



*The International Journal
of Not-for-Profit Law*

**Volume 13, Number 4
December 2011**

A Quarterly Publication of

The International Center for Not-for-Profit Law
1126 16th Street, NW, Suite 400
Washington, DC 20036
(202) 452-8600
www.icnl.org

Publisher

International Center for Not-for-Profit Law
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Washington, DC 20036
(202) 452-8600
www.icnl.org

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The *International Journal of Not-for-Profit Law*, ISSN 1556-5157, is a forum for the discussion of civil society, philanthropy, nongovernmental organizations, and the law, published quarterly by the International Center for Not-for-Profit Law, www.icnl.org. Based in Washington, D.C., the International Center for Not-for-Profit Law promotes an enabling environment for civil society and public participation around the world. Views expressed here do not necessarily reflect those of the International Center for Not-for-Profit Law, its affiliates, or its funders.

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Letter from the Editor

This issue of the *International Journal of Not-for-Profit Law* features a major article from the **Commonwealth Human Rights Initiative**: a call for civil society to establish partnerships with national human rights institutions, including practical suggestions on how best to realize that goal. The Commonwealth Human Rights Initiative is an independent nongovernmental organization that works to foster human rights in Commonwealth nations. Next, **Douglas Rutzen** and **Jacob Zenn** of the International Center for Not-for-Profit Law present a compelling argument that freedom of association and freedom of assembly must be protected online as well as in person. **Jennifer Ann Bremer**, Associate Professor and Chair of the Department of Public Policy and Administration at American University in Cairo, examines the rise of civic activism in Egypt through the “popular committees” formed in early 2011 to provide security. **Azay Guliyev** explains how Azerbaijani law treats nongovernmental organizations; the author is Chairman of Azerbaijan’s Council on State Support for NGOs as well as a member of Parliament. Finally, **Edward T. Jackson** of Carleton University’s School of Public Policy and Administration reviews Bob Rae’s *Exporting Democracy*.

We are grateful to all of our authors for their timely and meaty analyses of issues affecting civil society. And we invite you to add your voice. *IJNL* welcomes manuscripts on challenges and opportunities facing civil society worldwide. For details, contact the editor.

Stephen Bates

Editor

International Journal of Not-for-Profit Law

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Partnership for Human Rights

Civil Society and National Human Rights Institutions

Commonwealth Human Rights Initiative¹

Foreword

Commonwealth Human Rights Initiative (CHRI) works for the *practical* realization of human rights in the lives of ordinary people in the Commonwealth. This report, CHRI's eleventh to the biennial Commonwealth Heads of Government Meeting (CHOGM), is a natural progression from previous reports which suggested practical means by which many governance and justice challenges in the Commonwealth can be overcome. *Civil Society and National Human Rights Institutions* encourages close cooperation between national human rights institutions (NHRIs) and civil society. It has been deliberately designed to be a constructive point of engagement for improving the relationship between NHRIs and civil society. The report makes practical suggestions on how engagement can be utilized and has been optimized in the past to enhance the promotion and protection of human rights in the Commonwealth.

CHRI has always advocated that the Commonwealth is about human rights or it is about nothing at all. Unlike other intergovernmental organizations, the Commonwealth has neither a universal membership nor a geographic, thematic, military or economic focus to define its central purpose. Instead, the Commonwealth, which emerged in the spirit of post-colonial ideals such as freedom and democracy, has only a set of values around which to organize itself and build its identity.

¹ The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organization, mandated to ensure the practical realization of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

CHRI's objectives are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights, and other internationally recognized human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments, and civil society associations. Through its public education programs, policy dialogues, comparative research, advocacy, and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organizations allows for a national presence and an international network. These professionals can steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards, and practices. These groups also bring local knowledge, can access policy-makers, highlight issues, and act in concert to promote human rights.

CHRI is based in New Delhi, India, and has offices in London, UK, and Accra, Ghana.

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Despite the many protestations of the Commonwealth and its member states that human rights are central to the organization's core beliefs – and the oft-repeated assertion that the Commonwealth is as much an association of peoples as it is an intergovernmental organization – the reality of the majority of people living in the Commonwealth demonstrates a paucity of rights and justice. This, CHRI believes, is due in large part to the failure of Commonwealth governments to create environments where everyone can realize and exercise guaranteed human rights. It is also a result of the Commonwealth's "consensus" approach which has kept the organization silent on major human rights violations in member states, resulting in several missed opportunities to transform the soaring rhetoric of the Commonwealth Heads of Government Meeting (CHOGM) communiqués into action.

To its credit, the Commonwealth has nurtured some non-confrontational approaches to address the human rights of its roughly two billion people. It has done so, for example, through its leadership in debt reduction, by impelling member states to sign the Convention on the Elimination of All Forms of Discrimination Against Women, and through its encouragement and practical assistance in setting up national human rights institutions in member states.

There are now well over thirty NHRIs in the Commonwealth. It is this report's assertion that, while the establishment of an NHRI should be applauded, the body cannot effectively fulfill its mandate in isolation. NHRIs and civil society must work together, where mutually beneficial, to advance each other's work and the ultimate goal of improving human rights.

The Commonwealth needs to do all it can to catalyze support and assist in making this happen. The Commonwealth Heads of Government should encourage and promote engagement by giving the Commonwealth Secretariat a mandate to build cooperation between NHRIs and civil society. This would present a chance for Commonwealth realities to lean closer to the Commonwealth's fundamental values of human rights, but also make good on the multiple CHOGM statements urging that civil society engagement be mainstreamed into all of the Commonwealth functions and activities.

Sam Okudzeto
Chair, Commonwealth Human Rights Initiative
New Delhi, 2011

1. The Commonwealth Context: Rights Unrealized

The potential of the Commonwealth to champion human rights exists in stark contrast to the reality lived out by the majority of its people. In this context, when governments falter in the promotion, protection, and realization of human rights, national human rights institutions and civil society can, when working together, be a formidable force in moving the Commonwealth and its member states towards compliance with the organization's fundamental political principles, which include human rights and democracy.

The Harare Declaration

The Harare Declaration, frequently referred to as the Commonwealth's "mission statement," was laid down by the Commonwealth Heads of Government at the conclusion of their biennial meeting in 1991.² The Declaration defines the core values of the Commonwealth and espouses protection and promotion of "democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government; [and] fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief."³

As the Commonwealth marks the twentieth anniversary of the Harare Declaration, it is no secret that many Commonwealth governments have been unsuccessful in carrying out its mission. Across the Commonwealth, examples of violations of basic human rights can be found at the domestic and international level.

Soul Searching

Sensing that the Commonwealth was in danger of losing touch with its *raison d'être*, in 2009 the Commonwealth Heads of Government established an Eminent Person's Group (EPG) to "undertake an examination of options for reform" through which the Commonwealth could transform itself into a global body with renewed relevance for the twenty-first century.¹ Also up for self-review was the Commonwealth Ministerial Action Group (CMAG), a body which has the power to suspend or eject members of the Commonwealth if they seriously or persistently violate the principles of the Harare Declaration. To date, CMAG has chosen to interpret its mandate narrowly, meaning that it has only suspended member states which experienced unconstitutional overthrow of government, and has not taken to task those regimes that consistently violate the human rights of their populations. Hopefully, the culmination of both the reviews at the 2011 Commonwealth Heads of Government Meeting in Perth will lead to a refocusing on the active defense of values to which the Heads of Governments have repeatedly affirmed allegiance – human rights and democracy.

At the domestic level, in too many places, grinding poverty and endemic corruption, coupled with degraded environments and poor governance, ensure that the possibility of ever enjoying fundamental human rights, let alone living in dignity, remains remote for many Commonwealth people. Torture, rape, illegal detention, appalling prison conditions, and death in custody are all too frequent. Widespread impunity means that justice often remains inaccessible and illusive. Furthermore, fear of terror and uncertain threats have allowed easy passage of draconian laws that eat into guarantees of due process. The steady contraction of civil society space in various corners of the Commonwealth on the excuse of national security includes: limits on freedom of speech and access to information; intolerance for dissent; overzealous police reaction to peaceful protests; and disregard for the work of human rights defenders. Basic

² Duxbury, A (1997), "Rejuvenating the Commonwealth: the Human Rights Remedy," 46 *International and Comparative Law Quarterly* 344, p. 355.

³ Commonwealth Heads of Government (1991), *Final Communiqué*: Harare: <http://www.thecommonwealth.org/document/181889/34293/35468/35773/harare.htm> as on 11 July 2011.

equality for women and minorities remains unrealized, while discrimination persists. The litany goes on, but is too well documented elsewhere to be rehashed here.

In their role as members of the international community, Commonwealth countries have also underperformed in furthering human rights. For instance, the behavior of member states at the United Nations Human Rights Council suggests that these countries place more importance on deflecting attention from their own poor human rights records and those of allies, than actually advancing human rights.⁴

The promotion, protection, and realization of human rights rely on several factors. They range from socioeconomic conditions – such as economic inequality, the vibrancy of civil society, and societal awareness of human rights and attitudes towards them – to the ability and resources of the government to govern well – for example, through the drafting of proper standards, and the implementation of policies and procedures to carry out those standards in practice. Most important, however, is the government’s consistent determination to respect human rights and adhere to democratic governance. Political will is manifested at the very least by the presence of an accountable executive, committed legislature, independent judiciary, honest and transparent bureaucracy, and a free media.

In the survey undertaken for this report, eight civil society organizations (CSOs) responded to a question about their expectations for the Commonwealth by noting disappointment with the Association on two fronts. First, the Commonwealth had lost its former reputation as a leader on human rights,⁵ and second, the Commonwealth needed to do more work with civil society, through capacity-building, training, and engagement.⁶ As one civil society actor put it, “human rights promotion and protection is a partnership issue.”⁷

In practice, these ideal conditions and the ideal institutions that demonstrate their existence do not permeate through all the countries of the Commonwealth. However, the increasing number of new national human rights institutions that have been created or existing ones that have been strengthened is a sign that Commonwealth governments see that human rights governance needs improvement and that political will does exist to do something about it.

NHRIs are primarily set up to promote and protect human rights. The upholding of international and domestic human rights standards is the responsibility of the state, and, while the establishment of well-functioning NHRIs is not a sufficient guarantee that human rights norms will be upheld, they can be complementary to the functioning of other democratic institutions. In countries with well-established rights cultures, an NHRI is a welcome addition to ensure that human rights are upheld to the highest standards and implemented through a comprehensive and

⁴ CHRI recently released the third report in its *Easier Said Than Done* series. The report compares pre-election pledges made by Commonwealth countries at the Human Rights Council, with each country’s actual performance at the UN and domestic levels. The report concludes that all Commonwealth countries failed to fulfill the human rights pledges they made before their election to the Council. The report can be accessed at http://www.humanrightsinitiative.org/publications/hradvocacy/ESTD_2010/Full_report_with_Annexure_III.pdf.

⁵ Telephone interviews with civil society representatives in Australia, Fiji, South Africa, Kenya, and Sri Lanka.

⁶ Telephone interviews with civil society representatives in Namibia, Tanzania, and Cameroon.

⁷ Telephone interview with a civil society representative in Namibia in December 2010.

holistic approach. In other countries, effective NHRIs are a necessity to aid in the prevention of egregious violations.

A Nod from the Human Rights Council

In June 2011, the UN Human Rights Council in Geneva passed a resolution that affirmed the important role of NHRIs in promoting and protecting human rights at the domestic level and at the UN. The resolution encourages member states to establish NHRIs that are compliant with international standards and likewise encourages those with already established NHRIs to strengthen them.⁸ This was the Human Rights Council's first resolution to focus specifically on NHRIs' work and was co-sponsored by more than 110 states across all regions.⁹

This report examines thirty-four Commonwealth jurisdictions that have created institutions for the express purpose of promoting and protecting human rights, many of which came into being with the Commonwealth Secretariat's encouragement, technical support, and expertise. Most were set up after the 1993 World Conference on Human Rights in Vienna, which called for the engagement of the international community to support and facilitate the establishment and strengthening of NHRIs and the adoption of international standards for NHRIs by the UN General Assembly later that year. The Vienna Declaration and Programme of Action recognized that "it is the right of each State to choose the framework which is best suited to its particular needs at the national level."¹⁰

NHRIs in the Commonwealth¹¹

Commonwealth jurisdictions with National Human Rights Commissions:

Australia (1986), Bangladesh (2008), Cameroon (1990), Canada (1977), Cyprus (1991), Fiji (1999), Ghana (1993), Great Britain (2007), India (1993), Kenya (2003), Malawi (1996), Malaysia (2000), Maldives (2003), Mauritius (2001), New Zealand (1977), Nigeria (1996), Northern Ireland (1999), Rwanda (1999), Scotland (2008), Seychelles (2009), Sierra Leone (2006), South Africa (1995), Sri Lanka (1997), Swaziland (2009), Tanzania (2001), Uganda (1997) and Zambia (1997).

Commonwealth jurisdictions with ombudsman institutions that are members of the Commonwealth Forum of NHRIs:

Antigua and Barbuda (1981), Barbados (1980), Belize (1999), Jamaica (1978), Namibia (1990), Papua New Guinea (1976), St Lucia (1981), Trinidad and Tobago (1977).

There are several models of NHRIs among those that have been surveyed in this report. Most are multi-member commissions with mandates that allow them to deal with a broad swath

⁸ UN Human Rights Council (2011), "National Institutions for Promotion and Protection of Human Rights - Resolution A/HRC/17/L.18": <http://www2.ohchr.org/english/bodies/hrcouncil/17session/resolutions.htm> as on 13 July 2011.

⁹ Asia Pacific Forum (2011), "UN recognizes crucial role of NHRIs": <http://www.asiapacificforum.net/news/un-recognises-crucial-role-of-nhris.html> as on 11 July 2011.

¹⁰ UN General Assembly (1993), *Vienna Declaration and Program of Action*, part I, paragraph 36.

¹¹ Please refer to the methodology appendix of this report for an explanation of which NHRIs were included for analysis in this report. The years in parentheses refer to the year in which each NHRI started operating.

of human rights issues and violations, as is the case in India. Others are one-person ombudsman institutions which have evolved from focusing solely on the fairness and transparency of public administration to include a human rights mandate, as in Jamaica. Still other models are mixed, like the Ghanaian Commission on Human Rights and Administrative Justice, which is a multi-member institution vested with the power to protect and promote human rights and to address the misuse of power by public officials. Elsewhere, institutions concentrate on specific themes, such as equality and discrimination, as in Canada.

An NHRI's mandate and powers may vary according to the model on which it is based. Typically, however, an NHRI will monitor state institutions for compliance with human rights norms; report on patterns of violation; educate officials and the public at large about human rights; urge and advise its government to ratify international human rights treaties; and report to international human rights bodies on the human rights situation in-country. NHRIs with broader mandates will accept and investigate complaints of human rights violations and discrimination; protect human rights defenders; and recommend punishment for perpetrators and compensation for victims of human rights abuse.

The rapid expansion of NHRIs in the Commonwealth during the 1990s¹² was a welcome development for civil society actors, many of whom had campaigned for the promotion and protection of human rights as their most central undertaking and saw themselves as natural allies of the new institutions. While civil society actors in the Commonwealth vary in form – ranging from huge trade unions to tiny community groups – a large segment of them, and those that are the focus of this report, are involved in holding the government to account, fighting impunity, educating the public, training public officials, promoting adherence to international best practices, monitoring and publicizing human rights violations, shaping legislation, and campaigning internationally for the creation and ratification of international human rights treaties.

Over time, civil society's early optimism on the potential of NHRIs has, in many cases, turned to disappointment. While some Commonwealth NHRIs are accused of acting as mere window dressing for rights-violating states, others face criticism for operating hesitantly, bowing to government influence, pulling their punches on serious issues, and failing to take measurable steps to realize their mandates.¹³ On the other hand, NHRIs have questioned the capacity, commitment, and politics of CSOs. Plagued by misguided preconceptions about each other, both sides often shy away from substantial engagement with one another. The result is a loss of opportunity for collaboration to embed a genuine culture of human rights within the member states of the Commonwealth. Both NHRI mandates and civil society goals would be better served if the two would mend fences and work together.

2. International Standards: A Bridge Too Far?

Global, regional, and Commonwealth standards, guidelines, and recommendations on NHRIs recognize that human rights are furthered when civil society and NHRIs work in tandem.

The most important international standards relating to NHRIs are the Principles Relating to the Status of National Human Rights Institutions, known as the Paris Principles. Adopted by

¹² See the box, above, for the founding years of NHRIs in the Commonwealth.

¹³ Examples of these will be elaborated throughout the report.

the UN General Assembly in 1993, the Principles provide a normative framework to steer the creation and functioning of NHRIs. In laying out minimum standards for the status, role, mandate, composition, and functions of NHRIs, the Principles deter governments that are intent on establishing ineffective mechanisms for the sake of international acclaim and emphasize the inherent value of NHRI-civil society engagement.

“In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, [NHRIs shall] develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas.”

*Principles Relating to the Status of National Institutions
(The Paris Principles)*¹⁴

Many other complementary standards, guidelines, and best practices on substantive NHRI-civil society engagement have emerged out of the UN and global and regional coordinating networks of NHRIs. The United Nations Centre for Human Rights developed a handbook for NHRIs in 1995 which maintained that NHRIs “should establish and maintain contact with non-governmental organizations (NGOs) and community groups which are directly or indirectly involved in the promotion and protection of human rights.”¹⁵ The publication suggests that partnership with civil society is beneficial to furthering human rights because civil society can enhance the NHRI’s visibility in the general population, act as an intermediary between the NHRI and victims of human rights abuse who are reluctant to come forward, and serve as a pool of expertise and information to which the NHRI is not a party. The United Nations Development Programme (UNDP) and the United Nations High Commissioner on Human Rights more recently developed a Toolkit on NHRIs to be used by civil society, NHRIs, and staff from United Nations Country Teams who work with NHRIs. The Toolkit focuses on, among others, “effective strategies to harness stronger collaboration between NHRIs, government, Parliament, judiciary and civil society.”¹⁶ It strongly advocates active and continuous engagement with civil society in the creation and day-to-day functions of NHRIs.

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), which is a Geneva-based organization with a global membership of NHRIs, also has its own standards for civil society engagement which are based on the Paris Principles. The ICC comprises four regional groupings: Africa, Americas, Europe, and the Asia Pacific. It uses NHRI-civil society engagement as an important factor in assessing the extent to which an NHRI complies with the basic standards set out in the Paris Principles and

¹⁴ UN General Assembly (1993), “Resolution 48/134 - Principles Relating to the Status of National Institutions (The Paris Principles)”: <http://www2.ohchr.org/english/law/parisprinciples.htm>.

¹⁵ United Nations Centre for Human Rights (1995), *National Human Rights Institutions – A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*: New York and Geneva: http://www.hrea.org/erc/Library/display_doc.php?url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2Ftraining4en.pdf&external=N as on 11 July 2011.

¹⁶ UNDP and OHCHR (2010) *UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions*, p. ix.

to determine the level of accreditation that an NHRI merits. The Asia Pacific Forum of National Human Rights Institutions (APF), which is the ICC's regional grouping in the Asia Pacific region, has developed best practices on including civil society in the creation and functioning of NHRIs. In addition to setting and promoting high standards of engagement, the ICC and APF both involve civil society in their own activities and, in doing so, practice what they preach.

In contrast, the relatively young Commonwealth Forum of National Human Rights Institutions (Commonwealth Forum), established in 2007, has consistently excluded civil society groups from its operations and so denied them the opportunity to participate in the exchange of ideas at the Forum and build in-country relationships with its membership. This neglect persists despite the fact that the Commonwealth has published its own best practice guide for NHRIs,¹⁷ which reflects the need to work in close cooperation with civil society. The Commonwealth Forum's aloofness from civil society is especially surprising given that every recent statement from the biennial Commonwealth Heads of Government Meetings lauds the work and value of civil society and human rights defenders, while exhorting governments and agencies to work closely with them.

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

The ICC, which has its Secretariat at the UN Office in Geneva (UNOG) and includes twenty-four Commonwealth institutions as members,¹⁸ "promotes and strengthens NHRIs to be in accordance with the Paris Principles."¹⁹ The ICC assists countries to establish NHRIs; helps members to liaise with the UN, other international agencies, and governments; offers opportunities to cooperate and share information; builds capacity in collaboration with the Office of the High Commissioner for Human Rights (OHCHR); and assists members under threat from their governments.²⁰ Most importantly, however, the ICC's Sub-Committee on Accreditation assesses compliance of NHRIs against the criteria for conformity established by the Paris Principles.

NHRIs that are in compliance with the Paris Principles are granted full membership, or "A" status. This allows them full voting rights within ICC and participation rights at the UN Human Rights Council.²¹ Institutions that are accorded "B" status do not comply fully with the

¹⁷ Commonwealth Secretariat (2001), *National Human Rights Institutions: Best Practice*: London: http://www.asiapacificforum.net/members/international-standards/downloads/best-practice-for-nhris/nhri_best_practice.pdf as on 11 July 2011.

¹⁸ International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights (December 2010), "Chart of the status of national institutions accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights": Geneva.

¹⁹ International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights (2010), *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, 29 March -1 April 2010: [http://www.nhri.net/2009/SCA_REPORT_March%202009%20Session_\(English\).pdf](http://www.nhri.net/2009/SCA_REPORT_March%202009%20Session_(English).pdf) as on 11 July 2011, Art. 5.

²⁰ International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights (date unknown), *Information Brochure*: Geneva.

²¹ Byrnes, A, et al (2008), *Joining the Club: the Asia Pacific Forum of National Human Rights Institutions, the Paris Principles, and the Advancement of Human Rights Protection in the Region*: University of South Wales, University of New South Wales, Faculty of Law Research Series, p. 2.

