its authority for conducting investigations from its statutory standing as an independent national body. Accordingly, it can initiate inquiries *suo motu* (usually coming to its attention via the media) or based on petitions submitted by human rights victims or persons on their behalf.⁷⁶ Its power to investigate human rights violations perpetrated by the state is also significant insofar as it complements the work of the judiciary, a function emphasized by most members of the Commission (NHRC, 2001b).⁷⁷ The judiciary itself can empower the NHRC to conduct an investigation on its behalf and it has done so on several occasions, including in a controversial case involving illegal cremations in the Punjab.⁷⁸

In the course of investigation, moreover, the NHRC has the power to act in ways that may challenge individual state actors. The Commission, among other things, can summon and force witnesses to appear before it and then examine them under oath. It also can compel the discovery and production of relevant documents, including entering any building to obtain such documents. In its proceedings, the NHRC is endowed with all the powers of a civil court.⁷⁹ Most evidence in fact seems to indicate that state officials, especially at the higher and mid-level echelons, perceive Commission investigations as a challenge to their authority. To avoid receiving public subpoenas, many officials reportedly agree to cooperate with the NHRC after the mere threat of a subpoena.⁸⁰

An investigation by the NHRC challenges the legitimacy of state-sponsored actions that violate international law. This challenge occurs regardless of whether an investigation leads to changes in state behavior and regardless of the fact that the Commission’s

⁷⁶ NHRC, *The Protection of Human Rights Act 1993* (New Delhi: NHRC, 1994). Section 2a.

⁷⁷ NHRC Members, Personal Interviews (New Delhi, March 2001). Note that three of the members of India’s NHRC are required to be former members of the judiciary, with the Chair being a former chief justice of the Supreme Court.

⁷⁸ NHRC, *Human Rights Newsletter* (New Delhi, January 2001).

⁷⁹ NHRC, *The Protection of Human Rights Act 1993*, Chapter III.

⁸⁰ SAHRDC, *Komnas HAM*, 24-25; Anonymous Sources and NHRC Members, Personal Interviews (New Delhi, March 2001).

investigatory machinery is over-burdened and staffed by former state security officials. It is true that investigations are hampered by the NHRC's circumscribed mandate, which limits its jurisdiction over cases involving the military, defines human rights almost exclusively in terms of civil and political rights, and only empowers the Commission to investigate complaints alleged to have occurred within the previous year. Even so, anecdotal evidence shows that investigations sometimes lead to actual change. Following a complaint from an NGO alleging that 20 people (including children) were being kept in a stone quarry in the northern state of Haryana, the NHRC conducted an independent investigation. District officials eventually conceded to release the group and pay them relief.⁸¹ While only a small fraction of cases are resolved or result in punishment, the act of initiating an investigation serves to hold the government somewhat accountable.

Additionally, the NHRC has been surprisingly successful, even according to its staunchest critics, in persuading the state to pay compensation to human rights victims. Based on section 18(3) of the Protection of Human Rights Act 1993, the Commission may recommend the granting of "immediate interim relief" to a victim of human rights abuse or their family. Significantly, the Commission can make this recommendation as soon as it ascertains that there has been a human rights violation, without prejudice to any subsequent court rulings.

According to the NHRC, compensation constitutes an implicit admission by state officials of wrongdoing. Claimants themselves, however, occasionally have rejected monetary compensation awarded by the Commission on the grounds that it failed to address broader issues of state responsibility.⁸² Whether or not compensation amounts to an admission of responsibility, a question that merits close attention, the demand by the NHRC that state authorities compensate victims of abuse is consequential. It demarcates

⁸¹ NHRC, *Human Rights Newsletter* (New Delhi, April 2000).

⁸² NHRC, *Human Rights Newsletter* (New Delhi, January 2001).

the state’s responsibility vis-à-vis its victims, thereby challenging traditional forms of state impunity.