Principles or have not submitted adequate documentation to determine whether they are in fact compliant. These bodies are only granted observer status within ICC. “C” status institutions are not compliant with the Principles and likewise can only be observers.²²

New Privileges for NHRIs at the UN Human Rights Council

On completion of its self-review in 2011, the UN Human Rights Council granted more privileges to NHRIs. Now, NHRIs with “A” status will have greater opportunities to speak at Council sessions and, like accredited CSOs, will be able to formally participate in the nominating process when the Council appoints experts on country situations and thematic issues, such as torture.²³

An important factor in determining whether an NHRI is to be accredited or re-accredited as “A” status lies in the quality and consistency of its engagement with civil society. The ICC Sub-Committee, which accredits incoming NHRIs and re-accredits members every five years, noted in its General Observation 1.5, entitled *Cooperation with other human rights institutions*, that: “NHRIs should closely cooperate and share information with [...] other organizations, such as NGOs, working in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee.”²⁴

The Sub-Committee requests certain information to assess whether an NHRI is compliant with the stipulation in the Paris Principles that NHRIs develop relations with civil society:

1. *Whether the provisions in the NHRI’s founding law formalize relationships between it and civil society;*

2. *How the NHRI has developed relationships with NGOs in practice;*

3. *Which civil society groups the NHRI cooperates with (e.g., NGOs, trade unions, professional organizations, individuals or organizations espousing trends in philosophical or religious thought, universities and qualified experts, parliament, and government departments); and,*

4. *How frequent and what type of interaction the NHRI has with NGOs (e.g., workshops, meetings, joint projects, through complaints handling).²⁵*

²² International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights (2010), *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, Geneva, 29 March -1 April 2010:
[http://www.nhri.net/2009/SCA_REPORT_March%202009%20Session_\(English\).pdf](http://www.nhri.net/2009/SCA_REPORT_March%202009%20Session_(English).pdf) as on 11 July 2011.

²³ Asia Pacific Forum (2011), “UN recognises crucial role of NHRIs”:
<http://www.asiapacificforum.net/news/un-recognises-crucial-role-of-nhris.html> as on 11 July 2011.

²⁴ International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights (2009), *Sub-Committee on Accreditation: General Observations: Geneva*, Article 1.5, p. 1.

²⁵ International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights (2009), *Template: Statement of Compliance with the Paris Principles*, Section 8.

Civil Society and the ICC Accreditation Process

During the accreditation process, the Sub-Committee invites civil society groups to make submissions about the functioning of their NHRI and their relationships with it on the ground. Indian civil society have presented detailed concerns to the ICC about the Indian National Human Rights Commission's (INHRC) diminishing stature, ambivalent responses to rights violations, and restricted and superficial engagement with civil society.²⁶ These allegations found reflection in a letter from the ICC Sub-Committee on Accreditation to INHRC at the end of its latest review in May 2011, which made caveats about INHRC's "A" status re-accreditation. One caveat specifically noted that information received from civil society organizations showed that existing mechanisms through which INHRC engaged with civil society were not functioning properly. As a result, instead of being reviewed for re-accreditation in 2016 according to the normal cycle, INHRC's relationship with civil society – as well as its appointment process and composition – will be re-examined by the ICC in early 2013.²⁷

Beyond setting minimum benchmarks for civil society engagement among its members, the ICC sets a good example by involving civil society in its processes. The ICC's statute notes, in Article 9, that NGOs or "any other person or institution" may be invited as an observer without voting rights to its annual general meetings in Geneva and its larger thematic biennial conferences.²⁸ Civil society representatives have also been invited as panelists during the thematic sessions of the ICC's annual meeting.²⁹ At the most recent 10th Biennial Conference on Human Rights and Business and the Role of NHRIs, held in October 2010 in Edinburgh, the results of the NGO Forum informed the Conference deliberations and were welcomed in the final Declaration.³⁰ Furthermore, the organization's most recent "Strategic Plan identifies developing outreach to and cooperation with civil society among the ICC's strategic priorities for the coming years."³¹

²⁶ All India Network of NGOs and Individuals Working with NHRIs (2011), *NGO Parallel Report on the Compliance of the Paris Principles of the National Human Rights Commission of India*.

²⁷ Letter from Vladlen Stefanov, Chief, National Institutions and Regional Mechanisms Section, OHCHR, to Justice K. G. Balakrishnan, Chair, National Human Rights Commission, with ICC/SCA recommendations of May 2011 as attachment, 8 June 2011.

²⁸ According to Section 4 of the ICC Statute: "The ICC may liaise with other human rights institutions including the International Ombudsman Institute and non-governmental organizations. The ICC Bureau may decide to grant such organizations observer status at any meetings or workshops of the ICC or the ICC Bureau." International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights (2010), *Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva*, 29 March -1 April 2010: [http://www.nhri.net/2009/SCA_REPORT_March%202009%20Session_\(English\).pdf](http://www.nhri.net/2009/SCA_REPORT_March%202009%20Session_(English).pdf) as on 11 July 2011.

²⁹ Email correspondence with Katharina Rose, Geneva Representative, International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights, on 16 August 2011.

³⁰ International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights (2010), "Conference programme & general materials related to the main conference": Edinburgh, Scotland: <http://www.business-humanrights.org/Documents/NHRIsConference2010#51507> as on 11 July 2010.

³¹ Email correspondence with Katharina Rose, Geneva Representative, International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights, on 16 August 2011.

Civil society presence in the ICC's processes has ensured that the value of civil society engagement is repeatedly affirmed in the ICC's declarations. For example, the recent 2010 Edinburgh Declaration acknowledged the "highly constructive statement [of the NGO Forum] to the Conference which enriched the debate, participants' collective thinking and deliberations," and called on NHRIs to "engage with organizations and stakeholders at national, regional and international levels" and to "renew efforts to work collaboratively with NGOs and civil society in implementing [their] mandates."³²

The Asia Pacific Forum of National Human Rights Institutions³³

The APF, which is the ICC regional grouping for Asia Pacific, is a member organization representing NHRIs in the region. It invites civil society to its annual meetings and biennial conferences, which are the largest regular human rights events in the region.³⁴ Civil society is also involved in the design and delivery of a wide range of APF activities, including training programs, capacity assessments of NHRIs,³⁵ and consultations on the creation of NHRIs. The APF's Advisory Council of Jurists, which comprises legal experts from the region, advises the APF on "the interpretation and application of international human rights standards" and makes practical recommendations to member NHRIs on a wide variety of human rights issues.³⁶

The APF and the Association for the Prevention of Torture

The APF's openness to engagement and collaboration with civil society is evidenced in a variety of relationships. One significant partnership involves the APF and the Association for the Prevention of Torture (APT), an international non-governmental organization which works towards a world in which no one is subjected to torture or other cruel, inhuman, or degrading treatment or punishment. In 2005, the APF and the APT collaborated on the development of Minimum Interrogation Standards. Subsequently, the two organizations built an ongoing partnership to provide expert advice and training to support NHRIs in preventing torture and ill-treatment. The collaboration led to the creation of detailed resources, including a two-stage training program on torture prevention and a comprehensive manual, *Preventing Torture: An Operational Guide for National Human Rights Institutions*. The partnership also facilitates discussions with NHRIs and governments in the region on implementing the Optional Protocol to the Convention Against Torture in different national settings.

The APF has produced some excellent best practices on NHRI-civil society engagement. The Larrakia Declaration, which is the APF's founding document, was developed in conjunction with all relevant stakeholders, including civil society. It explicitly states that close cooperation

³² International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights (2010), *Edinburgh Declaration*, Edinburgh: http://www.asiapacificforum.net/services/international-regional/icc/icc-international-conference/downloads/10th-international-conference-2010/Edinburgh_Declaration.doc as on 11 July 2011.

³³ Membership includes NHRIs from Australia, India, Malaysia, Maldives, New Zealand, and Sri Lanka.

³⁴ Asia Pacific Forum (2011), "Annual Meetings": <http://www.asiapacificforum.net/about/annual-meetings> as on 11 July 2011.

³⁵ Email correspondence with Kieren Fitzpatrick, Director of Asia Pacific Forum, on 25 May 2011.

³⁶ Asia Pacific Forum (2011), "Advisory Council of Jurists": <http://www.asiapacificforum.net/support/issues/acj> as on 18 August 2011.

between NHRIs and NGOs is essential “to ensure that human rights principles are fully implemented in effective and material ways.”³⁷ Despite these strong foundations, some civil society representatives feel that the road to inclusion remains bumpy and tensions persist, specifically over the varying degrees of openness of the APF’s meetings during the past six years.³⁸

Asian NGO Network on NHRIs

The APF has a civil society counterpart – the Asian NGO Network on NHRIs (ANNI).³⁹ ANNI is a unique regional civil society network that aims at the establishment and development of “accountable, independent, effective, and transparent” NHRIs in Asia.⁴⁰ It organizes a parallel NGO event in the shadows of the APF’s annual meetings and biennial conferences, to which representatives of the APF and its member institutions are invited to speak and observe. The outcomes of ANNI’s shadow event are published online by the APF. Further, because civil society organizations, like governments, are accorded observer status and speaking rights, the outcomes are presented during APF’s meeting.⁴¹ This regular and synergistic pattern of working is respectful of the individual processes of both civil society and NHRIs and is valuable in enriching each, because points of convergence, rather than parallel tracks, are built into it.

The APF’s Kandy Programme of Action (1999) lays out practical methods through which NHRIs can improve cooperation with civil society. To date, its recommendations remain the most comprehensive best practice guidelines specifically on mutual engagement between the two actors. The recommendations detail multiple entry points for an NHRI to formally engage with civil society beginning from its establishment to nearly every one of its core operations, including human rights education, complaints and investigation, public inquiries, relations with legislatures, and advising on proposed legislation.⁴²

Separate APF guidelines developed specifically for the creation of a new NHRI urge that representatives of civil society be present on the steering committee, which “oversees the process leading towards the establishment of the national institution.” Furthermore, broad-based

³⁷ Asia Pacific Forum (1996), *Larrakia Declaration: Conclusions, Recommendations and Decisions*: Darwin, Australia: <http://www.nhri.net/pdf/AFP1conclusions.pdf> as on 11 July 2011.

³⁸ Email correspondence in August 2011 with a civil society representative who has interacted with the APF.

³⁹ “ANNI comprises some of the largest and best resourced NGOs in the region: Forum-Asia (Bangkok), People’s Watch (India), SUARAM (Malaysia), Imparsial (Indonesia). It includes civil society representatives from states with established NHRIs and from states where civil society is agitating for the establishment of NHRIs (Taiwan, Cambodia and Japan).” Renshaw, C. (2010), *The Role of Networks in the Implementation of Human Rights in the Asia Pacific Region*.

⁴⁰ Asian NGOs Network on NHRIs, *Asian NI Watch, Wolume 1, Issue 1*: http://www.forum-asia.org/news/press_releases/pdfs/NI%20Watch_Issue1.pdf, as on 18 August 2011

⁴¹ Email correspondence with Toru Hisada, Secretariat, Asian NGOs Network on National Human Rights Institutions, on 29 May and 22 June 2011.

⁴² Asia Pacific Forum (1999), “The Kandy program of action: Cooperation between national institutions and nongovernmental organizations”: Kandy, Sri Lanka: <http://www.nhri.net/pdf/Kandy%20Program.pdf> as on 11 July 2011.

consultations should address cooperation between the proposed NHRI and non-governmental organizations.⁴³

The APF's Secretariat is also deeply involved in urging governments to establish Paris Principles-compliant NHRIs and assisting with the establishment process by holding consultations with government and civil society throughout.⁴⁴ The APF undertakes extensive critiques of draft legislation on new NHRIs to ensure compliance with the Paris Principles. For example, it critiqued Pakistan's National Commission on Human Rights Bill against the standard of the Paris Principles and the ICC's accreditation criteria, and, inter alia, called for amendments that would ensure a transparent and participatory process for the selection of members, including the involvement of all stakeholders.

Other Regional and International NHRI Networks and Coordinating Committees

Though other networks of NHRIs and ombudsmen have not developed international standards or best practices to guide their members in engaging with civil society (as have the ICC and the APF), some best practices have emerged from their operations.

For example, a significant landmark in the growing relationship between NHRIs and civil society occurred early in 2010 when the Network of African National Human Rights Institutions⁴⁵ entered into a formal agreement with the Association for the Prevention of Torture (APT) to strengthen, within three years, the capacity of NHRIs in Africa to prevent torture. The agreement would see NGO-NHRI collaboration on the sharing and supporting of best practices and the adoption of a public declaration from African NHRIs on the prevention of torture.⁴⁶ In another potential example of good practice, the current Secretariat of the Network of Institutions for the Promotion of Human Rights of the American Continent plans to strengthen its relationship with civil society by establishing a social network-based communication mechanism on its website.⁴⁷

Ombudsmen networks have generally not gone as far as ICC-affiliated NHRI networks to promote civil society engagement among members. However, the African Ombudsman Association has an objective "to foster affiliation and maintain liaison with [...] organizations interested in the progress of Ombudsman activities and Human Rights."⁴⁸

⁴³ The Asia Pacific Forum (2007), *Guidelines for the Process of Establishing National Institutions in Accordance with the Paris Principles*: <http://www.asiapacificforum.net/members/international-standards/downloads/best-practice-for-nhris> as on 11 July 2011.

⁴⁴ Asia Pacific Forum (2007), *Presentation to the Commonwealth Conference of NHRIs - The role of the APF in Relations to the Application of the Paris Principles*: London.

⁴⁵ Commonwealth institutions in NANHRI include those from: Cameroon, Ghana, Kenya, Malawi, Mauritius Namibia, Nigeria, Rwanda, Sierra Leone, South Africa, Tanzania, Uganda, and Zambia.

⁴⁶ Email correspondence with Gilbert Sebihogo, Executive Director, Network of African National Human Rights Institutions, on 31 May and 14 June 2011.

⁴⁷ This had not come to fruition as this report went to press. Email correspondence with Francisco Bonilla, RINDHCA Secretariat, on 8 and 27 June 2011.

⁴⁸ African Ombudsman Association, *Strategic Plan*: <http://www.aoma.org.za/content/view/13/15/> as on 11 July 2011, p. 3.

The Commonwealth Forum of National Human Rights Institutions

The Commonwealth has its own set of suggestions for NHRIs on civil society engagement in the form of the Commonwealth Secretariat's 2001 publication, *National Human Rights Institutions: Best Practice*.

The publication is clear that civil society must be a partner throughout the life cycle of an NHRI: "The establishment process, whether initiated by government or by civil society, must be transparent and include all relevant actors. It is essential that all stakeholders 'buy-in' to the establishment process if the NHRI is to have the trust and confidence of both government and the people."⁴⁹

A steering committee, which includes representatives from all types of civil society, is recommended by the *Best Practice* publication as a method by which the establishment process can be inclusive.

"It is likely that including civil society will make the establishment process more lengthy, but consultations and input from members of the public are essential for attaining public legitimacy. It will be hard to build trust if government creates an NHRI in a climate of secrecy."⁵⁰

—*National Human Rights Institutions: Best Practice*

After an NHRI is established, the publication notes that one of its "most important contributions [to the development of pluralistic and healthy democracies] arise[s] from the exercise of powers to: [...] build bridges between government and civil society and between groups within civil society."⁵¹ It goes on to recommend that: an NHRI's legal mandate should enable it to work with civil society;⁵² the process by which commissioners are appointed to an NHRI include civil society;⁵³ they should build alliances with civil society to increase their own accessibility and effectiveness;⁵⁴ they should work in cooperation with civil society to protect human rights during conflict situations;⁵⁵ and mitigate the "human rights consequences of environmental degradation."⁵⁶

Beyond these guidelines specific to NHRIs, the Commonwealth Heads of Government have affirmed and re-affirmed on paper that civil society should be a valuable partner in the quest to realize the Commonwealth's fundamental values and to pursue its program of work. Since 1999, every one of their statements, from Durban to Port of Spain, has highlighted the importance of civil society engagement to development, good governance, and the promotion

⁴⁹ Commonwealth Secretariat (2001), *National Human Rights Institutions: Best Practice*: London: http://www.asiapacificforum.net/members/international-standards/downloads/best-practice-for-nhris/nhri_best_practice.pdf as on 11 July 2011, p.9.

⁵⁰ *ibid*, p. 10.

⁵¹ *ibid*, p. 3.

⁵² *ibid*, p. 18.

⁵³ *ibid*, p. 16.

⁵⁴ *ibid*, p. 31.

⁵⁵ *ibid*, p. 33.

⁵⁶ *ibid*, p. 35.

and protection of human rights.⁵⁷ Among the most affirmative statements on civil society engagement, the Malta Communiqué calls for civil society to be increasingly mainstreamed into all Commonwealth activities and those of its institutions.⁵⁸ In this spirit, civil society is invited to make submissions to several Commonwealth meetings, such as the Commonwealth Ministerial Action Group, the Commonwealth Law Ministers Meeting, and Commonwealth Heads of Government Meeting (CHOGM).

Surprisingly, the Commonwealth's pledge to engage with civil society – expressed in best practice guidelines for NHRIs and in commitments by past CHOGMs – has not found replication in the creation of the Commonwealth Forum of NHRIs, nor has it been reflected in its continuing operation.

The creation of the Commonwealth Forum in 2007 was proposed at a Commonwealth NHRI meeting organized in London by the Commonwealth Secretariat. The meeting was attended by the representatives from twenty-three Commonwealth NHRIs, in addition to representatives from the UN, regional organizations such as ECOWAS and the APF, and civil society, including CHRI. At the meeting, the head of the Commonwealth Secretariat's Human Rights Unit (HRU) at the time presented a scoping paper which proposed the creation of the Commonwealth Forum. The presentation highlighted the potential for a network to “institutionalise a framework allowing interaction with Commonwealth Heads of Government and with members of the civil society.”⁵⁹ The proposal was accepted by NHRI representatives, who saw potential in a forum that would allow further NHRI access to CHOGM; create a lobby of Commonwealth NHRIs to act in defense and support of fellow NHRIs; and increase linkages among individual NHRIs, regional organizations, the UN, and civil society.⁶⁰

A steering committee of representatives from the NHRIs of New Zealand, Canada, Uganda, and India met in May 2007 to hammer out the modus operandi of the Forum. It was decided that the Commonwealth Forum would be created to “support the broad objectives of promoting networking, sharing of information, experiences and best practices, encouraging countries to establish Paris Principles-compliant NHRIs, and assisting national institutions to fulfill their mandated activities.”⁶¹ The HRU was to become the new network's secretariat. Though no civil society representatives were present at the meeting, the steering committee

⁵⁷ The CHOGM communiqués can be found online at: http://www.thecommonwealth.org/Document/181889/34293/35232/152035/commonwealth_heads_of_government_meetings/ as on 11 July 2011.

⁵⁸ Commonwealth Heads of Government (2005), *Final Communiqué*: Valetta: <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=147565> as on 11 July 2011.

⁵⁹ Commonwealth Forum of NHRIs (February 2007), *Report of the Commonwealth Conference of National Human Rights Institutions*: London: http://www.commonwealthnhri.org/files/185688/FileName/Report_of_February_2007.pdf as on 1 June 2011, p. 12.

⁶⁰ Commonwealth Conference of NHRIs (2007), *Concluding Statement*: London: http://www.thecommonwealth.org/document/160769/commonwealth_conference_of_national_human_rights_i.htm as on 1 June 2011, p. 2.

⁶¹ Commonwealth Forum of National Human Rights Institutions (2007). *Steering Committee Meeting*: London, p. 1.

suggested the Commonwealth Forum could invite civil society members to other meetings as observers.⁶²

Open Invitation

Membership of the Commonwealth Forum is open to all Commonwealth NHRIs and Ombudsmen and, unlike other NHRI networks, it is not based on accreditation status at ICC. According to a representative of the Commonwealth Forum, “[t]his allows NHRIs accredited with ‘A’ status to share good practice experiences with other NHRIs. It also encourages the latter NHRIs to move towards full compliance with the Paris Principles.”⁶³

The Commonwealth Forum’s next meeting was held over two days just prior to the 2007 CHOGM in Kampala. The first day of the meeting was used to finalize agreements between the Commonwealth NHRIs; vote on the report of the steering committee; and establish the Commonwealth Forum of NHRIs as an informal body. Despite the initial proposal in the HRU scoping paper that the Forum institutionalize a framework to allow interaction between NHRIs and civil society, the latter was not invited to the first day of the meeting and was consequently not in attendance during deliberations on the creation of the Forum.⁶⁴ In spite of the absence of civil society, the meeting’s final communiqué reiterated the main objectives of the Commonwealth Forum, one of which was to promote dialogue and interaction between NHRIs and civil society.⁶⁵ On the second day of the meeting, civil society was invited in to discuss possible thematic issues with the delegates.⁶⁶

In these circumstances, it is difficult to assert that the Commonwealth Forum was created with adequate civil society engagement. The most important meetings for its creation – the steering committee meeting and the closed-door meeting in Kampala at which the Forum’s establishment was finalized – were ultimately devoid of civil society participation.

The lack of initial civil society engagement during the creation of the Commonwealth Forum has ensured that subsequent engagement has also been inadequate. This was illustrated by events in the days immediately before the 2009 Trinidad and Tobago CHOGM. Before every CHOGM there is a meeting of Commonwealth civil society sponsored by the Commonwealth Foundation and known as the Commonwealth People’s Forum (CPF). In 2009, the People’s Forum included a two-day human rights assembly as well as other assemblies that addressed civil society concerns, such as democracy, governance, health, and climate change. The meeting of the Commonwealth Forum of NHRIs, which was on climate change and its effects on human rights, was held on the same days, effectively excluding several human rights and environmental

⁶² Ibid, p. 3.

⁶³ E-mail correspondence with Karen McKenzie, Human Rights Advisor, Commonwealth Secretariat, on 2 August 2011.

⁶⁴ Commonwealth Forum of National Human Rights Institutions (2007), *Report of the Meeting of the Commonwealth Forum of National Human Rights Institutions*: Kampala (via email).

⁶⁵ Commonwealth Forum of National Human Rights Institutions (2007), *Kampala Communiqué of the Commonwealth Forum of NHRIs*: <http://www.thecommonwealth.org/document/34293/35232/173603/kampalahumanrights.htm> as on 11 July 2011.

⁶⁶ Uganda Human Rights Commission, et al. (2007), *Report of the Workshop on National Mechanisms for the Protection of Human Rights, Violations and Abuse in the Commonwealth*: Kampala.

groups that took part in the human rights assembly. In the end, a single thematic NGO was present at the meeting, and while other CSOs were invited to a dinner to interact with members of the Commonwealth Forum, there was no way for civil society to provide proper input into the meeting's deliberations. An opportunity to take the best advantage of an expensive international meeting and to effectuate a broader and more inclusive platform to promote human rights was lost. Indeed, the concluding statement of the meeting did not make a single mention of civil society or the need or means to engage with it.

Besides the two CHOGMs that took place since its inception, the Commonwealth Forum has primarily met in the wings of the ICC's meetings and conferences. There is no formalized mechanism for observation or participation by civil society at these Forum meetings. Between meetings, information about dates and agendas is not easily available. Unlike the APF's informative website, the Commonwealth Forum's often lacks vital information about meeting particulars and contains no information about when and how submissions can be made and, indeed, about whether they can be made at all or would be given consideration.⁶⁷ This is surprising, given the concluding statement of the 2009 pre-CHOGM meeting of the Commonwealth Forum of NHRIs, which urged "Forum members, governments, NGOs and the general public to use the site as a resource for the promotion and protection of human rights in the Commonwealth."⁶⁸

NHRIs and the Commonwealth Secretariat's Human Rights Unit

The Commonwealth Secretariat's Human Rights Unit (HRU), which now acts as the Secretariat to the Commonwealth Forum, has done valuable work on the promotion and development of NHRIs for over twenty years.

Early in its existence, the HRU commissioned several reports on the situation of NHRIs in the Commonwealth and organized the first meetings of Commonwealth NHRIs in Ottawa in 1992 and Cambridge in 2000. It also worked to encourage and assist governments on establishing NHRIs, including, most recently, in Swaziland and Bangladesh. Taking a welcome participatory approach in Swaziland, HRU organized national consultations which included government, civil society, and leaders of local communities.⁶⁹ In 2011, HRU partnered with OHCHR to organize a workshop which called on "English-speaking Caribbean countries to establish NHRIs which are compliant with the Paris Principles."⁷⁰

⁶⁷ As this report was being finalized, CHRI was informed that the improvement of the Commonwealth Forum's website was currently being considered.

⁶⁸ Commonwealth Forum of National Human Rights Institutions (2009), *Concluding Statement: Port of Spain, Trinidad and Tobago*: http://www.commonwealthnhri.org/files/216613/FileName/CFNHRI_Concluding_Statement1.pdf as on 11 July 2011.

⁶⁹ Commonwealth Secretariat, Human Rights Unit (2010), *Human Rights Update*: <http://www.commonwealthnhri.org/files/230043/FileName/HRUpdateNewsletter21092010.pdf> as on 1 June 2011 p. 3.

⁷⁰ E-mail correspondence with Karen McKenzie, Human Rights Advisor, Commonwealth Secretariat, on 2 June 2011.

The HRU also works to develop the capacity of NHRIs and civil society to participate in the Universal Periodic Review (UPR) of the Human Rights Council, which provides a forum for peer scrutiny of the human rights record of every UN member country every four and a half years. The HRU provides training on the implementation and follow-up of recommendations made during the UPR. Most recently, in 2011, the HRU organized regional seminars on that topic for representatives of government, NHRIs and civil society in Bangladesh, Barbados, Mauritius, and New Zealand.

Given that most members of the Commonwealth Forum are also members of the ICC and regional networks where civil society routinely works side by side with NHRIs, there are few obstacles keeping the good practices in these networks, and in the Commonwealth's own best practice guide, from being transferred into the Commonwealth's own NHRI network. Their absence makes the Forum look regressive and unwilling to be inclusive when, in fact, the reasons may be based in practical limitations.

From its inception in 2007, the Forum has suffered from financial constraints and cannot with ease bring its own members to periodic meetings, let alone think of supporting civil society groups to attend. Nevertheless, as it often holds its meetings in the shadow of the ICC meetings or at CHOGM, it could, by publicizing meeting dates, locations, and agendas in advance, use the presence of ICC or CHOGM-attending civil society organizations to engage with them. Furthermore, the tiny size and slender resources of the Forum's secretariat which is located in the Human Rights Unit of the Commonwealth Secretariat – and tasked with many other responsibilities - also creates limitations on the Forum's ability to create layers of engagement outside servicing its own immediate membership. For the Commonwealth Forum to properly engage with civil society, it needs a secretariat that is provisioned to be effective. Finally, the busy domestic schedules and more competing international commitments have also meant that attendance at the Forum is not always a priority with its own membership. For the Commonwealth Forum to develop a lasting and meaningful engagement with civil society, it needs the funds and assistance certainly, but more than these it needs its membership to value the Forum itself sufficiently to prioritize it at the same level as the ICC and the regional networks to which they belong.

None of these obstacles are insurmountable. However, they require clear signals from the Commonwealth Secretariat of whether there exists some political will to support the Commonwealth Forum in the future. This is the key ingredient to turning the Forum into an invaluable resource for its member NHRIs and, consequently, for the nearly two billion people whose human rights are affected by its performance.

3. The Domestic Environment: Human Rights Begins at Home

International standards exhorting NHRIs and civil society to work together come from the recognition that collaboration and not isolation will bring the realization of human rights closer to fruition in national jurisdictions.

The founding laws of NHRIs in the Commonwealth reflect these standards in several ways. While some laws make clear mention of civil society engagement, others are vague. Whether or not NHRIs are mandated to engage with civil society, the national environments in which both actors work make a strong case for meaningful NHRI-CSO engagement in the Commonwealth.

NHRI Mandates

The mandates of NHRIs in Australia, Bangladesh, Cameroon, Fiji, India, Kenya, Malawi, Maldives, New Zealand, Nigeria, Sierra Leone, and the United Kingdom contain specific reference to engagement with civil society. However, in these countries mandates cast civil society engagement in different shades and every mandate is worded differently. South Asia's laws mirror each other in phrasing the requirement to engage with civil society in broad and unspecific terms. India's Protection of Human Rights Act, 1993 instructs the Indian commission to "encourage efforts of non-governmental organizations and institutions working in human rights."⁷¹ The Human Rights Commission of the Maldives is similarly directed by its founding legislation to "assist and support non-governmental organizations involved in the protection of human rights,"⁷² but does not elucidate further. The Bangladesh National Human Rights Commission Act, which is more recent, calls on the Human Rights Commission "to encourage and coordinate the efforts of Non-Governmental Organizations and institutions working in the field of human rights,"⁷³ as well as "to assist and advice (sic) the organizations, institutions and generally the civil society for effective application of human rights."⁷⁴

The Australian Human Rights Commission's mandate merely states that "the Commission may work with and consult appropriate persons, governmental organizations and non-governmental organizations."⁷⁵ Similarly, the National Commission of Human Rights and Freedoms in Cameroon is mandated to "liaise, where necessary, with non-governmental organizations working for the promotion and protection of human rights and freedoms."⁷⁶ These mandates leave it to the discretion of the NHRI to decide whether it will engage or not. By contrast, the mandates of other NHRIs oblige them to interact with civil society to perform their functions.

While many mandates only go as far as to instruct NHRIs to provide "encouragement" to civil society, and several mention "cooperation" as important, others speak of the need to both "cooperate" *and* "consult" with civil society. For example, the Kenya National Commission on Human Rights' mandate⁷⁷ requires it to "encourage the efforts of other institutions working in the field of human rights and cooperate with such other institutions for the purpose of promoting and protecting human rights in Kenya."⁷⁸ The New Zealand National Human Rights Commission is mandated to "consult and cooperate with other persons and bodies concerned with the protection of human rights."⁷⁹ This latter responsibility is identical to the Fiji Human Rights Commission's mandate.⁸⁰ In a slightly different characterization, the National Commission of

⁷¹ S12(i) The Protection of Human Rights Act, 1993 (India).

⁷² S2(c) Human Rights Commission Act No.6 / 2006 (The Maldives).

⁷³ S12 (1)(k) National Human Rights Commission Act No. 53 of 2009 (Bangladesh).

⁷⁴ S12(1)(o), National Human Rights Commission Act No. 53 of 2009 (Bangladesh).

⁷⁵ S15, Australian Human Rights Commission Act, 1986 (Australia).

⁷⁶ S2, *National Commission on Human Rights and Freedoms* 2004/016, 2004 (Cameroon).

⁷⁷ Kenya National Commission on Human Rights Act, 2002. This mandate will change as directed by the National Constitution, 2010 (Kenya),

⁷⁸ S16(1)(g), Kenya National Commission on Human Rights Act, 2002 (Kenya).

⁷⁹ S5(2)(g), Human Rights Act. 1993 (New Zealand).

⁸⁰ S 12 (1)(c), Fiji Human Rights Decree, 2009 (Fiji).

Human Rights in Sierra Leone is required to achieve “effective cooperation.”⁸¹ These mandates do not explicitly compel NHRIs to set up structures and take specific actions to institutionalize relationships with civil society. However, the duty to consult does suggest the necessity of putting in place mechanisms to establish cooperative relationships.

The mandate of the Equality and Human Rights Commission (EHRC) in Britain, for instance, contains several provisions that instruct it to “consult” with civil society.⁸² With regard to the formulation of its strategic plan, the EHRC has a three-fold duty to: consult with civil society, allow civil society to make representations, and take those representations into account.⁸³ To fulfill its statutory obligations, it has a process in place that allows civil society to input into its strategic plan for 2009-2012, which includes online submissions, focus groups, and meetings.⁸⁴

Mandated Improvement

Following years of political interference and wavering legitimacy, Nigeria’s government adopted an Act in February 2011 to amend the Nigerian Human Rights Commission’s mandate. This new and improved mandate safeguards the Commission’s autonomy, strengthens its enforcement powers, including powers to award effective remedies for human rights violations, and affirms the importance of civil society engagement.

Adopting an almost identical provision as its predecessor, the amended Act states that the Commission shall “liaise and cooperate, in such manner as it considers appropriate, with local and international organizations on human rights with the purpose of advancing the promotion and protection of human rights.”⁸⁵ A new provision also calls on the Commission, when exercising its powers, to “cooperate with and consult with other agencies and organizations, governmental and non-governmental, as it may deem appropriate.”⁸⁶ These two provisions make engagement with civil society obligatory but give the Commission some leeway over the nature of its relationship with civil society.

A novel and significant addition to the Commission’s mandate is a provision for the establishment of a new Human Rights Fund, which is devoted to research, as well as “the facilitation of human rights activities of the Commission in collaboration with other human rights non-governmental organizations, civil society organizations and other stakeholders.”⁸⁷

⁸¹ S7(2)(b)(iv), Human Rights Commission of Sierra Leone Act, 2004 (Sierra Leone).

⁸² S5, S12 and S14, Equality Act, 2006 (Great Britain). See also Equality and Human Rights Commission, Great Britain (2008), *ICC Statement of Compliance: Application for New Accreditation: November 2008*: <http://www.nhri.net/2009/Summary%20GB%20-%20Oct%20FINAL.pdf> as on 14 July 2011.

⁸³ S4, Equality Act, 2006 (Great Britain). See also Equality and Human Rights Commission, Great Britain (2008), *ICC Statement of Compliance: Application for New Accreditation: November 2008*: <http://www.nhri.net/2009/Summary%20GB%20-%20Oct%20FINAL.pdf> as on 14 July 2011.

⁸⁴ Equality and Human Rights Commission, Great Britain: <http://www.equalityhumanrights.com/> as on 14 July 2011.

⁸⁵ S6, Nigeria National Human Rights Commission (Amendment) Act, 2010 (Nigeria),

⁸⁶ S7, *Ibid.*

⁸⁷ S12, *Ibid.*

Mirroring the Paris Principles, the Malawi National Human Rights Commission's mandate requires it to specifically "develop work relationships with non-governmental organizations devoted to protecting and promoting human rights."⁸⁸ To satisfy this statutory requirement, the Commission is obliged to create structures and specific opportunities that indicate that it is taking active steps to create and maintain a relationship with civil society actors.

While some laws, like Malawi's, speak of engagement with "non-governmental organizations," others, like New Zealand's, include individuals by using the terminology: "persons and bodies concerned with the protection of human rights." However, most mandates refer to non-governmental organizations and institutions.

In Aid of the Defender

While no legislation on NHRIs expressly refers to human rights defenders (HRD), policy and practice have evolved to place a duty on an NHRI to protect human rights defenders.⁸⁹ The UN Declaration on Human Rights Defenders (1998) defines a human rights defender as a person who "individually and in association with others" promotes and strives "for the protection and realization of human rights and fundamental freedoms at the national and international levels."⁹⁰ The Declaration recognizes the special status of HRDs and implores states to establish NHRIs as a mechanism to protect human rights and those using legitimate means to further them. This framework, endorsed by all Commonwealth governments, makes it imperative for their NHRI bodies to take on this assigned role. Owing to the nature of their work, HRDs are often under grave threat. They regularly function in hostile environments that stigmatize their work – threats to life and liberty through arbitrary arrests and detention, harassment, and violence – environments that are common in many Commonwealth countries.

Violence, intimidation, and threats often increase when human rights defenders take on politically sensitive and controversial issues. For instance in Uganda, [lesbian](#), [gay](#), [bisexual](#), [transgender](#) and intersex (LGBTI) activists face egregious abuse⁹¹ and, as was in the case of David Kato, have even been killed.⁹² Restrictive legislation such as the Ugandan NGO Act has also brought new concerns about the future of human rights defenders in the country.⁹³ In Malaysia, a campaign in July 2011 for electoral and political reform prompted systematic harassment by government authorities and

⁸⁸ S16(e), Malawi Human Rights Commission Act No. 27 of 1998 (Malawi).

⁸⁹ UN Human Rights Council (2010), "Resolution 13/13: Protection of Human Rights Defenders: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/129/00/PDF/G1012900.pdf?OpenElement> as on 17 August 2011.

⁹⁰ *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms* (1998).

⁹¹ *Frontline* (2010), "Human Rights Defenders in 2010," p. 2: http://www.protectionline.org/IMG/pdf/front_line_2011_annual_report_on_hrds.pdf as on 4 August 2011.

⁹² *Ibid.*

⁹³ Telephone interview with a civil society representative from Uganda on 27 October 2010.

culminated in mass arrests.⁹⁴ So too in Bangladesh, human rights defenders continue to face intimidation and harassment.⁹⁵ In Kenya, two human rights defenders were murdered soon after collaborating with the UN Special Rapporteur on extrajudicial killings.⁹⁶ Women human rights defenders face the threat and risk of gender-based violence by government agents in certain African states.⁹⁷

To maintain legitimacy, an NHRI must be vocal, proactive, and prepared to advocate the defense of HRDs – a repressive climate should prompt an NHRI to provide special assistance to defenders. The Northern Ireland Human Rights Commission, for example, monitored the Rosemary Nelson inquiry that investigated the murder of prominent human rights lawyer, Rosemary Nelson.⁹⁸ In another example, following the subsequent arrests and harassment by state authorities of protestors in July 2011, SUHAKAM, the Malaysian National Human Rights Commission, plans to carry out an inquiry to investigate allegations of police brutality while dealing with activists.⁹⁹

NHRIs can also be a rich resource for HRDs to receive information on international human rights norms and domestic, regional, and international human rights protection mechanisms. Additionally, in their role as advisors to governments, NHRIs can also review legislation to ensure that it facilitates an enabling environment for HRDs' work.

Another way for an NHRI to aid HRDs is through the creation of a “focal point person” – a recognized best practice¹⁰⁰ – to adhere to the urgent and specific needs of human rights defenders. Commonwealth NHRIs, including those in India, Sri Lanka, Kenya, and Uganda, have appointed focal point persons on human rights defenders.

Yet the mere appointment of a focal point person is inadequate. For example, the UN Special Rapporteur on Human Rights Defenders observed during a visit to India in 2011 that despite the creation of a focal point person within the INHRC, it lacks “sufficient

⁹⁴ “Malaysian activists arrested before banned political rally,” *The Guardian*, 27 June 2011: <http://www.guardian.co.uk/world/2011/jun/27/malaysia-activists-arrested-political-rally> as on 4 August 2011.

⁹⁵ World Organization Against Torture (2011), “Bangladesh: Continuing acts of harassment against members of Odhikar”: <http://www.omct.org/human-rights-defenders/urgent-interventions/bangladesh/2011/03/d21161/> as on 4 August 2011.

⁹⁶ “Two Kenyan human rights activists shot dead,” *The Guardian*, 6 March 2009. <http://www.guardian.co.uk/world/2009/mar/06/kenyan-activists-shot-dead> as on 13 July 2011.

⁹⁷ Civicus (2011) *Report on the Challenges faced by Women Civil Society in Africa*, p. 14, http://www.civicus.org/view/media/Challenges_Faced_by_Women_in_Civil_Society_in_Africa.pdf as on 9 July 2011.

⁹⁸ Telephone interview with an NHRI representative in Northern Ireland on 25 November 2010.

⁹⁹ “Suhakam to probe police action in Bersih rally,” *The Malaysian Insider*, 14 July 2011: <http://www.themalaysianinsider.com/malaysia/article/suhakam-to-probe-police-action-in-bersih-rally> as on 4 August 2011. Also see “Suhakam panel to investigate Bersih rally rights allegations,” *The Malaysian Insider*, 22 July 2011: <http://www.themalaysianinsider.com/malaysia/article/suhakam-forms-panel-to-look-into-bersih-rally/> as on 4 August 2011.

¹⁰⁰ Sekaggya, M. (2009), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, A/HRC/13/22: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/100/12/PDF/G1010012.pdf?OpenElement> as on 9 August 2011.

prominence within the Commission.”¹⁰¹ An Indian human rights defender has also noted that the focal point person in the INHRC fails to respond with urgency to complaints of alleged abuse against human rights defenders.¹⁰²

Ideally a focal point person must go beyond acting as a separate complaints-handling cell to monitor and report on concerns relating to HRDs, prompt investigations, and where possible, even initiate legal procedures on behalf of HRDs.

Put It on Paper

The level of enthusiasm with which civil society approaches its NHRI in the Commonwealth often depends on the personalities at its helm. Strong infirmities in the design of succession impact engagement patterns, as in the case of India, where only Chief Justices can lead the Commission, and in single-member ombudsman offices, where the individual *is* the office. In Jamaica, civil society generally perceives the present Ombudsman as more proactive and open to engagement than his predecessor. The present Ombudsman in Namibia is seen as more open and accessible to civil society, while his predecessor was viewed as inclined to the formal and official and therefore averse to lobbying for specific civil society concerns. In the long run, a rise and fall in engagement with civil society can be extremely detrimental to public ownership of a national human rights body. NHRIs must therefore espouse civil society partnerships from the very start in the mandate itself, to counter deprecations that mar the office of an NHRI.

Most mandates of Commonwealth NHRIs make no mention of civil society at all, as in the mandates of NHRIs in Antigua and Barbuda, Barbados, Belize, Canada, Cyprus, Ghana, Jamaica, Malaysia, Mauritius, Namibia, Northern Ireland, Rwanda, Papua New Guinea, St. Lucia, Seychelles, South Africa, Sri Lanka, Swaziland, Tanzania, Trinidad and Tobago, Uganda, and Zambia. However, there are instances where, though no mention of civil society engagement is made within the mandate, NHRIs have worked with civil society on their own initiative to further mutual agendas. For example, the mandate governing the Commission of Human Rights and Administrative Justice (CHRAJ) in Ghana is silent on civil society engagement. Nevertheless, CHRAJ takes interaction with civil society seriously and has established an NGO forum that meets quarterly, which registered NGOs can join.¹⁰³

¹⁰¹ United Nations (2011), *Statement of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, as She Concludes Her Visit to India*: 21 January, 2011: <http://www.peopleswatch.org/dm-documents/HRDA/press%20release%20-%20end%20of%20mission%20to%20India.pdf> as on 4 August 2011.

¹⁰² Telephone interview with a civil society representative in India in February 2011.

¹⁰³ Telephone Interview with an NHRI representative in Ghana on 13 January 2011.

The Northern Ireland Human Rights Commission created a Human Rights Practitioners Group comprised of advice workers, equality officers, solicitors, and academics. This informal Group holds quarterly meetings to deliberate on human rights concerns.¹⁰⁴

Notably, none of the mandates of Commonwealth ombudsmen, who have responsibilities to promote and protect human rights, make reference to civil society engagement and, in practice, few seem to view it as a priority. An exception is the Ombudsman in Namibia. In fact, despite the absence of instruction from domestic legislation, the Namibian Ombudsman set up the Ombudsman Human Rights Advisory Committee, which comprises civil society actors, including NGOs and faith-based organizations. The Committee meets monthly to discuss and strategize on emerging human rights concerns.¹⁰⁵

Whether mandates do or do not explicitly require NHRIs to engage with civil society, challenges can obstruct the actualization of this desirable practice. These include differences in the nature and organizational structures of both CSOs and NHRIs, their perceptions about each other, and the environments in which they function.

NHRIs and Civil Society: Mutual Perceptions and Inhibitions

While created by the state and supported by it, an NHRI is a *sui generis* body that is required to be independent of political interference. Its statutory origins provide it with formal authorization and powers to hold the state to account as well as to act as a public advocate that furthers the human rights agenda. On the other hand, civil society, by its very nature, is self-defining, self-mandated, voluntary, and self-propelled. Its strengths come from its ubiquitous formal and informal presences at different levels of society and sometimes fluid and adaptable structure.