SOCIALIZATION

Both on the societal and state fronts, the NHRC has shaped expectations about the legitimate scope of state authority. It has done this by promoting international human rights norms and socializing domestic actors. At the level of civil society, this has led to a rise in human rights claims brought to the Commission, even if many of these petitions are initiated by NGOs and human rights awareness by the public at large remains limited. Between 1996 and 1999 alone, petitions to the NHRC doubled from approximately 20,000 to 40,000.⁸³ Similar trends are evident elsewhere in Asia, including in Indonesia where “[s]oon after its creation” the Commission “became a lightning rod for complaints from every corner of Indonesia.”⁸⁴ In India, the NHRC has promoted human rights awareness mostly through the use of workshops, which it has organized with domestic and international actors, and increasingly through the media. Socialization, however, has not yet taken the form of broad public campaigns, apparently because of the government’s intransigence in the face of a large population and cumbersome bureaucracy.⁸⁵

Within government, the Commission has sensitized officials to human rights issues, namely by fostering the idea that violations can bring consequences. This has not necessarily resulted in a decline in abuses, but it has signaled a redefinition of what constitutes publicly acceptable state behavior. The NHRC has socialized state agents primarily through training programs. In addition to preparing training materials for police personnel, for example, the NHRC has helped to organize seminars on subjects like forensic science and prison management. It also has networked with other state agencies that play a

⁸³ NHRC, *Annual Report* (New Delhi, multiple years).

⁸⁴ SAHRDC, *National Human Rights Institutions in the Asia Pacific Region*, 35.

⁸⁵ NHRC Members, Personal Interviews (New Delhi, March 2001).

role in human rights socialization, including senior officers charged with training police personnel and paramilitary forces. In other cases, the Commission has supported innovative means of socializing state agents, including the initiation of a “postcard” system of human rights “do’s and don’ts” that army personnel can carry with them as well as an annual human rights debate competition for members of the security and armed forces.⁸⁶

Most members of the Commission identify socialization, or the lifting of “entrenched attitudes,” as the single greatest obstacle to human rights reform.⁸⁷ While the effects of human rights socialization in fact have been limited, they are not negligible. By providing civil society with institutional access to the state, the NHRC has promoted the idea that members of society have certain rights vis-à-vis the state. For government officials, the Commission has shaped attitudes toward what the state should and should not do. Put differently, the NHRC has challenged the state’s control over defining what constitutes appropriate and acceptable state behavior.

Critics may dismiss these transformations as a case of “too little, too late.” But the difficulty of a state institution moving in a relatively short time span from being ‘a toothless tiger’ to redefining how the state and society relate to one another, as some of these institutions have done, should not be overlooked. Even other governments are beginning to learn that national commissions can pose unexpected challenges. One commentator describes this kind of perverse learning in Nepal, where the government may have delayed creating a human rights commission precisely to avoid the challenges faced by neighboring governments.⁸⁸ National human rights commissions may not have their intended effects, disappointing international supporters and state policy makers alike. But in performing several overlooked functions — agenda setting, rule creation, accountability, and

⁸⁶ NHRC, *Human Rights Newsletter* and *Annual Report* (New Delhi, multiple years); Former Chief Justice of India’s Supreme Court and former NHRC Chair Ranganath Misra, Personal Interview (New Delhi, March 2001).

⁸⁷ NHRC Members, Personal Interviews (New Delhi, March 2001).

⁸⁸ Ravi Nair, “National Human Rights Institutions in the Asia-Pacific Region,” Notes of a Presentation at a Round Table Organized by the Canadian Human Rights Foundation, *Working with National Human Institutions Overseas*, 45.

socialization — national commissions can contribute to embedding international norms in local structures.

CONCLUSION: STATE ADAPTATION AND HUMAN RIGHTS CHANGE

The recent proliferation of NHRIs, driven largely by international forces, raises questions about the prospects for human rights change. This paper has contributed to this emerging debate in several ways. I have framed the topic of NHRIs critically, taking the basic fact that states are the principal norm makers and breakers as my point of departure. And in addition to conducting case studies, I have relied on preliminary data to canvass the chief features of these new institutions.