Situations and circumstances surrounding both NHRIs and civil society can inhibit engagement between the two parties. Civil society actors frequently cite their reservations about working with NHRIs because, inter alia, they sometimes perceive them as negatively motivated entities propped up by the state or guarded by its agents; lacking in ability, commitment, and/or resources; and overcautious in responses to human rights violations. On the other hand, the large number and variety of civil society actors sometimes causes NHRIs to be reasonably cautious about with which actors they want to engage. NHRIs can be aloof about their involvement with civil society groups because they sometimes perceive them to be politically partisan, prone to inaccurate or exaggerated reporting of violations, too confrontational, lacking in adequate expertise themselves, and unrepresentative or driven by external/donor agendas.

¹⁰⁴ European Union Agency for Fundamental Human Rights (2010), *National Human Rights Institutions in the EU Member States: Strengthening the Fundamental Rights Architecture in the EU*: http://fra.europa.eu/fraWebsite/attachments/NHRI_en.pdf as on 4 August 2011.

¹⁰⁵ Walters, J. (2008), "The protection and promotion of human rights in Namibia: The constitutional mandate of the Ombudsman," in Horn, N. and Boesl, A. (eds), *Human Rights and the Rule of Law in Namibia*, p. 128, <http://www.kas.de/upload/auslandshomepages/namibia/HumanRights/walters.pdf> as on 12 May 2011.

Looking for Legitimacy

Sometimes civil society will isolate itself from an NHRI because it does not view the NHRI as legitimate. In 2006, the President of Sri Lanka directly appointed the Commissioners of the Human Rights Commission of Sri Lanka, in clear contravention of the national Constitution and the Paris Principles. The Commission's consequent lack of political independence severely inhibited its engagement with civil society and impacted its image in the international arena. In 2011, the report of the UN Secretary-General's Panel of Experts on Sri Lanka noted that while the Commission "could potentially contribute to advancing certain aspects of accountability," it had "serious reservations and believes that the Commission will need to demonstrate political will and resourcefulness in following up on cases of missing persons and in monitoring the welfare of detained persons."¹⁰⁶ Most Sri Lankan civil society actors chose to disengage themselves completely from the Commission, as they perceived it to be an unconstitutional and illegitimate body. In 2007, the ICC declared the Commission non-compliant with the Paris Principles and as a result, downgraded it to "B" status.

In the same year, following the military coup in Fiji, the ICC suspended the Fiji Human Rights Commission's "A" status, *inter alia*, owing to its open support of the coup and its justification of human rights violations on account of the State of Emergency.¹⁰⁷ The Commission consequently resigned from the ICC. Additionally, the Commission has been admonished for its criticism of Fijian human rights NGOs, its request for increased governmental scrutiny of NGO activities and funding, and for publishing confidential email exchanges about the country's political situation between Fijian NGOs and newspaper publishers.¹⁰⁸ Having lost its credibility, independence, public support, and capacity and will to engage with civil society, the NHRI has been virtually rendered ineffective.

Even under the very best of circumstances, concerns about co-option, retention of functional autonomy, and independence of action mean that both civil society and NHRIs too often approach each other gingerly for fear that engagement may verge on encroachment.

Perceptions aside, inevitably the effectiveness of both an NHRI and civil society actors to further human rights depends greatly on the environment in which both exist. For every jurisdiction that is progressive, accommodating, and responsive to human rights, NHRIs, and civil society, there are several others where governments are unenthusiastic about human rights work, whether it is undertaken by civil society or the NHRI.

¹⁰⁶ UN, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka* (2011): http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf as on 29th August 2011, p. v

¹⁰⁷ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2007), *Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 19th Session: 22 March 2007*: http://www.nhri.net/2007/Sub_Committee_Report_March07_EN.pdf as on 14 July 2011.

¹⁰⁸ Amnesty International (2009), *Fiji: Paradise Lost: A Tale of Ongoing Human Rights Violations: April-July 2009*: <http://www.amnesty.org/en/library/asset/ASA18/002/2009/en/5da2ce7b-de57-4778-af80-03632b33a322/asa180022009en.html> as on 14 July 2011.

The Creation of NHRIs

Motives to create NHRIs vary. Some developed Commonwealth member states have set up their NHRIs by consolidating several offices with similar roles into one. Frequently, these NHRIs take on the form of equality commissions, which deal with problems of discrimination and inequality. For instance, the creation of the Equality and Human Rights Commission in Great Britain consolidated three previously existing bodies dealing with race relations, gender equality, and disabilities.¹⁰⁹

Several other NHRIs have come into being as part of large national transitions. The South African Human Rights Commission was established following its post-apartheid “constitutional moment.” The Malawi Human Rights Commission was likewise created during its transition to democracy following thirty years of authoritarian rule. Sierra Leone and Northern Ireland established their NHRIs as a result of peace agreements after long periods of internal conflict.

In certain Commonwealth countries, pressure from the international community – including governments, donors, international human rights groups, and international and regional human rights monitoring and enforcement mechanisms – has pushed reluctant governments to create NHRIs in order to temper disapproval and condemnation. India was spurred into creating its National Human Rights Commission after a damning report on torture, rape, and death in custody pointed out endemic violations across the country.¹¹⁰ Malaysia felt compelled to set up SUHAKAM only after it became a member of the erstwhile UN Commission on Human Rights, despite the fact that civil society had agitated for a national human rights mechanism for years.¹¹¹

Once in place, the NHRI – as a unique body created by the state but charged with taking state actors to task – occupies a precarious space.¹¹² While the creation of an NHRI suggests that a state consents to scrutiny, in reality governments are reluctant to submit to this level of accountability. Defensive governments can and do use their control over NHRIs’ design and appointments to weaken them from the very beginning or frustrate them if they become too outspoken. For example, in 2006, the Executive Secretary of the Nigerian National Human Rights Commission, Bukari Bello, was sacked for voicing his opposition to government policies and actions, including the arrest and detention of a journalist by state authorities. Finances are a perennial problem for most states, but tightened purse strings that have little to do with national financial constraints also signal a sharp response to growing displeasure with an institution. An NHRI’s realization that it is ultimately dependent on the government can likewise act as a continuing rein on its willingness to take it on with even mild admonishments.

¹⁰⁹ Telephone interviews with an NHRI and civil society representative in the United Kingdom on 3 November and 13 December 2010.

¹¹⁰ Amnesty International, *India: Torture, Rape and Deaths in Custody*: <http://www.amnesty.org/en/library/asset/ASA20/006/1992/en/d8f411b5-edaa-11dd-9ad7-350fb2522bdb/asa200061992en.html> as on 11 July 2011; interview with a civil society representative in India in February 2011; and Sripati, V. (2000), “India’s National Human Rights Commission: A Shackled Commission?,” *Boston University International Law Journal*, Volume 18, Issue 1.

¹¹¹ Thio, L. A. (2009), “Panacea, Placebo, or Pawn? The Teething Problems of the Human Rights Commission of Malaysia (SUHAKAM),” *The George Washington International Law Review*, Volume 40: <http://docs.law.gwu.edu/stdg/gwlr/PDFs/40-4/40-4-9-Thio.pdf> as on 12 May 2011.

¹¹² Smith, A. (2006), “The Unique Position of National Human Rights Institutions: A Mixed Blessing?,” *Human Rights Quarterly*, 28:904, p. 905.

“[Government] has a tendency to exercise authoritarian power and does not still fully appreciate the significance, meaning and essence of an NHRI. It often confuses the NHRI with the various other institutions that exist and forgets the body’s unique role and position and international significance.”¹¹³

While NHRIs are often under scrutiny from governments for daring to perform, this pressure is also channeled against civil society actors whom they perceive to be too vociferous in furthering human rights. Governments challenged by dissent, embarrassed by criticism, or defensive about violations, frequently restrict civil society functioning through unreasonable registration regimes; limited access to funding; arbitrary arrests and detention; and draconian laws that hinder the rights to expression, assembly, and association.¹¹⁴

Nevertheless, engagement is perhaps all the more valuable and rewarding when done in the face of constraining environments. Nigeria’s Human Rights Commission (NHRC) was created to assuage international criticism of Nigeria’s military government and, in its formative years, had little legitimacy with civil society. At the same time, human rights defenders were under persistent threat from the government, and arbitrary detention and harassment executed by government agents became rampant. In a bid to overcome state intimidation, human rights actors chose to engage with NHRC, however illegitimate they perceived it to be. Working with NHRC, which had access to the African Commission for Human and Peoples’ Rights – a regional human rights mechanism – became a means to profile the human rights situation in Nigeria. Most importantly, however, the government found it difficult to inhibit the work of civil society actors who engaged with NHRC.

Even in more secure environments with established democratic space, a symbiotic relationship is more effective than working in isolation. In Australia in 2006, a nationwide campaign to improve healthcare for indigenous people was triggered by collaborative action between the NHRI and civil society.¹¹⁵ Earlier in the year, the Australian Human Rights Commission (AHRC) had published a report that revealed gross inequalities in healthcare for Aboriginals and Torres Strait Islanders compared to the rest of Australians.¹¹⁶ To compel the government to respond, the AHRC formed the “Close the Gap Coalition,” an umbrella group of over forty organizations, including Australians for Native Title and Reconciliation (ANTAR), the National Aboriginal Communities Controlled Health Organization (NACCHO), and Oxfam Australia.¹¹⁷ The joint movement successfully prompted the government to make a series of

¹¹³ Telephone interview with a representative from an NHRI in the Commonwealth in October 2010.

¹¹⁴ CHRI (2009), *Silencing the Human Rights Defenders: Human Rights Defenders in the Commonwealth*: http://www.humanrightsinitiative.org/publications/chogm/chogm_2009/silencing_the_defenders_chogm_2009_report.pdf as on 13 July 2011.

¹¹⁵ Australian Human Rights Commission (2011), *Close the Gap: Campaign for Indigenous Health Equality*: http://www.hreoc.gov.au/social_justice/health/index.html as on 11 July 2011.

¹¹⁶ Telephone interview with an NHRI representative in Australia on 25 November 2010.

¹¹⁷ Australians for Native Title and Reconciliation (2011), *Close the Gap*: http://www.antar.org.au/issues_and_campaigns/health/close_the_gap as on 11 July 2011.

commitments, including a boost in funding, to remedy indigenous health inequities.¹¹⁸ The Close the Gap Coalition continues to monitor and report on the progress of this initiative.

4. Developing Partnerships: Practice Makes Perfect

Engaging from the Beginning

The relationship between NHRIs and civil society is most effective when civil society plays a role in the creation of an NHRI. Pluralism and participation of the largest numbers of stakeholders throughout an NHRI's establishment and continued existence can strengthen it and minimize the possibilities of interference by vested interests of the state. Furthermore, adequate and meaningful engagement also demonstrates and satisfies the fundamental democratic value of participation that is central to the Commonwealth.

The larger the number of stakeholders connected with the creation and operation of an NHRI, the easier it is for the NHRI to modulate the negative reactions of the political executive. Such reactions are often present in a process where the government of the day creates an agency whose primary function is to monitor its performance in a subject matter that goes to the very heart of the state's legitimacy.

Broad-based consultation processes facilitate the spread of knowledge about the institution into the public at large. Wide consultations at the outset help shape the new institution, refine debates around contentious issues, and transfer ownership of the institution from the government's hands to the communities it is to serve. When the need arose to form a statutory body to advocate human rights concerns, expand the democratic space, and advocate freedom of fundamental rights, the Kenyan National Commission on Human Rights (KNCHR) was created in 2003, following immense pressure from civil society actors in Kenya and a large dose of assistance from the United Nations, and specifically the Office of the High Commissioner on Human Rights. The participation of civil society actors in the creation of KNCHR was key in establishing the strong engagement that the body has maintained subsequently with civil society. Several of the commissioners eventually appointed to KNCHR came from civil society. Such engagement with civil society was also critical in establishing a sense of public ownership over KNCHR and furthering its legitimacy. KNCHR sees engagement with civil society as a crucial accountability mechanism. Furthermore, civil society actors in Kenya themselves view their NHRI as a strategic partner in all their initiatives.¹¹⁹

Such a consultation at the inception of an NHRI allows for public concerns to feed into the role and functions of the institution. However, consultations alone may not always mean that every battle is won. In India, consultations with civil society groups were not successful in including the armed forces under the purview of the Commission's final enabling legislation, despite strong evidence that it was responsible for human rights violations.¹²⁰

¹¹⁸ Australian government (2011), Closing the Gap: Prime Minister's Report: http://www.fahcsia.gov.au/sa/indigenous/pubs/closing_the_gap/2011_ctg_pm_report/Pages/default.aspx as on 11 July 2011.

¹¹⁹ Telephone interview with a civil society representative from Kenya on 3 November 2010.

¹²⁰ Interview with a civil society representative from India on 25 January 2011.

The People Behind an NHRI

Every major change in the members of an NHRI can change the dynamics of civil society engagement. For this reason, the involvement of civil society must extend well beyond the creation of an NHRI into the appointment of its members.

Diversity, pluralism, and the regular and accepted involvement of civil society bring the richness of varied perspectives and expertise into an NHRI. Involving civil society early in the selection process and appointing people from a large variety of groups as Members of an NHRI are in themselves ways of habituating continuous engagement. Pluralism and diversity among the members are promoted by the Paris Principles as well as the ICC Sub-Committee's Guidelines.¹²¹ The Commonwealth Best Practice for NHRIs states: "In addition to the strong personal and professional qualifications of the individual members, successful NHRIs are characterised by the plurality of their composition."¹²² Drawing members from civil society adds to the diversity and richness of expertise of an NHRI; however, drawing extensively from civil society can also result in too close a relationship with civil society, which can sometimes obscure the boundaries that need to be maintained by an NHRI for it to work effectively with the public service.

Sierra Leone's statutory selection panel comprises a representative of the government and a representative of each of the following umbrella organizations: the Inter-religious Council, the National Forum for Human Rights, the Civil Society Movement, the Council of Paramount Chiefs, the Sierra Leone Women's Forum, and the Sierra Leone Labour Congress.¹²³

The Malawian Human Rights Commission Act invites civil society actors to nominate independent, nonpartisan persons of high integrity for appointment as members of the NHRI. The Malawi Law Commissioner and the Ombudsman jointly assess these nominations and use them as a basis to make recommendations to the President for appointments.¹²⁴ In Kenya, anyone in the country can nominate any qualified person to be appointed to the National Human Rights Commission. The call for nominations is widely advertised in the print media to make it a participatory process.¹²⁵ This has resulted in a diverse composition of commissioners, richer by the range of experiences they bring to the job.

¹²¹ The Paris Principles contain key requirements related to the composition and guarantees of independence and pluralism (See Paris Principles B 1 a). They require that the composition of a NHRI and the appointment of its members shall a) be established by a procedure which ensures representation of all social forces including civil society, and b) enable effective cooperation with, and/or representation of, non-governmental organizations. The Sub Committee on Accreditation in its General Observation 2.1. entitled "Ensuring Pluralism" has clarified that "The Sub Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub Committee emphasizes the importance of national institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications"; it also notes that there are different ways in which pluralism may be achieved (see GO 2.1). In its General Observation 2.2 entitled "Selection and appointment of the governing body," the SCA notes further "the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the national institution" and emphasizes the need for a transparent and inclusive process, including with the involvement of civil society.

¹²² Commonwealth *Best Practice for NHRIs*, p. 14.

¹²³ S3 Human Rights Commission of Sierra Leone Act, 2004 (Sierra Leone).

¹²⁴ S4 The Human Rights Act, 1998 (Malawi).

¹²⁵ S4(c) The Kenya National Commission on Human Rights Act, 2002 (Kenya).

Inclusion of multiple interest groups helps ensure that the marginalized, the vulnerable, and even the unpopular are represented and are knowledgeable about their concerns.

Expanding the Pool

The staff composition of an NHRI defines its relationship with civil society in carrying out its functions. Many NHRIs, however, tend to take regular staff from only a limited segment of society. Heavy reliance on staff deputed from various departments of the government has, in some countries, created concern about overly government-oriented outlooks, and a lack of expertise and sympathy for the human rights regime they are entitled to serve. Similarly, concerns abound about loyalties where staff members are required to eventually return to government entities at the end of their deputations at an NHRI. These concerns can be significant where staff deputed from state security forces conduct an NHRI's human rights investigations. The investigative staff of the National Human Rights Commission of India, for instance, is mandated to comprise primarily existing police personnel and officers from the Intelligence Bureau.¹²⁶ Other staff members are also recruited from various government agencies to which they then return after their deputation period is over.¹²⁷ This has had significant repercussions on the NHRI's engagement with civil society.

Mutual Engagement for Mutual Benefit

Challenges faced by NHRIs and civil society, in the varied and sometimes difficult environments within which they function, can deter regular engagement. Yet in good or poor circumstances, both actors can accomplish their goals better by working together, because the limitations of one actor can be overcome by the strengths of the other.

Civil society may in some circumstances have better human rights expertise, skill sets, networks, and outreach. Unburdened by bureaucratic fetters, it can sometimes move faster and more effectively. Therefore, in certain circumstances, NHRIs can seek support from civil society partnerships to extend their community outreach and advocacy measures, which may otherwise be limited by financial and human resource constraints. Civil society brings with it networks, often at the grassroots level, that give access to rural areas and marginalized sections of society where the outreach of an NHRI may be limited. This can grant an NHRI crucial access to populations, regions, information, and human rights expertise to which it would never otherwise be privy. Civil society actors who are in touch with the concerns and perceptions of different cross sections of society can act as bridges between NHRIs and different communities and social echelons.

KNCHR views civil society partnerships as invaluable. In 2010, the African Commission on Human and Peoples Rights discovered that the Kenyan government had violated the rights of

¹²⁶ Protection of Human Rights Act, 1993 (India).

¹²⁷ Ibid. The Sub-Committee of Accreditation of the ICC has recommended during its review of the National Human Rights Commission of India in 2006 and in 2011 that the Protection of Human Rights Act 1993 be suitably amended. See the Letter from Vladlen Stefanov, Chief, National Institutions and Regional Mechanisms Section, OHCHR, to Justice K. G. Balakrishnan, Chair, National Human Rights Commission, with ICC/SCA recommendations of May 2011 as attachment, 8 June 2011 and the International Coordinating Committee for National Institutions for the promotion and protection of human rights (2006) *Report and Recommendations of the Sub-Committee on Accreditation*: Geneva

the Endorois, an indigenous group, by forcibly removing them from their land without prior consultation or compensation. In a campaign to promote the rights of indigenous peoples, and in particular to monitor the implementation of a ruling by the African Commission, KNCHR collaborated with several NGOs, including the Centre for Minority Rights Development (CEMIRIDE) and the Kenya Land Alliance (KLA), to urge the government to implement the ruling of the African Commission.¹²⁸

Making the Most of It

Several NGOs in Bangladesh have an established profile with the public. They have many years of experience in delivering development and bettering governance at the grass roots, large financial and manpower resources, and expansive networks. In contrast, the Bangladesh Human Rights Commission is nascent. It is still in the process of setting up and mapping its role in the human rights arena, while challenged by a dearth of resources. The Commission has therefore used the expertise of established, credible NGOs in furthering its outreach to all sections of the country. In many cases of human rights violations in Bangladesh, NGOs are the first to intervene, investigate, and report preliminary findings, which the Bangladesh Commission uses as a basis to take necessary action.¹²⁹

Even some single-member institutions, such as the Office of the Ombudsman in Namibia, welcome engagement with civil society. The Namibian Ombudsman is especially interested in “collaborating with civil society organizations which are closer to the ground” because they are a “source of knowledge and expertise.”¹³⁰ Putting this into practice, the Office of the Ombudsman has conducted outreach programs specific to human rights in collaboration with NGOs, community leaders, and local authorities.¹³¹

Working with an NHRI also confers many benefits on civil society. NHRIs have the voice and authority of a statutory institution, with mandated access to the government. Association with an NHRI can give civil society crucial access to the decision-making bodies of the state and offer a powerful platform to analyze and advise on legislation and negotiate compliance with human rights norms. A CSO based in Namibia acknowledged that its partnership with the Ombudsman provided greater weight to its human rights concerns, “legitimising certain controversial issues”¹³² and precipitating a positive government response.

CSOs can also benefit from the resources and platform that an NHRI provides as a state institution. Those NHRIs that have substantial geographic reach through regional and district

¹²⁸ Okoth, D. (2011) *Cheers turn to tears for Endorois waiting for land: The Standard: 17/06/2011*, <http://www.standardmedia.co.ke/specialreports/InsidePage.php?id=2000037356&cid=259&story=Cheers%20turn%20to%20tears%20for%20Endorois%20waiting%20for%20land> as on 13 July 2011.

¹²⁹ Telephone interview with Chairperson, Bangladesh Human Rights Commission on 27 October 2010.

¹³⁰ Walters, J. (2008) “*The protection and promotion of human rights in Namibia: The constitutional mandate of the Ombudsman*,” in Horn, N. and Boesl, A. (eds), (2008) *Human Rights and the Rule of Law in Namibia*, <http://www.kas.de/upload/auslandshomepages/namibia/HumanRights/walters.pdf> as on 12 May 2011.

¹³¹ G Ruppel, K. (2008) “*The Independence of the Ombudsman in Namibia*,” http://www.kas.de/upload/auslandshomepages/namibia/Independence_Judiciary/ruppel-schlichting.pdf as on 1 July 2011.

¹³² Telephone interview with a civil society representative from Namibia on 28 October 2010.

level offices can benefit civil society advocacy efforts. The Ghanaian Commission on Human Rights and Administrative Justice, for instance, has offices in over 100 districts of the country. As a result, Ghana's civil society finds the Commission to be a strategic partner to enhance its advocacy and awareness efforts.¹³³

Formal Platforms

Unfortunately, much of the engagement between NHRIs and civil society is ad hoc. It is usually limited to workshops, training programs, seminars, and human rights advocacy initiatives. In the absence of formal platforms and processes for long-term engagement, these initiatives may be seen as temporary or implying tokenism. Malaysian civil society cites its consistent unmet demand for regular meetings as a challenge for further engagement with SUHAKAM.¹³⁴ The nature of the engagement remains ad hoc and issue-based in Malaysia, making the implementation of outcomes difficult.

There is a strong need to establish formal platforms for engagement with civil society to ensure that it is regular and meaningful. This may mean a clearly defined framework with mutually agreeable parameters for both actors.

None of the mandates of Commonwealth NHRIs lay down a formal mechanism through which engagement can be realized. However, mechanisms were subsequently established to formalize engagement. Tanzania's Commission for Human Rights and Good Governance, for instance, has established formal engagement through a Memorandum of Understanding (MoU) with certain CSOs. In 2007, it signed an MoU with ten NGOs (eight from mainland Tanzania and two from Zanzibar) with the aim of enabling effective participation by CSOs to monitor and report human rights violations in the country as well as to promote public awareness on human rights issues through training and other outreach programs. The MoU requires parties to combine efforts to work towards observation, protection, and promotion of all human rights norms. It makes the roles of each stakeholder clear, thereby avoiding duplication of effort.¹³⁵

NHRIs in India and Maldives have established core groups focusing on thematic human rights issues.¹³⁶ Individuals and experts from various CSOs have been taken on board to ensure that these platforms are used most effectively.

The establishment of formal platforms is merely the first step towards substantial and consistent engagement. Creating platforms can often become a box-ticking exercise for NHRIs, sometimes adding to the atmosphere of non-transparency and co-opted exclusiveness. For instance, a consultative forum for NGOs, an initiative of the Rwandan Human Rights Commission,¹³⁷ was set up to strengthen capacity for sustained partnerships with civil society actors. The Forum convenes twice a year and has been

¹³³ Telephone interview with a civil society representative from Ghana on 13 December 2010.

¹³⁴ Telephone interview with a civil society representative from Malaysia on 2 December 2010.

¹³⁵ E-mail interview with a representative from the Commission for Human Rights and Good Governance, Tanzania, on 8 November 2010.

¹³⁶ Interview with the Chairperson, National Human Rights Commission of India on 12 January 2011; telephone interview with a civil society representative from Maldives on 12 October 2010.

¹³⁷ Telephone interview with the Chairperson, Rwanda Human Rights Commission on 8 April 2011.

able to encourage engagement between the NHRI and civil society actors at a very superficial level. Civil society actors may be invited to participate in the advocacy campaigns, public outreach activities, and trainings of the NHRI, but are excluded from the planning stages of these programs. While engaging through a consultative forum may be a step towards strengthening NHRI-CSO partnerships, according to civil society actors in Rwanda a more substantial approach would bolster efforts that are initiated by civil society itself with the facilitation of the NHRI.¹³⁸

Occasionally, the establishment of formal platforms may prioritize engagement with certain civil society actors over others. One remedy may lie with the selected civil society actors who could hold further open and transparent consultations with other sections of civil society and gain their feedback. In this way, more comprehensive views from a larger section of civil society may be presented in these NHRI-CSO platforms.

A Partnership to Advance the Human Rights Agenda

In the Commonwealth, certain NHRIs have set a high bar in engaging with civil society in their day-to-day functions, while others have lagged behind. The following examples draw from this broad spectrum and illustrate specific ways in which NHRIs and civil society engage successfully.

Handling Complaints

Handling complaints is a primary function of many NHRIs. One of the main ways in which civil society can add value to an NHRI's work is to bring complaints from people who cannot do it on their own. For the victim of a human rights abuse, filing a complaint can be a daunting affair, especially in places where state agencies are disproportionately powerful and populations are often poor, sometimes illiterate, and liable to reprisals. Language barriers, physical distance, an overwhelming amount of paperwork, and at times, even the misconception that an NHRI is an arm of the state can inhibit a victim from filing a complaint. Civil liberties groups, human rights defenders, health workers, environmentalists, lawyers, media persons, and others who operate in remote areas of a country and are in constant touch with ground realities play a predominant role in supporting victims and bringing their complaints to the NHRI.

Filing Complaints Made Easy

Undoubtedly, civil society plays a salient role in filing complaints – whether their own complaints or those of others. However, some NHRIs in the Commonwealth have also made efforts to ease the filing process. Though most NHRIs allow the lodging of complaints in person at the NHRI, or through telephone, email, or fax, for many complainants who have special needs or challenges, these methods can still pose difficulties. For this reason, some NHRIs have gone a step further to assist in this process. The Bangladesh Human Rights Commission, for instance, offers the assistance of its staff to people who cannot read or write.¹³⁹ The Australian Human Rights Commission

¹³⁸ E-mail interview with a civil society representative from Rwanda on 20 January 2011.

¹³⁹ Telephone interview with a representative of the National Human Rights Commission of Bangladesh on 27 October 2010. It should be noted that this facility, in the hands of a dysfunctional NHRI, may have detrimental effects and could impinge on the accuracy of complaints.

extends its reach to complainants by making all important information on how to register complaints available on its website¹⁴⁰ and translating the Commission's complaints handling role into several languages. The Mauritian Human Rights Commission has officers to assist with the filing process, including those made in the Creole language.¹⁴¹

Civilian Oversight in Prison Visits and Monitoring

Many NHRIs oversee and have access to places of custody. These are sites prone to police torture, extrajudicial deaths, and other human rights violations. Regulated and controlled access does not allow easy entry for civil society actors who work for prisoners' rights or prison reform in general. Partnerships with NHRIs that have such access can open prisons to locally available community services and significantly improve the situation in these traditionally closed institutions through more regular scrutiny.

As part of its civilian oversight duties, the Foundation for Human Rights Initiative collaborates with the Ugandan Human Rights Commission on joint missions to visit prisons and host workshops.¹⁴² While conducting an inquiry on the state of police and prison reforms, the Zambian Human Rights Commission has even taken the press into prisons. In Nigeria, civil society actors participate in the prison audit of the Nigerian Human Rights Commission.¹⁴³ In Kenya, the Commission developed a monitoring mechanism for human rights violations in prisons through consultation with civil society actors. It has also collaborated in its civil education program for prisoners with the Institute of Education in Democracy.¹⁴⁴

¹⁴⁰ Telephone interview with a representative of the Australian Human Rights Commission on 25 November 2010.

¹⁴¹ Email interview with a representative of the Mauritius Human Rights Commission on 21 April 2011.

¹⁴² Mottiar, S. (2005), "The Ugandan Human Rights Commission: Beyond Protection and Promotion of Human Rights," in Parlevliet M., Lamb G. and Maloka V. (eds), *Defenders of Human Rights, Mangers of Conflict, Builders of Peace? National Human Rights Institutions in Africa*: <http://home.medewerker.uva.nl/m.b.parlevliet/bestanden/NHRI%20edited%20vol%2005.pdf> as on 1 July 2011.

¹⁴³ Email interview with a civil society representative from Nigeria on 3 January 2011.

¹⁴⁴ Kenya National Commission on Human Rights (February 2003), *Newsletter*: http://www.knchr.org/dmdocuments/Nguzo_Issue1.pdf as on 1 July 2011.

The mandates of NHRIs in Bangladesh,¹⁴⁵ Cameroon,¹⁴⁶ India,¹⁴⁷ Kenya,¹⁴⁸ Malawi,¹⁴⁹ Malaysia,¹⁵⁰ Mauritius,¹⁵¹ Northern Ireland,¹⁵² Nigeria,¹⁵³ Seychelles,¹⁵⁴ Sierra Leone,¹⁵⁵ Sri Lanka,¹⁵⁶ Tanzania,¹⁵⁷ Uganda,¹⁵⁸ and Zambia¹⁵⁹ specifically mention the power to monitor prisons. Similar powers can be implied in Antigua,¹⁶⁰ Barbados,¹⁶¹ Belize,¹⁶² Canada,¹⁶³ Ghana,¹⁶⁴ Jamaica,¹⁶⁵ Maldives,¹⁶⁶ Papua New Guinea,¹⁶⁷ Namibia,¹⁶⁸ St. Lucia,¹⁶⁹ South Africa,¹⁷⁰ and Trinidad and Tobago.¹⁷¹ NHRIs in the countries mentioned above enjoy unconditional powers to visit prisons, except in Northern Ireland and Malaysia, where visits must be scheduled or prior permission sought from relevant authorities. Such restrictions severely weaken an NHRI's oversight role and its ability to hold prisons accountable to human rights norms. The Northern Ireland Commission, for instance, has limited investigation powers since it has to give a period of notice and agree to the terms of reference with any public body it wishes to investigate. A representative said: "We don't have unrestricted powers to visit places of detention... we can only

¹⁴⁵ S12(1c) National Human Rights Commission Act, 2009 (Bangladesh).

¹⁴⁶ S2 Law No 2004/016, 2004 (Cameroon).

¹⁴⁷ S12(c) The Protection of Human Rights Act, 1993 (India).

¹⁴⁸ S16(1b) The Kenya National Commission on Human Rights Act, 2002 (Kenya).

¹⁴⁹ S16 The Human Rights Act, 1998 (Malawi).

¹⁵⁰ S4(2d) Human Rights Commission of Malaysia Act, 1999 (Malaysia).

¹⁵¹ S4(1d) Mauritius Protection of Human Rights Act, 1998 (Mauritius).

¹⁵² S69(c) Northern Ireland Act, 1998 (Northern Ireland).

¹⁵³ S6(1d) National Human Rights Commission (Amendment) Act, 2010 (Nigeria).

¹⁵⁴ S6(b) Protection of Human Rights Act, 2009 (Seychelles).

¹⁵⁵ S9 The Human Rights Commission of Sierra Leone Act, 2004 (Sierra Leone).

¹⁵⁶ S11(d) The Human Rights Commission of Sri Lanka Act, 1996 (Sri Lanka).

¹⁵⁷ S6(1h) The Commission for Human Rights and Good Governance Act, 2001 (Tanzania).

¹⁵⁸ S7(b) The Uganda Human Rights Commission Act, 1997 (Uganda).

¹⁵⁹ S9(d) Constitution of Zambia, 1996 (Zambia).

¹⁶⁰ S16 The Ombudsman Act, 1994 (Antigua and Barbuda).

¹⁶¹ S10 The Ombudsman Act, 1980 (Barbados).

¹⁶² S20 The Ombudsman Act, 2000 (Belize).

¹⁶³ S43 Canadian Human Rights Act, 1977 (Canada).

¹⁶⁴ S23 Commission of Human Rights and Administrative Justice Act, 1993 (Ghana).

¹⁶⁵ S18 Public Defenders (Interim) Act, 2000 (Jamaica).

¹⁶⁶ S21(c) Human Rights Commission Act, 2006 (Maldives).

¹⁶⁷ S36 Organic Law on the Ombudsman Commission (Papua New Guinea).

¹⁶⁸ S4(b)(I) The Ombudsman Act, 1990 (Namibia).

¹⁶⁹ S116 Constitution of Saint Lucia, 1978 (Saint Lucia).

¹⁷⁰ S10 Human Rights Commission Act No 54 1994 (South Africa).

¹⁷¹ S97 Constitution of Trinidad and Tobago Act No 4 1976 (Trinidad and Tobago).

formally conduct an investigation, giving the establishment we might want to investigate a couple of weeks to see our terms of reference and they have the option to challenge it through the courts.”¹⁷²

Advising on Legislation

Mandates of many Commonwealth NHRIs grant them the ability to review and advise governments on proposed legislation so as to ensure its compliance with human rights norms. Consultations with civil society during this process can bring in subject expertise and provide a good picture of the impact on the ground.

One of the tasks given to the Northern Ireland Human Rights Commission (NIHRC) by its enabling legislation was the preparation of advice for the British Government on what rights could be added to the Human Rights Act passed by Westminster Parliament in 1998. These rights are to be supplementary to the European Convention on Human Rights (ECHR) and together with the ECHR would form a Bill of Rights for Northern Ireland.¹⁷³ The particular circumstances of Northern Ireland, after a period of protracted conflict culminating in a peace agreement, led to the need for additional rights, reflecting the principles of mutual respect for the identity and ethos of both communities. These together with the ECHR were to be included in a Bill of Rights for Northern Ireland.¹⁷⁴ This Bill of Rights was to help address the contemporary human rights concerns of Northern Ireland within the European Convention. NIHRC has extensively consulted civil society in these endeavors and has lobbied for the creation of a Bill of Rights through the Human Rights Consortium, an umbrella group of civil society actors.¹⁷⁵

Despite its accession to the Convention Against Torture, the Ugandan government failed to make the rights espoused in the Convention justiciable to Ugandan citizens. In response to this failure, the Uganda Human Rights Commission, in conjunction with CSOs, proposed a draft bill that prohibited torture and ill-treatment in order to pressure the government. Though the Ugandan parliament has yet to pass the anti-torture bill, the joint approach taken by civil society and the Ugandan NHRI has lent serious domestic weight to an issue that might have otherwise been shrugged off.¹⁷⁶

The Government of Australia recently announced its review of federal anti-discrimination legislation, which presently exists in four separate acts – the Racial Discrimination Act, 1975, the Sex Discrimination Act, 1984, the Disability Discrimination Act, 1992, and the Age Discrimination Act, 2004. The aim of the review is to consolidate all the acts into a single, comprehensive one to provide a clearer understanding of rights and obligations, remove

¹⁷² Telephone interview with an NHRI representative from Northern Ireland on 16 November 2010.

¹⁷³ Northern Ireland Human Rights Commission (2001), *Making a Bill of Human Rights for Northern Ireland*.

¹⁷⁴ *Ibid.* p. 123.

¹⁷⁵ Northern Ireland Human Rights Commission (2006), *Submission to the Round Table on a Bill of Rights for Northern Ireland*, Belfast.

¹⁷⁶ African Centre for Treatment and Rehabilitation of Torture Victims (2010) Annual Report: Uganda, p.5: http://www.actvuganda.org/uploads/1309243277_ACTV%202010%20Annual%20Report.pdf%20mail.pdf as on 31 July 2011.

overlaps, and mitigate inconsistencies in the acts.¹⁷⁷ The Australian Human Rights Commission, whose functions and role stem from all four acts, has actively engaged with CSOs in this review process, through which it encourages public input. For instance, in July 2011, the Human Rights Law Centre, an Australian Human Rights NGO, conducted a conference, with active participation from the Australian Human Rights Commission, for best practice models, frameworks to promote equality and encourage informed debate on the subject.¹⁷⁸

National Human Rights Action Plans

National Human Rights Action Plans (national plans) are a set of practical goals designed to guide the national human rights policies of a country. Governments are encouraged to develop national plans with the participation of all relevant stakeholders, including NHRIs and CSOs. The central role of these two actors in the creation, implementation, and monitoring of a national plan is strongly advocated by the Commonwealth¹⁷⁹ and the UN¹⁸⁰ as a means to ensure its comprehensiveness, effectiveness, and credibility.

At present, most Commonwealth countries are in the process of adopting national plans. However, very few national plans to date incorporate civil society participation sufficiently or effectively. The failure of the governments of Malawi¹⁸¹ and Australia¹⁸² – the first countries in the world to adopt national plans – to engage with civil society during the development of their plans is held to be one of the main contributors to their disappointing results. New Zealand’s national plan, on the other hand, stands as an example of worldwide best practice.¹⁸³ It was developed, partially implemented, monitored, and reviewed with continuous cooperation between the New Zealand Human Rights Commission and civil society. Kenya appears to have taken notice of this success and is on the verge of adopting an extremely valuable national plan. Led by the government and the NHRI, it will be the result of two years of nationwide consultations and intensive civil society participation, including a civil society working group. Additionally, a National Steering Committee composed of government and NGO representatives is coordinating and managing the process.¹⁸⁴

¹⁷⁷ National Anti-Discrimination Information Gateway (2011), *Consolidation of Commonwealth Anti-Discrimination Laws*: <http://www.antidiscrimination.gov.au/www/nadig/nadig.nsf/Page/Commonwealth> as on 31 July 2011.

¹⁷⁸ Human Rights Law Centre (2011), *Conference: Reforming Australia’s Equality Laws*: <http://www.hrlc.org.au/content/events/conference-reforming-australia%E2%80%99s-equality-laws/> as on 31 July 2011.

¹⁷⁹ Commonwealth Secretariat (2007), *Commonwealth Model National Plan of Action on Human Rights*.

¹⁸⁰ Office of the United Nations High Commissioner for Human Rights (2002), *Handbook on National Human Rights Plans of Action*.

¹⁸¹ Flinterman C. and Zwamborn M. (2003), *From Development of Human Rights to Managing Human Rights Development – Global Review of the OHCHR Technical Cooperation Programme*, p. 29.

¹⁸² Australian Government (2011), *National Human Rights Action Plan Background Paper*, p. 4.

¹⁸³ *Idem*, p. 6.

¹⁸⁴ Kenya National Commission on Human Rights: http://www.knchr.org/index.php?option=com_content&task=view&id=46&Itemid=89, as on 12 July 2011.

Human Rights Education

In its role as a promoter of human rights, an NHRI is responsible for spreading awareness through advocacy, research and human rights education. Human rights education can inculcate a culture of human rights and empower people to bring about social change. Additionally, when one lacks awareness of one's rights – and of mechanisms available to enforce them – the ability to claim or defend these rights is weakened. For these reasons, the Paris Principles see human rights education as one of an NHRI's core functions and most domestic mandates include an educational role as part of the institution's promotional capacity.

From conducting research studies, mainstreaming human rights into school curricula, developing toolkits, training, and sensitizing the public and government officials, to awareness and advocacy campaigns, there are several ways in which NHRIs execute this role. Civil society collaborations are useful in implementing and operating these programs as they further an NHRI's outreach, and sustain programs in the long run while providing resources and expertise for this work. Collaboration is especially important when an NHRI is faced with a scarcity of funds to run these programs.

Civil society actors are usually prominent players in the spread of human rights education and public awareness. Their approach, however, may be fragmented, stemming from their varied interests and specializations. Collaborating with the NHRI adds strategic value to their programs, since the NHRI may provide a more comprehensive approach to human rights initiatives.

Following decades of sectarian turbulence, the Northern Ireland Human Rights Commission, in collaboration with Amnesty International (Northern Ireland), co-developed an educational resource on citizenship for Northern Ireland's school curriculum. The material includes information on human rights, social responsibility, democracy, the proposed Bill of Rights, and the UN Convention on the Rights of the Child. The curriculum guide *Making Rights Real* was successfully piloted through several local schools by the statutory bodies that oversee the education system and is now part of the secondary school curriculum.¹⁸⁵

Similarly, the Ugandan Human Rights Commission (UHRC) piloted and actively initiated its National Civic Education Programme (NCEP). The program is targeted at educating citizens about their rights and providing knowledge on how to fully participate in the decision-making of the country's policies. Using the wide civic networks that may be accessed through collaborations with civil society, UHRC partnered with five CSOs during the implementation of NCEP – the Uganda Project Implementation and Management Centre (UPIMAC), the International Federation for Women Lawyers (FIDA), the National Association of Women Organizations in Uganda (NAWOU), the Uganda Joint Christian Council (UJCC), and MS Uganda.¹⁸⁶

Joint Advocacy

One of the major challenges faced by Commonwealth NHRIs is the limitations in their ability to ensure that their recommendations are implemented. Recommendations made by most

¹⁸⁵ Amnesty International (2009), *Northern Ireland: Making Human Rights Real ED126/2009*: <http://www.amnesty.org.uk/content.asp?CategoryID=11627> as on 1 July 2011.

¹⁸⁶ Bikayana, I., *From Protection to Violation: Analyzing the Right to a Speedy Trial by the Ugandan Human Rights Commission*: http://huripec.mak.ac.ug/Working_paper_2.pdf as on 31 July 2011.

NHRIs are not binding and are made in an advisory capacity. Even though they cannot make binding decisions, NHRIs can put pressure on their governments to accept and implement their recommendations through collaborations and joint lobbying efforts with civil society actors. In its recommendations to the Human Rights Commission of Maldives, the Asian NGO ANNI flagged collaboration with civil society as a key strategy to strengthen the NHRI and add force to the recommendations it makes to the government.¹⁸⁷ Joint action can make it tougher for a government to ignore or window-dress human rights deficiencies.

The Human Rights Commission of Sierra Leone signed an MoU with the Soweii¹⁸⁸ Council of Sierra Leone, the Council of Tribal Heads, the District Councils, and the Advocacy Movement Network (AMNET), a human rights NGO, to abolish the practice of female genital mutilation (FGM), which has contributed to the rise in early marriage, HIV/AIDS transmission, and other negative social factors.¹⁸⁹ In this regard, the Sierra Leone Commission and civil society worked together with local communities to successfully counter this practice in two districts in the northern region of the country.

Joint advocacy efforts may extend to raising awareness on the implementation and usage of ratified treaties. In December 2008, the Australian government ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The treaty created a communication and inquiry procedure through which the government can be held to account when failing to promote and protect rights that safeguard against gender discrimination and equality. In the following year, the Australian Human Rights Commission along with the Public Interest Law Clearing House (PILCH), a leading human rights CSO, held a joint advocacy seminar promoting the usage of the Protocol to ensure access to justice.¹⁹⁰ Through this effort, they provided detailed information on key jurisprudence under the Protocol and explained its potential uses to promote and protect women's rights.

Facilitated by the New Zealand Human Rights Commission, the New Zealand Diversity Action Programme (NZDAP) was set up to encourage community action on race relations. Its objectives are to celebrate diversity; promote equal enjoyment of civil, political, social, economic and cultural rights; foster harmonious relationships between diverse sections of society; and give effect to the Treaty of Waitangi – to preserve the culture of the Maori community. In the last six years, NZDAP has grown to include around 250 CSOs, taking practical initiatives to recognize and celebrate the cultural diversity of New Zealand.

Joint advocacy can lead to significant results, ranging from compensatory redress and addressing immediate concerns of victims of human rights violations, to high-level policy changes. In an effort to lobby and advocate for the rights of refugees and asylum seekers to

¹⁸⁷ Asian NGOs' Network on National Human Rights Institutions (2010), *Report on the Performance and Establishment of NHRIs in Asia: Maldives*: <http://www.mvdemocracynetwork.org/wp-content/uploads/2010/08/ANNI-report-2010-final.pdf> as on 31 March 2011.