Broader changes in the international system, namely the end of the Cold War, may have been necessary factors in the proliferation of NHRIs, but I have argued that they alone have been insufficient. International actors have defined and promoted the concept of NHRIs, made it costly for states not to create them, and provided governments with the technical capacities to set up these institutions. Without this web of international activities, the rise of NHRIs may not have been possible in the first place.

Indeed, a transnational network of human rights actors has both defined NHRIs as a viable goal and provided states with the means to realize this goal. This role is reminiscent of how, according to Martha Finnemore, national science policies were "supplied" by UNESCO more than they were "demanded" by domestic constituencies.⁸⁹ The creation of NHRIs, that is, may be the product of international involvement more than domestic initiative. Surely, local actors have been essential in supporting NHRIs, but it is unlikely that domestic support for NHRIs alone could have led to their creation. The three Asian-Pacific cases examined here show that the initial impetus to creating a NHRI generally

⁸⁹ Martha Finnemore, "International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy," *International Organization* 47 (Autumn 1993): 565-97.

emanated from international actors, even if this brought with it unintended and mixed consequences.

The proliferation of NHRIs therefore opens a new chapter in the long history of human rights within the modern state. These developments suggest that the state is attempting to retain control of human rights issues, as it comes under increasing assault, by appearing to concede “internal” sovereignty. Yet in the final analysis, the primacy of the state has not changed. What has changed is the fact that states have adapted to a human rights challenge by deploying innovative strategies, including by creating and strengthening NHRIs and thereby embedding international norms in domestic political structures. While the intent was to assert and retain state control, the result has also been unexpected social demands that states are not necessarily inclined or equipped to meet. Even so, state attempts to co-opt human rights discourse have impeded in most cases a genuine national human rights debate, or an exchange of competing ideas about which human beings are entitled to what.

Existing recommendations for strengthening NHRIs tend to call, above all, for greater independence and transparency of these institutions, as well as an improvement in their relations with NGOs. Building on these recommendations, this analysis also suggests the importance of undertaking the following measures: 1) Opening these institutions to non-state influence, especially by assuring that they are staffed by a socially representative group of people; that they include non-governmental actors on advisory boards; and that they are permitted to receive funding from non-state sources; 2) Foreign governments should call on states to close the gap between their protection and promotion of human rights norms. Rather than focusing merely on the creation of these institutions, foreign governments need to join the cast of actors calling for these institutions to be strengthened; 3) The United States, as the hegemonic power in the human rights arena, should promote the creation of its own local human rights commissions and ensure that their mandates explicitly reflect international human rights norms; and 4) International actors need to develop formal standards that will help structure relations between NGOs and NHRIs.

Unlike other depictions of human rights change, state adaptation is an open-ended process that does not necessarily entail incremental and progressive human rights improvements. In fact, if the broader literature across the sciences tells us anything about adaptation, it is that this process can set in motion complex and unintended dynamics.⁹⁰ Empowering human rights interests within the state apparatus, through the creation of NHRIs, is intended to empower social groups vis-à-vis the state. In fact, these institutions could have the opposite effect of entrenching state control and 'bureaucratizing' human rights issues. In some states with human rights institutions, as the Indian case suggests, human rights change could come to reflect bureaucratic turf wars more than executive prerogative or social struggle. The locus of human rights policy making could shift to new arenas of conflict, as government human rights institutions compete with rival state agencies. In other states with NHRIs, human rights policy could continue to reflect executive monopoly but carry the veneer of these more democratic, and therefore palatable, institutions. The impact of NHRIs will be necessarily varied and complex, leading only in some instances to human rights improvements. The logic of state adaptation indeed cautions us against assuming that these new human rights institutions will always have their intended effects.

⁹⁰ For its application to international relations, see Robert Jervis, *System Effects: Complexity in Political and Social Life* (Princeton: Princeton University Press, 1997).