¹⁸⁸ Initiators who perform Female Genital Mutilation.

¹⁸⁹ Ansumana, S. (2011), *MoU to Ban Under-18 Child FGM Signed*: Centre for Accountability and Rule of Law <http://www.carl-sl.org/home/news-and-notice/477-news-briefs> as on 1st July 2011.

¹⁹⁰ Promoting Law in the Public Interest (2009), *Equality Seminar*: <http://www.pilch.org.au/humanrights/equality/seminars/> as on 1 July 2011.

education, the Coordinating Body of Refugee Communities in South Africa partnered with the South African Human Rights Commission to urge the Department of Education to accept refugee children into public schools. Access to the schools was previously denied as the refugee documents of these children were not accepted. The success of this endeavor led to several refugee children entering schools, with some even being provided financial assistance. Following this joint intervention, refugee documents are no longer a determining factor in school admission processes.¹⁹¹

As a part of its mandate to promote human rights awareness, an NHRI may often need to advocate and raise awareness on sensitive issues where collaborations with civil society actors may be constructive and invaluable in creating inroads. The South African Human Rights Commission (SAHRC), in collaboration with the National Council on Refugee Affairs, the Office of the United Nations High Commissioner for Refugees, and other organizations, initiated the “Roll Back Xenophobia Campaign” to underline the dignity and rights of migrants, asylum seekers, and refugees in post-apartheid South Africa.¹⁹² These efforts were recognized by the Committee for the Elimination of Racial Discrimination (CERD), who commended the Commission on its “active role in eliminating the residual effects of racial discrimination.”¹⁹³ Interacting with civil society organizations helped SAHRC advocate to the government to deal with this matter, and most especially, sensitized the public on these issues.¹⁹⁴

Likewise, *trokosi*, a ritual and customary practice of forced labor and servitude that is prevalent in Ghana, came under the scrutiny of the Commission on Human Rights and Administrative Justice (CHRAJ). The practice entails atoning for sins by making women or children in the family engage in servitude under priests who follow fetishist beliefs. In a joint partnership with a local NGO, International Needs, Ghana, the Commission successfully released some of these victims.¹⁹⁵

In New Zealand, the Human Rights Commission has developed a human rights community development program called *Taku Manawa*. The program was started in four regions of New Zealand with plans to extend to the fifth one. Community members are selected and trained in a human rights facilitator training program. The program is aimed at building human rights knowledge and expertise in local communities and training them to share knowledge and best practice.¹⁹⁶

¹⁹¹ Coordinating Body of Refugee Communities: <http://www.cbrc.org.za/partnership.htm> as on 31 July 2011.

¹⁹² South African Human Rights Commission (1998), *The Braamfontein Statement on Xenophobia*: <http://www.queensu.ca/samp/migrationresources/xenophobia/responses/sahrc2.htm> as on 27 May 2011.

¹⁹³ UN Committee for the Elimination of Racial Discrimination (2006), *Concluding Observations CERD/C/ZAF/CO/3*.

¹⁹⁴ Telephone interview with a civil society representative, South Africa, on 22 October 2010.

¹⁹⁵ Commission on Human Rights and Administrative Justice (2007), *Promoting and Protecting Human Rights, Ensuring Administrative Justice and Fighting Corruption in Ghana*: http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/783FC49E-D904-4AC4-BD55-785E4EF00E0C_GHANA.pdf as on 1 July 2011.

¹⁹⁶ Email correspondence with a representative from the New Zealand Human Rights Commission on 12 April 2011.

Taking the Office to the People

A national inquiry is considered one of the most cost-effective and efficient strategies to proactively address systemic and endemic human rights concerns.¹⁹⁷ A national inquiry will collect evidence on a large scale and scope concerning the situation on the ground before coming to conclusions and giving recommendations to government or the parliament that will have weight and influence enough to bring about systemic change. The process may involve setting up public hearings across the country, researching secondary data, and taking testimony from victims and witnesses on the ground.

Since national inquiries are wide ranging and visible, they educate the population about the issues and the functions and powers of the NHRI, and, in turn, can build up pressure from the public to change the system responsible for the abuse. They go beyond just looking at individual violations and attempt to establish patterns and tackle underlying causes for repeated violations of rights.

NHRIs in Australia, India, Kenya, Nigeria, and several other Commonwealth countries have included civil society as a key actor in very successful large-scale inquiries. The 2010 Public Tribunal on Police Abuses held by the Nigerian Human Rights Commission in collaboration with the National Committee on Torture (NCOT) and the Network on Police Reforms (NOPRIN) – a network comprising forty-six CSOs dedicated to promoting police reforms – have been viewed as “an effective and popular strategy of public advocacy against police violations and of naming and shaming of perpetrators.”¹⁹⁸ The tribunals were intended to give a voice to survivors and relatives of victims of police abuses – extrajudicial killings, torture, rape, sexual abuse, and other inhumane and degrading treatment. They led to dismissals and prosecutions of the perpetrators; reopened investigations into cases of extrajudicial killings and crimes; recovered bribes extorted by police personnel from victims during investigations; and inspired law enforcement policy changes.¹⁹⁹

The expertise of civil society actors has been a feature in many national inquiries as independent experts drawn from civil society frequently constitute the panel of inquiry. As this report went to press, SUHAKAM, the Malaysian human rights commission, was conducting an inquiry into the land rights of indigenous peoples in Malaysia. The Inquiry sought to comprehensively examine the root of the problems relating to native customary rights to land and recommend appropriate actions to address this issue. It was due to have held both public consultations and public hearings as part of the inquiry in Sabah, Sarawak, and peninsular Malaysia. SUHAKAM intended to bring out an in-depth report, making recommendations to the Government on short- and long-term practical solutions. The panel of inquiry was to consist of SUHAKAM members and independent experts in

¹⁹⁷ Burdekin, B. (2007) *National human rights institutions in the Asia Pacific Region*, The Raoul Wallenberg Institute Human Rights Library: The Netherlands.

¹⁹⁸ National Community on Human Rights Experts, *Report on the Public Tribunal on Police Violations/Abuse, Nigeria*: <http://www.republicreport.com/national-committee-on-human-rightsexperts-public-tribunal-on-police-violationsabuses-in-nigeria-reports/> as on 31 July 2011.

¹⁹⁹ Ibid.

the field of indigenous rights. Following the consultations, a public hearing was to be held where invitations to appear before the panel were to be extended to key witnesses, including indigenous people, government officials, community-based organizations, corporate personnel, and the media.²⁰⁰

Engagement at the International Level

Engagement with civil society actors often goes beyond the domestic sphere. At the international level, NHRIs have a role to play in ensuring that states meet their international human rights obligations, such as ratifying treaties and reporting on human rights compliance. In this regard, apart from producing their own independent reports, NHRIs often work with civil society to create shadow reports. Both actors occasionally contribute to each other's submissions at international fora. They have collaborated regionally and at the UN to pursue campaigns and publicize their human rights situations.

The Universal Periodic Review has been an important catalyst for NHRI-NGO consultations and for the creation of standing or regular consultation platforms. For instance, Kenyan civil society organizations, such as the Kenyan Chapter of Article 19, recently partnered with the Kenyan National Human Rights Commission during the country's first UPR and pushed for the implementation of recommendations made during the process.²⁰¹ The Australian Human Rights Commission has also partnered with various Australian CSOs during the country's treaty body reviews. Such partnerships maximized lobbying efforts and minimized duplication.²⁰²

Apart from making submissions, NHRIs may make the concluding observations and recommendations from treaty bodies available to CSOs as a means to promote accountability. The Mauritius Human Rights Commission proactively disseminates these recommendations and observations through its annual reports; making this information accessible to civil society, so that it can lobby for their implementation.²⁰³ Similarly, the New Zealand Human Rights Commission, in its follow-up work to the 2007 CERD examination of the country, regularly engaged and coordinated with communities and civil society, and, based on their input, provided annual updates on CERD implementation and follow up to CERD's 2007 recommendations. The Commission's engagement with communities and civil society ensured that their voices were heard and adequately reflected in monitoring the State's compliance with CERD.

In 2009, after two human rights defenders were killed in Nairobi for daring to work with the UN Special Rapporteur on extrajudicial killings,²⁰⁴ the Kenya National Commission on

²⁰⁰ Human Rights Commission of Malaysia (2011); *Press Statement -SUHAKAM to conduct a National Inquiry into the Land Rights of Indigenous Peoples in Malaysia* http://www.suhakam.org.my/c/document_library/get_file?p_1_id=35723&folderId=441003&name=DLFE-11001.pdf as on 15 Aug 2011

²⁰¹ Telephone interview with a civil society representative from Kenya on 3 November 2010.

²⁰² Telephone interview with a civil society representative from Australia on 14 January 2011.

²⁰³ Annual Report (2008), Mauritius Human Rights Commission, Annexe IV, V.

²⁰⁴ *The Guardian*, "Two Kenyan human rights activists shot dead," 6 March, 2009, <http://www.guardian.co.uk/world/2009/mar/06/kenyan-activists-shot-dead> as on 13 July 2011.

Human Rights worked jointly with several civil society actors to draw the attention of the UN Human Rights Council to violence and threats faced by human rights defenders at home. The fact that the Commission lent its support to civil society provided further authority to the recommendations made by the Special Rapporteur, gave greater credibility to civil society advocacy, and a sense of safety to Kenyan defenders who advocated at the Council. It also kept the matter of accountability alive in the eyes of the international community, potentially preventing repeat reprisal killings.

5. Recommendations

Many of the people of the contemporary Commonwealth live in environments that do not reflect the Association's most fundamental values. Twenty years after the Harare Declaration put human rights promotion and protection at the center of the Commonwealth agenda, its vision is actively pursued in some corners of the Commonwealth and actively ignored in others.

Well-functioning national human rights institutions are essential for the promotion and protection of human rights within the Commonwealth. However, the potential of an NHRI to implement its mandate to the fullest is underpinned by meaningful civil society engagement. International and Commonwealth standards demand such engagement and, beyond the domestic and international legitimacy that comes with meeting these standards, NHRIs have much to gain from their realization. Despite the obvious benefits of cooperation, the sometimes inimical environments in which both these actors work – not to mention misconceptions each harbors about the other's role and nature – can keep engagement superficial or stifle it completely. With potentially thousands of civil society groups, engagement can be a complex and time-consuming process, and while NHRIs must be judicious in deciding with which organizations to engage, many are bound to feel excluded. Overcoming these challenges is a vitally important endeavor as human rights are protected more effectively when NHRIs and civil society work together.

There are now more than thirty NHRIs in the Commonwealth and innumerable civil society organizations and actors. Both NHRIs and civil society have their own separate operations which must be respected, but too often they work in parallel tracks or at cross purposes. While there will always be points of divergence, it is increasing the points of intersection that CHRI extols. With the following recommendations, CHRI offers means through which that end can be achieved.

Commonwealth Heads of Government

For over a decade, statements by the Commonwealth Heads of Government Meetings (CHOGM) have repeatedly recognized that civil society is a valuable partner in the Commonwealth's work. In continuation of this trend, CHOGM should:

- Reaffirm the value of civil society participation in all Commonwealth activities and specifically urge Commonwealth NHRIs to engage meaningfully with civil society.
- Mandate the Human Rights Unit of the Commonwealth Secretariat (HRU) to work with the Commonwealth Forum of National Human Rights Institutions (CFNHRI) towards:
 - The development of a formal platform to engage with civil society at CFNHRI meetings.

- Creating a formal platform for the “A” status members of CFNHRI to engage meaningfully with Commonwealth Heads of Government.
- Provide additional funding to bolster the Commonwealth Secretariat’s Human Rights Unit’s capacity to involve civil society in its work on NHRIs (including its work as the Secretariat of the Commonwealth Forum and in facilitating and advising governments on the creation of new Commonwealth NHRIs).
- Urge all member states to establish NHRIs which are compliant with the Paris Principles and follow best practice guidelines such as those in the Asia Pacific Forum’s (APF) Kandy Programme of Action and the Commonwealth’s *National Human Rights Institutions: Best Practice*.

Commonwealth Forum of National Human Rights Institutions

As a Commonwealth body, however informal, the Commonwealth Forum must operate in the spirit of past CHOGM declarations which proclaim civil society as a key partner in the Commonwealth’s activities. As a Commonwealth network, the Commonwealth Forum should:

- Undertake a substantial review of its operations to pinpoint new avenues for engagement with civil society in all its work, including by:
 - Widely publicizing and advertising the dates, locations, and agendas of its meetings, and giving priority to updating its websites more frequently and improving documentation.
 - Inviting civil society to make submissions to its meetings, ensuring that this opportunity is widely advertised and that those submissions are duly shared and debated among members.
 - Inviting civil society representatives to attend meetings and allowing them opportunities for meaningful oral interventions.
- Encourage increased adherence among members to the Commonwealth publication, *National Human Rights Institutions: Best Practice*, in addition to the standards in the Paris Principles. Additionally, the Commonwealth Forum should explore ways of using the publication to conduct a peer review among members.
- Establish a specific program to share best practices on civil society engagement within the Commonwealth and assist members to carry out activities stemming from such best practices.

International and regional networks of NHRIs

Global and regional networks of NHRIs should:

- Facilitate the sharing of best practices as regards civil society engagement among members and assist them to carry out activities stemming from those best practices.
- Create and nurture multiple avenues through which civil society can input into the network’s own operations and functions.

Commonwealth Secretariat and the Human Rights Unit

For the past twenty years, the Commonwealth Secretariat and its Human Rights Unit (HRU) have shown leadership in assisting Commonwealth governments to set up Paris Principle-compliant NHRIs. Keeping this trend alive, the Commonwealth Secretariat and the Human Rights Unit should:

- Continue to encourage and assist Commonwealth governments to create Paris Principle-compliant NHRIs in partnership with civil society.
- Provide political will and practical resources and channel energy into transforming the Commonwealth Forum into a stronger network that can become a leader on civil society engagement.
- Begin a dedicated program to nurture Commonwealth best practices in NHRI-civil society engagement and encourage their use in all parts of the Commonwealth.

Commonwealth Governments

Governments are responsible for the formulation of an NHRI's mandate and can positively or negatively affect the environment within which NHRIs and civil society function. In the spirit of the Harare declaration, governments have a responsibility to respect and protect human rights. In addition to this basic tenet, and in aid of advancing NHRI-civil society engagement, Commonwealth governments should:

- Ensure that civil society is fully involved in the creation of an NHRI through meaningful and substantial consultations that are broad-based, with a diverse range of civil society groups and other stakeholders from across the country. Governments should also ensure that the outcomes of such consultations are duly considered and incorporated into the design of an NHRI.
- Ensure that the mandate of an NHRI includes specific and substantial avenues for effective civil society engagement.
- Make the process through which members of an NHRI are appointed transparent and participatory and advertise vacancies widely.
- Allow civil society to nominate members of an NHRI and include representatives of a broad cross-section of civil society groups on the panel which makes the final selection.
- Ensure that the members of an NHRI reflect the country's civil society community adequately.
- Encourage, initiate, and work with multiple stakeholders, including the NHRI and civil society, to create time-bound, benchmarked National Human Rights Action Plans.

Commonwealth National Human Rights Institutions

The openness of an NHRI to civil society determines whether its engagement with civil society is substantial and substantive. In this regard, each Commonwealth NHRI should:

- Whether mandated to do so by its founding legislation or not, engage with civil society in a substantial and substantive way.
- Ensure that it meet the standards of civil society engagement as laid out in the Paris Principles, the higher Commonwealth standards set out in the publication *National Human Rights Institutions: Best Practice*, and the Kandy Programme of Action.
- Aspire to “A” status at the ICC and not be content with “B” or “C” status. This would necessarily require ensuring that civil society engagement is not cosmetic.
- Go beyond informal contact to create formal platforms for civil society engagement that ensure regular, substantial, inclusive, and consultative interaction with a diverse range of civil society actors.
- Consult and collaborate with civil society actors in fulfilling their mandates, including in the review of legislation, expanding outreach, educating the public on human rights, reporting to UN and regional bodies, responding to human right emergencies, and undertaking national inquiries.
- Appoint a Focal Point Person for Human Rights Defenders and, in doing so, recognize HRDs as a special and vulnerable category of civil society with specific needs.
- Encourage and work with their governments and multiple stakeholders, including civil society, to create time-bound, benchmarked National Human Rights Action Plans.

Commonwealth Civil Society

Civil society must actively pursue and take advantage of every opportunity to work with NHRIs. In this regard, civil society should:

- Advocate for a participatory, inclusive, and transparent process in the establishment of Paris Principle-compliant NHRIs in jurisdictions without them.
- Proactively engage with their NHRI and use formal and informal means to improve access to the policymaking processes of the government.
- Assist victims of human rights violations in accessing the NHRI and support them through the process of filing a complaint.
- Facilitate their NHRI’s outreach by providing networks to spread awareness of its role and functions as a mechanism for redress.
- Work with their NHRI in its role as civilian oversight mechanisms on prisons and detention areas where human rights violations are rife.
- Lobby and work with their NHRI, government, and other stakeholders to develop time-bound, benchmarked National Human Rights Action Plans.
- Submit reports on the performance of their NHRI to the International Coordinating Committee of National Institutions for Promotion and Protection of Human Rights.

- Work closely with their NHRI in, *inter alia*, reporting to international and regional human rights mechanisms and implementing education programs.

Donors

Some NHRIs can receive, and are partially dependent on, funding that comes from sources besides their governments. Nearly all civil society organizations are dependent on similar funds. Donors should:

- When supporting the establishment of an NHRI, ensure that the process is inclusive, transparent and implemented in consultation with a wide range of stakeholders, including civil society actors.
- Support the work of civil society actors who seek to catalyze greater engagement with NHRIs in promoting and protecting human rights.

Appendix: Methodology

This report is based on both primary and secondary research. Its main source of data was a series of in-depth telephone/email interviews with members of NHRIs from twenty-eight Commonwealth countries,²⁰⁵ and civil society actors from twenty-seven countries. Secondary research was conducted to substantiate information where needed and to authenticate primary data.

Selection of National Human Rights Institutions

This report is based on a study of all members of the Commonwealth Forum of NHRIs (Commonwealth Forum) and every accredited Commonwealth member of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The only exception to this is the Scottish Human Rights Commission.

As a rule, the report only examines one institution per country. The United Kingdom presented a special case as it has three NHRIs within its borders: the Great Britain Equality and Human Rights Commission, which includes Wales and Scotland within its jurisdiction; the Northern Ireland Human Rights Commission; and the Scottish Human Rights Commission. As a special case, the Northern Ireland Commission was included as a second NHRI within the UK, since Northern Ireland is not part of the jurisdiction of the Great Britain Commission. Scotland's NHRI, however, was not included since Scotland is already under the Great Britain Commission's jurisdiction.

The NHRIs in Bangladesh, Seychelles, and Swaziland, though not accredited by ICC, are a part of the Commonwealth Forum and were included as subjects of this report. In addition, Fiji, which is not a member of either network, was also included in the report. The Fiji Human Rights Commission was suspended, and subsequently withdrew, from the ICC in 2007. Fiji has been fully suspended from the Commonwealth since 2009, yet has been included as an example of an NHRI that has lost public legitimacy.

²⁰⁵ Despite repeated efforts we were unable to get in touch with five NHRIs. The Fiji Human Rights Commission refused, in writing, to be interviewed for our report. Although attempts were made to gain responses from CSOs in all Commonwealth countries that have established NHRIs, civil society actors from only twenty-seven countries responded to our questionnaire.

There are, however, numerous coordinating networks for national human rights commissions, especially and ombudsmen, that are not discussed at length or at all in this report. Only selected networks that made significant efforts to engage with civil society or produced standards or best practices in that regard were included.

Selection of Civil Society Organizations

The civil society organizations selected for the report were those that engaged with their NHRI and had the experience and capacity to critique it. CHRI's existing network of contacts was used to select civil society actors. In countries where CHRI had no suitable contact, research and advice from contacts in the region were used to find suitable interviewees. In order to give appropriate weight to both small and large countries in the Commonwealth, an average of two CSOs was taken for each country.

Data Collection and Analysis

Interviews were conducted on the basis of a set of separate but similar questionnaires for NHRIs and civil society. The questionnaires sought to examine the scope of NHRI-CSO engagement in the domestic and international arenas. The data was transcribed and analyzed by the research team for unique practices, commonalities, and challenges in making NHRI-CSO engagement a reality. The data was further supplemented with secondary data collected from a range of sources: local and international civil society reports; NHRI annual reports; NHRI mandates; communiqués from international fora; media reports and articles; and additional website research.

Limitations in Scope of Study

This report is a qualitative study of NHRI-CSO engagement in the Commonwealth. One of the major challenges while preparing it was in identifying civil society actors who could comprehensively comment on their NHRIs. Due to the varying geographic and socio-political spectrum of the countries in the Commonwealth, the study acknowledges that an average of two civil society organizations per country may not give a realistic picture of countries that have a broad and diverse civil society presence. Bearing this in mind, the study only attempts to map best practices and trends in the Commonwealth where NHRI-CSO engagement has occurred, many of which can be replicated or serve as caution for others.

Article

Association and Assembly in the Digital Age

Douglas Rutzen and Jacob Zenn¹

In this paper, we explore the connection between new technology and fundamental freedoms, specifically the rights to freedom of association and peaceful assembly. We examine how autocratic governments are increasingly targeting Facebook groups, social networks, and online communities – in other words, associational activities occurring on the Internet. We argue that many of these groups are protected “associations” under international law. We address the physical proximity argument, demonstrating that it is not required for individuals to meet in person in order to exercise their freedom of association. We also argue that the freedom of assembly protects groups that may not technically qualify as “associations” under international law.

We recognize that this is not the first time international law has had to grapple with new technology. We consider, for example, the case of the photocopier – last century’s great innovation to spread the written word. We examine the response of the Organization for Security Co-operation in Europe (OSCE) in 1990, which provides a model for reaffirming fundamental freedoms in the digital age. We conclude by arguing that longstanding commitments require states to respect the exercise of fundamental freedoms enabled by new technologies, including the Internet, mobile networks, social media, and technologies arising in the future.

I. Introduction

Recent events in the Middle East and North Africa have highlighted the need to examine the legal protections for associations, assemblies, and dissent in the digital age. During the “Jasmine Revolution” in Tunisia, the government blocked Facebook pages that promoted demonstrations, and it reportedly hacked into Facebook accounts to steal passwords, change entries, and delete anti-government Facebook groups.² At the same time, the government arrested dissident bloggers and maintained its longstanding ban on YouTube until President Ben Ali left the country.³

In late January 2011, the Egyptian government imposed broader Internet restrictions. In response to anti-government protests, the government began blocking all access to Twitter,

¹ Douglas Rutzen is President and CEO of the International Center for Not-for-Profit Law (www.icnl.org). Jacob Zenn is a Legal Advisor at the International Center for Not-for-Profit Law.

² O’Brien, Danny. “Tunisia invades, censors facebook, other accounts.” <http://www.cpj.org/internet/2011/01/tunisia-invades-censors-facebook-other-accounts.php>. Committee to Protect Journalists. January 5, 2011. Accessed: March 12, 2011.

³ “Tunisia: The Story of the First Successful Internet Revolution.” <http://ahumanright.org/blog/2011/01/tunisia-how-the-internet-overthrow-a-terrible-government/>. Ahumanright.org. January 30, 2011. Accessed: March 12, 2011.

Facebook, and Google.⁴ On January 27, the government “pulled the plug” on the entire Internet,⁵ impeding access for Egypt’s 15 million Internet users.

The technological “counter-revolution” continued after President Mubarak stepped down in February. In March, after protests erupted in Bahrain⁶ and Libya,⁷ the governments in those countries started a campaign to block social networking sites, such as Facebook and Twitter, as well as any online discussions that the authorities considered subversive. Since the 2009 “Green Protests” in Iran, the government has continued to train “senior Internet lieutenants” within the armed forces whose responsibilities include “confronting Iran’s virtual enemies online” and tracking individuals responsible for “spreading lies and insults” about the regime.⁸ Restrictions are not limited to the Middle East and North Africa; numerous countries around the world⁹ have adopted restrictions on the Internet, new media, and Information and Communications Technology (ICT).¹⁰

⁴ Perez, Juan Carlos. “Egypt’s Internet block aims at social media.”

<http://www.itworld.com/internet/135178/egypts-internet-block-aims-social-media>. ITWorld. January 28, 2011. Accessed: March 12, 2011.

⁵ Albanesius, Chloe. “Government in Egypt Reportedly Cuts All Access to the Internet.”

<http://www.pcmag.com/article2/0,2817,2376863,00.asp>. PCMAG.com. January 28, 2011. Accessed: March 12, 2011.

⁶ “Authorities block links posted on BCHR Facebook page.” <http://www.bahrainrights.org/en/node/2812>. Bahrain Center for Human Rights. Accessed: March 12, 2011.

⁷ Saqer, Gaith. “Libya Blocks Facebook, Twitter, Aljazeera.net.” <http://arabcrunch.com/2011/02/libya-blocks-facebook-twitter-and-aljazeera-net.html>. Arab Crunch. February 18, 2011. Accessed: March 12, 2011.

⁸ Fassihi, Farnaz. “Iranian Crackdown Goes Global.” Wall Street Journal Online. <http://online.wsj.com/article/SB125978649644673331.html>. December 3, 2009. Accessed: December 1, 2011.

⁹ The OpenNet Initiative has documented network filtering of the Internet in more than forty countries worldwide (*see* York, Jillian C. “More than half a billion Internet users are being filtered worldwide.” <http://opennet.net/blog/2010/01/more-half-a-billion-internet-users-are-being-filtered-worldwide>. OpenNet Initiative. January 19, 2010. Accessed: December 5, 2011). According to OpenNet Initiative’s “Social Media Filtering Map,” China, North Korea, and Vietnam completely block access to social media platforms, such as Facebook, YouTube, and Twitter. As a few additional examples of restrictions on new media, in 2010 a court in northern Nigeria issued an order prohibiting a Human Rights group from “opening a chat forum on Facebook, Twitter, or any blog for the purpose of the debate” of an Islamic legal ruling (*see* Imam, Imam. “Sharia Judge Bans Amputation Discussion on Facebook, Twitter.” <http://allafrica.com/stories/201003240460.html>. All Africa. March 24, 2010. Accessed: April 12, 2011). In Azerbaijan, the government has dissuaded Internet users from using social media to support protests through a policy of “network authoritarianism” in which the government “makes an example out of online dissenters [through imprisonment] in order to affirm the futility of activism....” (*see* Pearce, Katy E. and Kendzior, Sarah. “This is What Can Happen to You: Networked Authoritarianism and the Demonization of Social Media in the Republic of Azerbaijan.” <http://caucasusedition.net/analysis/%E2%80%9Cthis-is-what-can-happen-to-you%E2%80%9D-networked-authoritarianism-and-the-demonization-of-social-media-in-the-republic-of-azerbaijan/>. Journal of Conflict Transformation, Caucasus Edition. December 1, 2011. Accessed: December 5, 2011). In addition, on August 11, 2011, San Francisco police attempted to thwart a planned protest over the fatal shooting of a man by transit police by cutting off cell phone service at four rail stations for three hours (Associated Press. “BART cellphone blocking raise uproar.” <http://www.sfgate.com/local/2011/08/bart-cellphone-blocking-raises-uproar>. SF Examiner. August 13, 2011. Accessed: December 5, 2011).

¹⁰ While this paper highlights restrictions on the Internet and social media, the freedoms of association and assembly also apply to other “non-computer” means of transmitting information and communicating, such as telephone wires or cell phone signals. *See supra* note 9 (“BART cellphone blocking raises uproar”).

These developments have led to a vibrant discussion in the international community about online freedoms and whether “society has reached the point at which Internet access is a basic human right?”¹¹ While an interesting question, it is important to recognize that Internet access is already protected under existing rights and freedoms.

Freedom of opinion and expression have been most commonly cited as the primary legal bases to combat government interference with Internet access, but Internet freedom is also integrally linked with the rights of association and assembly. As recent events around the world demonstrate, governments are specifically using Internet restrictions to impede protests (i.e., assemblies), associations, and other online connections. Terminology also illustrates this link—governments are targeting Facebook “groups,” “social networks,” “online communities,” and other forms of associational life on the Internet.

In this paper, we explore the connection between Internet freedom and other fundamental rights and freedoms, specifically the rights of freedom of association and assembly.

II. Brief Literature Review

For at least a decade there has been considerable literature written on the link between Internet freedom and the right to freedom of expression and speech. The “International Seminar on Promoting Freedom of Expression With the Three Specialised Mandates” published a Background Paper on Freedom of Expression and International Regulation in 2001.¹² The paper cited two sources of law to justify the Right to Internet Access. First, it cited a 1982 Declaration adopted by the Committee of Ministers of the Council of Europe stating that “Member States should seek to achieve the availability and access on reasonable terms to adequate facilities for the domestic and international transmission and dissemination of information and ideas.” Second, it cited the European Court of Human Rights’ affirmation in *Autronic AG v. Switzerland* that the right to freedom of expression “applies not only to the content of information but also to the means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive information.”¹³ Illicit restrictions on the freedom of expression, according to the paper, were prohibitions on access to the Internet, as well as registration and licensing requirements, filtering and blocking by law, monitoring and surveillance, and encryption.

In 2001, Professor William Fisher of Harvard Law School wrote an article “Freedom of Expression on the Internet”¹⁴ debating whether restraints on pornography, threats, and intellectual property on the Internet violate peoples’ rights. In the same year, a Masters Degree student at the Raoul Wallenberg Institute argued in his dissertation that as a “public sphere” the Internet should receive the same level of protection provided to rights of expression in the

¹¹Hesse, Monica. “In Egypt: Access Denied.” <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/28/AR2011012806446.html>. Washington Post. January 29, 2011. Accessed: March 12, 2011.

¹² See Background Paper on Freedom of Expression and Internet Regulation for the International Seminar on Promoting Freedom of Expression With the Three Specialized Mandates. <http://www.article19.org/pdfs/publications/freedom-of-expression-and-internet-regulation.pdf>. November 19-20, 2001. Accessed: March 12, 2011.

¹³ *Autronic AG v. Switzerland*, 22 May 1990, Application No. 12726/87.

¹⁴ Fisher, William. “Freedom of Expression on the Internet.” <http://cyber.law.harvard.edu/ilaw/Speech/>. The Berkman Center for Internet and Society, Harvard Law. June 14, 2001. Accessed: March 23, 2011.

physical world.¹⁵ In 2003, the World Press Freedom Committee argued that the freedoms of speech, opinion, and press must be applied to new media of the 21st century just as Article 19 of the Universal Declaration of Human Rights protected older print and broadcast media rights after 1948.¹⁶

More recently, in June 2011, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, presented a report to the UN Human Rights Council in which he primarily focused on the Internet and new technologies. He stated:

The right to freedom of opinion and expression is as much a fundamental right on its own accord as it is an “enabler” of other rights, including economic, social and cultural rights, such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the rights to freedom of association and assembly. Thus, by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realization of a range of other human rights.¹⁷

The following section further examines the international legal framework for the freedoms of association and assembly, and new applications of these freedoms in the digital age.

III. International Law

A. Freedom of Association

As of December 2011, 167 countries have ratified the International Covenant on Civil and Political Rights (“ICCPR”). States Parties include a number of countries that have restricted online associational life, including Egypt, Libya, Tunisia, Sudan, Iran, Syria, China, Cuba, Ethiopia, and Vietnam.¹⁸

Article 22 of the ICCPR states that “[e]veryone shall have the right to freedom of association with others.” In 1998, the UN General Assembly adopted a resolution elucidating this right, clarifying that it transcends national boundaries:

¹⁵ Jorgenson, Rikke Frank.” Internet and Freedom of Expression.” <http://www.ifla.org/files/faife/publications/ife03.pdf>. Raoul Wallenberg Institute. 2000-2001. Accessed: March 12, 2011.

¹⁶ Presented by the World Press Freedom Committee and the Communications Media Committee of the Association of the Bar of the City of New York. <http://www.wpfc.org/site/docs/pdf/Publications/Working%20Papers-Conf%20Booklet.pdf>. World Press Freedom Committee. June 26-28, 2003. Accessed: March 12, 2011.

¹⁷ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf. Human Rights Council Seventeenth session, Agenda item 3. May 16, 2011. Accessed: December 1, 2011.

¹⁸ <http://map.opennet.net/filtering-pol.html>. OpenNet Initiative. Global Internet Filtering Map. Accessed: March 12, 2011.

Everyone has the right, individually and in association with others, at the national and international levels: ... (b) to form, join and participate in non-governmental organizations, associations, or groups.¹⁹

Under international law, individuals have the right to associate without seeking governmental approval or forming a legal entity. As the OSCE/ODIHR has stated, the law should “never condition the exercise of the right to freedom of association on the acquisition of formal status.”²⁰

The Human Rights Committee of the ICCPR has recognized this principle, stating on multiple occasions that mandatory registration of civil society organizations is not permissible under Article 22 of the ICCPR.²¹ The Committee found, for example, that Lebanon’s *de facto* practice of requiring prior licensing and control before an association may operate restricted the right to freedom of association under Article 22. In addition, the Committee expressed concern over Lithuanian legislation that required associations or organizations to comply with registration requirements in order to operate.²²

Accordingly, it is not necessary for individuals to receive any sort of government registration or approval to form an “association” protected under international law. Rather, a group is recognized as an “association” under international law if it meets three criteria: 1) it pursues a defined aim, 2) it has more than an ephemeral existence by possessing some “stability of duration,” and 3) it has a formal or informal institutional structure that provides members with a sense of belonging.²³ These requirements are met by numerous online groups.

B. Associating in the Digital Age

To make the analysis more concrete, we apply the foregoing standard to three online associations: the “April 6 Movement” that originated in Egypt; the “One Million Voices Against FARC” that originated in Colombia; and “Mir Hussein Mousavi’s” Facebook page that originated in Iran.

The April 6 Movement began when Ahmed Maher opened a group on Facebook to organize support for a workers’ strike on April 6, 2007. The members of the group reported on the strike, alerted online networks about police activity, and drew attention in the online world to the strikers’ efforts. The Movement continued its activities and began organizing protests against illegal government actions, such as police torture and beatings, and by March 2011 the group had more than 100,000 members.²⁴ During the anti-Mubarak protests in February 2011, the group’s

¹⁹Resolution Adopted By The General Assembly [on the report of the Third Committee (A/53/625/Add.2)]. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. March 8, 1999.

²⁰ OSCE/ODIHR Key Guiding Principles of Freedom of Association with an Emphasis on Non-Governmental Organizations, page 5; see also U.N. Special Representative Report, page 21 (“NGOs should be allowed to exist and carry out collective activities without having to register if they so wish.”)

²¹ Lebanon, ICCPR, A/52/40 vol. I (1997) 53 at paras. 357 and 358.

²² Lithuania, ICCPR, A/53/40 vol. I (1998) 30 at para. 177.

²³ McBride, Jeremy. *International Law on Freedom of Association*. Enabling Civil Society, 2003, pg. 10.

²⁴ <http://www.facebook.com/shabab6april?sk=photos#!/shabab6april?sk=wall>. Accessed: December 12, 2011.

promotion of a “march of millions”²⁵ was one of the primary factors responsible for the outpouring of masses of people that flooded Tahrir Square in Cairo to call for the resignation of Mubarak. Ahmed Maher, despite having spent time in prison in 2008, remains the group’s leader.²⁶

The One Million Voices Against FARC group was started in January 2008 by a 33-year old Colombian, Oscar Morales, who was concerned about FARC’s actions and the general disregard for FARC’s continuous kidnappings.²⁷ Within one week of opening his Facebook group, it acquired 100,000 members.²⁸ He instructed new members to take up “officer roles”²⁹ on issues from legal reform to public relations, and he set up a coalition of community organizers, or “coordinators,”³⁰ spanning nearly 50 countries to raise funds for the organization’s advertising campaigns and to plan protests against FARC on February 4, 2008.³¹ Some estimates place the number of people who protested in Bogota at between 500,000 and two million.³²

Mohammed Sadeghi is the founder and head administrator of Mir Hussein Mousavi’s Facebook page, which he launched on January 18, 2009. Sadeghi says that Mousavi called for “citizen staffs” to become a source of fundamental change in the nation, and the Facebook page allowed Sadeghi to spread Mousavi’s message into the “non-political atmosphere of social networks.” According to Sadeghi, media activities in social networks provided broader accessibility to the “virtual – not necessarily political – society inspired by the weblog movement.” After the disputed Iranian elections in 2009, the Facebook group’s horizontal network structure and minimal reliance on central leadership helped it to mobilize the membership base. The webpage created a framework for citizen journalism, which “raised

²⁵ “Egypt Protesters Increase Pressure.”

<http://english.aljazeera.net/news/middleeast/2011/01/20111316148317175.html>. Aljazeera. January 31, 2011. Accessed: March 13, 2011.

²⁶ World Report 2009 Egypt.

<http://www.unhcr.org/refworld/topic.4565c22535.47a840db2.49705fa48.0.html>. RefWorld. January 14, 2009. Accessed: March 12, 2011.

²⁷ Brodzinsky, Sibylla. “Facebook Used to Target Colombia's FARC with Global Rally.”

<http://www.csmonitor.com/World/Americas/2008/0204/p04s02-woam.html>. Christian Science Monitor. February 4, 2008; Williams, Andrew. “Oscar Morales: How I Used Facebook to Protest against Farc.” <http://www.metro.co.uk/news/812277-oscar-morales-how-i-used-facebook-to-protest-against-farc>. Metro. February 9, 2010. Accessed: December 1, 2011.

²⁸ Cullum, Brannon. “Oscar Morales and One Million Voices Against FARC.”

<http://www.movements.org/case-study/entry/oscar-morales-and-one-million-voices-against-farc/>. Accessed: April 12, 2011.

²⁹ Weintraub, Seth. “Jared Cohen and Eric Schmidt co-author Foreign Affairs piece.”

<http://tech.fortune.cnn.com/2010/11/01/jared-cohen-and-eric-schmidt-co-author-foreign-affairs-piece/>. 10:05. Fortune. November 1, 2010. Accessed: March 12, 2011.

³⁰ “AYM '08: Keynote - Building a Movement Against Terrorism.” Part 2 of 4.

<http://www.howcast.com/videos/99981-Keynote-Building-a-Movement-Against-Terrorism-Part-2-Of-4>. December 11, 2008. Accessed: March 14, 2011.

³¹ Albers, David. “Anti-FARC protest in East Naples was one of many around world.”

<http://www.naplesnews.com/news/2008/feb/04/anti-farc-protest-east-naples-was-one-many-around-/>. Naplesnews.com. February 4, 2008. Accessed: March 12, 2011.

³² “Colombians in huge Farc protest.” <http://news.bbc.co.uk/2/hi/americas/7225824.stm>. BBCNEWS.com. February 4, 2008. Accessed: March 12, 2011.

awareness of the events happening in Iran, be it in terms of empowering the circulation of information or in terms of mobilizing for rallies and to reach out to international mass media both inside and outside Iran.”³³

The April 6 Movement, One Million Voices Against FARC, and Mir Hussein Mousavi’s Facebook page all meet the three requirements enumerated above for the freedom of association. First, they have clearly defined aims. According to its Facebook page, the April 6 Movement was formed:

to obtain what was agreed upon by all the Egyptian intellectuals and national political forces on the need for Egypt to undergo a period of transition where the public figures work for the sake of this nation and dignity is established under the principles of democratic governance.³⁴

According to the One Million Voices Against FARC Facebook page, its mission is to:

design strategies to eradicate terrorism in Colombia through the awareness and the sensitization of society to the actions committed by illegal armed groups, taking advantage of the successful social force achieved in previous citizen marches.³⁵

The purpose of the Mir Hussein Mousavi Facebook page is to “to communicate Mousavi’s messages to his Green Movement supporters and the world at large.”³⁶

Second, the three groups have stability of duration. The April 6 Movement has been active since 2007. Its popularity has increased over time, and it was considered a “catalyst of the current political upheaval shaking up the government of Hosni Mubarak.”³⁷ The Facebook groups of “One Million Voices Against FARC” and Mir Hussein Mousavi are also active today – with more than 580,000³⁸ members and 220,000 members (or people who “like” them) respectively – more than two years after their founding.³⁹

Third, Ahmed Maher, Oscar Morales, and Mohammad Sadeghi have provided leadership and institutional structure to their organizations. Ahmed Maher mapped the April 6 Movement’s protest strategy with a core group of other activists in the “operations room,” and Oscar Morales delegated members in the One Million Voices Against FARC group to serve in the role of

³³Tehrani, Hamid. “Iran: 126,000 fans cheer Mousavi’s Facebook page.” <http://globalvoicesonline.org/2010/05/05/iran-126000-fans-cheer-mousavis-opposition-facebook-group/>. May 5, 2010. Accessed: March 25, 2011.

³⁴<http://www.facebook.com/group.php?gid=9973986703>. Accessed: March 14, 2011.

³⁵<http://www.facebook.com/onemillionvoices#!/onemillionvoices?sk=info>. Accessed: March 14, 2011.

³⁶Id. <http://globalvoicesonline.org/2010/05/05/iran-126000-fans-cheer-mousavis-opposition-facebook-group/>

³⁷Jijo, Jacob. “What is Egypt’s April 6 Movement?” <http://www.ibtimes.com/articles/107387/20110201/what-is-egypt-s-april-6-movement.htm>. International Business Times. February 1, 2011. Accessed: March 14, 2011.

³⁸<http://www.facebook.com/mousavi>. Accessed: March 14, 2011.

³⁹<http://www.facebook.com/onemillionvoices>. Accessed: March 14, 2011.

“officers.”⁴⁰ As a former State Department official commented, “One Million Voices Against FARC is the most sophisticated 550,000 person NGO you could ever imagine.”⁴¹

Mohammad Sadeghi organizes the Mir Hussein Mousavi Facebook page as an online media platform from which networks of “Green media” can extend to the real world.⁴² He has also chosen to decentralize the campaign and encourages the Green Movement to send messages in any web compatible format “in order to reach out to the world despite the desperate attempt of the coup regime to wall off Iran from the rest of the world.” The thousands of members who regularly contribute to these three web pages reflect the “sense of belonging”⁴³ that members share with respect to the group’s objectives.⁴⁴

In summary, these and other online associations meet the three-prong test to qualify as protected “associations” under international law.

C. The Issue of Physical Proximity

Some might argue that the freedom of association requires individuals to meet in person, but participation in in-person meetings is not a requirement for individuals to exercise the freedom of association. Consider, for example, the AARP (formerly the American Association of Retired Persons) in the United States,⁴⁵ which has more than 40 million members, or the Sierra Club, which has more than 1.3 million members.⁴⁶ While some members in these associations may convene at specific events, it is neither practical nor necessary for the groups to convene their entire membership in person. In other countries, the same concept applies. For example, the Russian Pensioners’ Union has 1.4 million members⁴⁷ and the All-Russian Association of Disabled Persons has more than 2 million members,⁴⁸ but members of those associations rarely attend in-person meetings. Nonetheless, the AARP, Sierra Club, Russian Pensioners’ Union, and

⁴⁰ Id. <http://tech.fortune.cnn.com/2010/11/01/jared-cohen-and-eric-schmidt-co-author-foreign-affairs-piece/>.

⁴¹ Banerjee, Amit. “Google to Hire an Ex White House Employee, ‘Google Ideas’ In The Making.” *Techie-buzz*. <http://techie-buzz.com/tech-news/google-hires-janed-cohen-google-ideas.html>. August 16, 2010. Accessed: April 12, 2011.

⁴² “Mir Hossein Mousavi FB 1/10.” *Iran News Digest*. <http://www.irannewsdigest.com/2010/01/10/mir-hossein-mousavi-fb-110/>. January 10, 2009. Accessed: April 12, 2011.

⁴³ Indeed, many associations around the world are moving to an online medium to carry out their activities. Members can obtain their “sense of belonging” to the association from the organization’s website, blogs, live-streaming programs, telephone calls, and other information and communication technology. The Sierra Club’s “Sierra Student Coalition” has an online sub-community where “where youth can connect, engage and organize around the most pressing environmental and climate issues of our time.”

⁴⁴ Al-Asar, Marwa. “April 6 movement launches new pro-reform campaign.” *Daily News Egypt*. <http://thedailynewsegypt.com/egypt/april-6-movement-launches-new-pro-reform-campaign.html>.

⁴⁵ The Next Web. “Exclusive Interview With the AARP: How the 50+ Crowd Sees Geolocation and Social Media.” <http://thenextweb.com/us/2010/08/23/how-the-50-crowd-sees-geolocation-and-social-media/>. August 23, 2010. Accessed: April 12, 2011.

⁴⁶ Sierra Club. *SourceWatch*. http://www.sourcewatch.org/index.php?title=Sierra_Club. Accessed: April 12, 2011.

⁴⁷ Author’s e-mail with colleague from Russia.

⁴⁸ Id.

the All-Russian Association of Disabled Persons are clearly protected “associations” under international law.

In *Golder v. United Kingdom*,⁴⁹ the European Court of Human Rights (“ECHR”)⁵⁰ indicated that even prisoners can be members of associations while behind bars. In that case, the defendant was in prison, and the prison administration denied him access to counsel. The ECHR held that constraints on Golder’s ability to participate in the full activities of an association to which he belonged could justifiably be restricted, but imprisonment could not otherwise be:

an obstacle to his continued membership in an association and involvement in its affairs; it would be very difficult to demonstrate that a restriction on freedom of association that went beyond the inevitable impracticality of attending meetings was something really needed for the purposes of confinement.⁵¹

If a prisoner can be a member of an association when he is unable to attend meetings, then certainly physical proximity is not a requirement for other individuals to exercise their right to associate.

IV. Government Interference with the Freedoms of Association and Assembly

In Egypt, the government under Mubarak intended to suppress dissent and interfere with the demonstrations.⁵² Similarly, in Bahrain the government applied the Press and Publications Law No. 47 of 2002⁵³ to prevent people from accessing anti-government websites during anti-government protests in Manama.⁵⁴

⁴⁹ *Golder v. United Kingdom*, 1 EHRR 524. 21 February 1975.

⁵⁰ The European Court of Human Rights resolves disputes brought against the European member states under the European Convention on Human Rights (“ECHR”); the Court’s decisions are considered to have global significance because the provisions of the ECHR on association and expression are virtually identical to those of the ICCPR and other conventions. We have therefore included references to the Court’s decisions where relevant.

⁵¹ McBride, Jeremy. *NGO Rights and Their Protection under International Human Rights Law*. Pages 18-19.

⁵² Ferenczi, Peter. “Egypt Internet Restored.” <http://www.mobiledia.com/news/81298.html>. Mabledia. February 2, 2011. Accessed: December 7, 2011, (“Recent upheavals in Iran, Tunisia and Egypt have focused attention on the Internet and social networking as a tool for organizing political action. Both Iran and Tunisia blocked specific sites or enacted general Internet slowdowns in efforts to suppress dissent, but Egypt’s total blockade of Internet service was unprecedented in its scope”); see also CNN Wire Staff. “Egyptians brace for Friday protests as internet, messaging disrupted.” CNN World. http://articles.cnn.com/2011-01-27/world/egypt.protests_1_egyptian-authorities-muslim-brotherhood-opposition-leader?_s=PM:WORLD. January 27, 2011. Accessed: December 7, 2011, (“Hours ahead of what are expected to be massive displays of anti-government ferment across the world’s most populous Arab nation, the internet went dark in parts of Egypt early Friday, and text messaging appeared to be blocked”).

⁵³ XIX Article 9, Press Release. “Bahrain: ARTICLE 19 supports collective appeal for stronger protection of freedom of expression in Bahrain.” <http://www.article19.org/pdfs/press/bahrain-appeal-strong-foe.pdf>. November 7, 2007. Accessed: April 12, 2011.

⁵⁴ During the anti-government protests in Manama when someone in Bahrain attempted to access a proscribed website the following warning appeared: “Site Blocked: This website has been blocked by the order of the Ministry of Culture and Information based on Article 19 of decree Law No. 47, 2002 regarding the organization of the press, printing and publishing in the Kingdom of Bahrain, due to the publication of prohibited content on the aforementioned site.” The authorities also used Article 47 in conjunction with Article 15 and Article 365 of the 1976 Penal Code to interrogate and prosecute more than 14 journalists as well as bloggers and website administrators.

Recognizing that online associations are protected under international law, we examine the grounds upon which these associations may be restricted. Under international law, restrictions on the freedom of association must meet a strict test. As stated in Article 22 of the ICCPR:

No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.⁵⁵

A. Prescribed by Law

The first requirement is that restrictions be prescribed by law. Consider Egypt, which in January 2011 blocked the entire Internet. For five days members of the April 6 Movement and other online groups were unable to communicate via their online meeting forums, message boards, and blogs, or plan activities.

Egypt's Emergency Law (Law No. 162 of 1958) grants broad powers to the President during emergencies and has been in effect continuously from October 1981 when President Sadat was assassinated. Among other powers in the Emergency Law, the President had the "authority to confiscate, suspend or shutdown the press and all means of communication."⁵⁶ However, in May 2010 when Egypt renewed the Declaration of Emergency, it explicitly limited the President to use powers only "as necessary to combat terrorism or drug trafficking," and it did not explicitly grant the President the power to impose censorship or shut down newspapers and other media outlets. Thus, there was no legislative basis for the government's blackout.

According to the Commentary on the Declaration of Human Rights Defenders issued in July 2011, the "prescribed by law" standard requires that restrictions on the freedom of association appear in some legislative act and not merely an executive order or decree. As stated by the UN Special Rapporteur on the situation of human rights defenders:

The term "prescribed by law" makes it clear that restrictions on the right to freedom of association are only valid if they had been introduced by law (through an act of Parliament or an equivalent unwritten norm of common law), and are not permissible if introduced through Government decrees or other similar administrative orders. It would seem reasonable to presume that an interference is only "prescribed by law" if it derives from any duly promulgated law, regulation, order, or decision of an adjudicative body.⁵⁷

Because there was no legislative act in Egypt that proscribed the activity targeted by the blackout, Egypt failed to meet the "prescribed by law" standard.⁵⁸

⁵⁵ ICCPR, Article 22.

⁵⁶ Edinburgh Middle East Report. Law 1958/162 (Emergency Law). <http://www.emerglobal.com/lex/law-1958-162> (Arabic).

⁵⁷ Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, page 44 <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersjuly2011.pdf>. July 2011. Accessed: December 1, 2011.

⁵⁸ The "prescribed by law" standard also requires that the law be accessible (published) and that its provisions be "formulated with sufficient precision to enable the persons concerned to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct

B. Justifications

Even if the “prescribed by law” threshold is passed in a particular circumstance, an interference is justified only if it is “necessary in a democratic society” in the interest of “national security” or one of the three other grounds articulated in the ICCPR, Article 22. These grounds are strictly construed. As the UN Human Rights Committee General Comment 31(6) stated:

Where such restrictions are made, states must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.⁵⁹

In interpreting nearly identical language from Article 11 of the European Convention on Human Rights, the European Court of Human Rights has made clear that “only convincing and compelling reasons can justify restrictions on the freedom of association.”⁶⁰

C. National Security

Neither Egypt nor Bahrain could reasonably rely on “national security” grounds to provide “convincing and compelling” reasons for their restrictions on the Internet during the Arab Spring. This is also true for Iran, which in 2009 charged anti-government protestors on Facebook and Twitter with harming Iran’s national security by leaving comments on opposition discussion forums.⁶¹

National security provides an extremely limited basis to justify constraints on the freedoms of association and assembly. According to the Siracusa Principles:⁶²

(See, for example, *N.F. v. Italy*, no. 37119/97, §§ 26-29, ECHR 2001-IX; and *Gorzelik and others v. Poland* [GC], no. 44158/98, §§ 64-65, ECHR 2004-I.)” If the Egyptian government did in fact have a different law that proscribed the blackout, then the government failed to make that law or regulation broadly accessible before, during, or after the blackout. After conducting research, colleagues in Egypt were unable to locate such a law. So even if a law exists, it could not be considered “accessible.”

⁵⁹ ICNL and World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: A Report of the World Movement for Democracy* (2008), p. 23, notes 44 and 45 (citing OSCE/ODIHR, Key Guiding Principles of Freedom of Association with an Emphasis on Non-Governmental Organizations, p.4).

⁶⁰ See, for example, *Case of Sidiropoulos and Others v. Greece*, 4 Eur. Ct. H.R. 500, paragraph 40 (1998) and *Case of United Communist Party of Turkey and Others v. Turkey*, 4 Eur. Ct. H.R. 1, paragraph 46 (1998), both holding that only “convincing and compelling” reasons can justify restrictions on the right to freedom of association, and that the restrictions must be “proportionate to the legitimate aim pursued.”

⁶¹ Id. <http://online.wsj.com/article/SB125978649644673331.html>

⁶² The “Siracusa Principles” [United Nations, Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4 (1984)] were adopted in May 1984 by a group of international human rights experts convened by the International Commission of Jurists, the International Association of Penal Law, the American Association for the International Commission of Jurists, the Urban Morgan Institute for Human Rights, and the International Institute of Higher Studies in Criminal Sciences. Though not legally binding, these principles provide an authoritative source of interpretation of the ICCPR with regard to limitations clauses and issue of derogation in a public emergency. They are available at: <http://graduateinstitute.ch/faculty/clapham/hrdoc/docs/siracusa.html>.

A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity....

Moreover, any restriction justified on national security grounds:

must respond to a threat to the country as a whole... and the threats *cannot be merely to the ruling party* nor relatively isolated.⁶³ (Emphasis added).

Accordingly, restrictions may not be invoked “in the sole interest of a government, regime or power group”⁶⁴ or when the purpose is to “frustrate revolutionary movements which do not threaten the life of the whole nation.”⁶⁵

As summarized in the Siracusa Principles, “national security” cannot be used as a pretext: aimed at suppressing opposition ... or at perpetrating repressive practices against its population.⁶⁶

In similar fashion, the UN Human Rights Committee has held that national security and other grounds cannot justify attempts to “muzzle advocacy of multi-party democracy, democratic tenets and human rights.”⁶⁷

Egypt’s blackout, Bahrain’s enforcement of the Publications Law No. 47, and Iran’s charges were not necessary to protect “the existence of the nation” or the countries’ “territorial integrity.” Rather, they were imposed to “suppress opposition,” “perpetrate repressive practices against [the] population,” and “muzzle advocacy of multi-party democracy.”⁶⁸ Accordingly, they fall afoul of international law.

D. The Scope of Violations

The foregoing discussion illustrates that violations of international law arise when governments undertake comprehensive measures, such as blocking the Internet or restricting access to Facebook or other networking sites. Violations also arise when a government undertakes targeted harassment of online human rights organizations and dissident groups. As but one example, after the Iranian Green Revolution protests in Iran in 2009, Passport Control officers in Tehran’s Imam Kohmeini Airport forced Iranians who had been living abroad to open their Facebook accounts on a laptop computer and allow the officers to examine their messages and posts with others on Facebook. Several individuals had their passports taken away after an inspection of their account history revealed that they had criticized the government on Facebook in their online messages or posts. Other Iranian protestors were reportedly beaten during interrogation and forced to reveal their Facebook passwords, which the government used to

⁶³ Coliver, Sandra. “Secrecy and Liberty: National Security, Freedom of Expression and Access to Information.” Springer, July 14, 1999. Pg. 19.

⁶⁴ Kiss, Alexandre. “Commentary by the Rapporteur on the Limitation Provisions.” 7 Hum. Rts. Q. Pages 290, 296-297. 1985.

⁶⁵ Id. Coliver.

⁶⁶ Siracusa Principles. Principle 32.

⁶⁷ *Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994).

⁶⁸ See *supra* notes 52-54.

obtain information about the protestor, the protestor's list of friends and group affiliations, and the private communications between the protestor and other Facebook users.⁶⁹

A host of international legal instruments protect associations, particularly those seeking to promote human rights, democracy, or a change in the way the state is organized.⁷⁰ In addition, ICCPR Article 17 protects the right to privacy:

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.⁷¹

According to leading scholars, international legal claims:

can arise against obligations to supply government authorities with (possibly) confidential data, such as *names and addresses of donors* of the organization, *or a list of members*. Obviously, obligations of this nature may be, in a climate of political unrest, particularly detrimental to organizations with (unpopular) advocacy purposes (emphasis added).⁷²

Forced disclosure of membership lists can also give rise to legal claims at the national level. For example, in 1958, the U.S. Supreme Court considered a case where the state of Alabama sought to compel the National Association for the Advancement of Colored People (NAACP) to disclose its list of members. The Supreme Court stated that, "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association" Furthermore:

Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.⁷³

In terms of an ICCPR analysis, actions such as those taken by Iranian Passport Officers to force the disclosure of friendship, or membership, lists and the private information of dissident Facebook users constitute a "restriction" on the freedom of association. Following the analysis of Egypt, Bahrain, and Iran highlighted above, the Passport Officers' actions cannot be justified in

⁶⁹ Id. <http://online.wsj.com/article/SB125978649644673331.html>

⁷⁰ ICNL and World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: A Report of the World Movement for Democracy* (2008), pp. 26-40.

⁷¹ The Universal Declaration of Human Rights (UDHR) employs almost identical language in its Article 12. The European Convention on Human Rights (ECHR), in Article 8, also enshrines the right to privacy: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

⁷² Erik Denters and Wino van Veen, "Voluntary Organizations in Europe: the European Convention on Human Rights," 1 *IJNL* 2 (December 1998).

⁷³ 357 US 449 (1958)

the interest of “national security” or other grounds enumerated in the ICCPR, Article 22. Accordingly, they contravene international legal protections guaranteed by the freedom of association.

In summary, the freedom of association is implicated if a government blocks the entire Internet, restricts access to social networking sites, forces disclosure of membership lists or the private information of online human rights groups, or undertakes other measures that restrict the exercise of the associational rights under Article 22 of the ICCPR.

V. Freedom of Assembly

Even if a group technically fails to meet the three-part standard to enjoy protection as an “association” under international law, it may still be protected under the right to peaceful assembly.

Article 21 of the ICCPR states, “The right of peaceful assembly shall be recognized,” and Article 20(1) of the Universal Declaration of Human Rights states, “Everyone has the right to freedom of peaceful assembly and association.”⁷⁴

The freedom of assembly encompasses “the individual right to come together and collectively express, promote, pursue and defend common interests.”⁷⁵ This is the precise objective of a host of online groups and social networks, and the freedom of assembly protects these sorts of connections. As U.S. Secretary of State Hillary Rodham Clinton stated, “the freedom to connect is like the freedom of assembly, only in cyberspace.”⁷⁶

Moreover, the freedom of assembly is linked to the ability to petition the government for the redress of grievances.⁷⁷ In *Stankov*, the ECHR held that:

In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realization is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means.⁷⁸

Traditionally, this has occurred through in-person assemblies and demonstrations in public squares and streets. Now, however, people can collectively petition the government and seek redress for grievances online. As U.S. Secretary of State Hillary Rodham Clinton stated, “cyber

⁷⁴ Article 20(1) of the Universal Declaration of Human Rights (1948)

⁷⁵ Jeremy McBride, *Freedom of Association*, in *The Essentials of ... Human Rights*, Hodder Arnold, London, 2005, pg.18-20

⁷⁶ Clinton, Hillary Rodham. “Remarks on Internet Freedom.” The Newseum, Washington, DC. <http://www.state.gov/secretary/rm/2010/01/135519.htm>. January 21, 2010. Accessed: April 12, 2011.

⁷⁷ See, for example, the Missouri Constitution, which states: “That the people have the right peaceably to assemble for their common good, and to apply to those vested with the powers of government for redress of grievances by petition or remonstrance....”

⁷⁸ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 85 *in fine*, ECHR 2001-IX; see also *Case of Schwabe and M.G.v. Germany nos. 8080/08 and 8577/08*, § 113, ECHR 2011-IX, (“There is little scope under Article 10 of the Convention – in the light of which Article 11 has to be construed... for restrictions on political speech or on debate on questions of public interest”).

space, after all, is the public square of the 21st century.”⁷⁹ For example, in March 2010 more than 130 people signed an online petition calling for Constitutional changes and free elections in the United Arab Emirates. Five of the signers were then arrested.⁸⁰ There is a strong argument, however, that petitioning the government online is protected under the freedom of expression, the freedom of assembly, and other international legal bases.

In addition, the Internet and other technologies are used to help organize demonstrations and other assemblies. The freedom of assembly protects not only the actual assembly but also preparatory measures to undertake an assembly.⁸¹ Accordingly, Internet restrictions—such as blockouts intended to impede the organization of peaceful protests—violate international law.

VI. Human Rights and New Technology

This is not the first time that international human rights law has dealt with the ramifications of new technology.

Consider the case of mass printing technology, particularly photocopiers.⁸² The mass dissemination of information was threatening to certain governments, so they sought to restrict access to this technology.

In 1990, the Organization for Security and Co-operation in Europe (OSCE) addressed this issue. Specifically, it took action to reaffirm that the freedom of expression applied to this new technology. As the OSCE stated in Article 9.1 of the Copenhagen Document:

Everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, *means of reproducing documents* of any kind, while respecting, however, rights relating to intellectual property, including copyright.⁸³ (Emphasis added.)

The Copenhagen Document recognizes that the laws governing new technologies must incorporate preexisting rights. In 1990, photocopiers and the freedom of expression were at issue. Today, we speak of social media and a host of fundamental freedoms, including the rights to freedom of expression, association, and assembly. In both cases, international law requires that individuals be able to exercise their fundamental rights and freedoms through the Internet

⁷⁹ Remarks at the Civil Society Meet and Greet. <http://www.state.gov/secretary/rm/2011/12/178313.htm>. Remarks, Hillary Rodham Clinton. Tolerance Center, Vilnius, Lithuania. December 6, 2011. Accessed: December 7, 2011.

⁸⁰ Associated Press. “Free and defiant, pardoned UAE activists vow to press on with democracy campaign.” The Washington Post with Foreign Policy World. http://www.washingtonpost.com/world/middle-east/free-and-defiant-pardoned-uae-activists-vow-to-press-on-with-democracy-campaign/2011/11/29/gIQAu9F78N_story.html. November 29, 2011. Accessed: December 1, 2011.

⁸¹ See, for example, *Christians Against Racism and Fascism v. UK* (1980) 21 DR 138, page 148

⁸² This section is based on the significant intellectual contributions of Lynne Davidson.

⁸³ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE. <http://www.osce.org/odihr/elections/14304>. June 29, 1990. Accessed: April 14, 2011.

and social media. In the words of U.S. Secretary of State Hillary Rodham Clinton, “enduring freedoms, new apps.”⁸⁴

VII. Conclusion

In summary, existing commitments require states to respect the rights of individuals to associate and assemble on land as well as online. More than two dozen countries supported this principle in a *Draft Declaration on Fundamental Freedoms in the Digital Age*, which was presented at the OSCE Ministerial Council in Vilnius, Lithuania, on December 6, 2011.⁸⁵

The *Draft Declaration* stated that “human rights and fundamental freedoms do not change with new technologies and that they extend into the Digital Age.” Moreover, it reaffirmed countries’:

commitments to respect the exercise by individuals, including members of groups and organizations, of their human rights and fundamental freedoms, including through new technologies such as the Internet, mobile networks and social media tools.

The OSCE operates by consensus, and certain governments blocked the adoption of the *Draft Declaration*. Nonetheless, it is remarkable that over two dozen countries co-sponsored the declaration, which provides a solid foundation for future initiatives in this area.

A number of countries have already issued clear statements in defense of online freedoms. As a particularly notable example, in June 2010, the Swedish Ministry of Foreign Affairs, stated:

For Sweden, one principle is particularly fundamental: the same rights that people have in general—such as freedom of expression, including the freedom to search for information, freedom of assembly and freedom of association—must also be protected on the Internet.⁸⁶

Similarly, in December 2011, Secretary of State Hillary Rodham Clinton stated:

Fundamental freedoms ... apply as much to a Twitter conversation and a gathering organized by NGOs on Facebook as they do to a demonstration in a public square.⁸⁷

⁸⁴ Remarks at the OSCE First Plenary Session. <http://www.state.gov/secretary/rm/2011/12/178315.htm>. Remarks, Hillary Rodham Clinton. LitExpo Conference Center, Vilnius, Lithuania. December 6, 2011. Accessed: December 7, 2011; see also, Promises We Keep Online: Internet Freedom in the Organisation for Security and Cooperation in Europe (OSCE) Region. <http://www.state.gov/g/drl/rls/rm/2011/168684.htm>. Testimony, Daniel Baer. Statement Before the Commission on Security and Cooperation in Europe (U.S. Helsinki Commission), Washington, DC. July 15, 2011. Accessed: December 7, 2011.

⁸⁵ Most of Europe, the United States, and Canada supported the *Draft Declaration*. According to a Senior U.S. State Department official, “among the countries that have been really strong on [the *Draft Declaration*] are the Dutch, the Swedes, and the United States and Canada.” See Background Briefing on the Secretary’s Travel to Lithuania. <http://www.state.gov/r/pa/prs/ps/2011/12/178297.htm>. Special Briefing, Senior State Department Officials. En Route Vilnius. December 5, 2011. Accessed: December 7, 2011.

⁸⁶ Ministry for Foreign Affairs, Press Release. “Freedom of the Internet—40 Countries Support Sweden.” <http://www.regeringen.se/sb/d/14924/a/170547>. June 10, 2011. Accessed: December 1, 2011.

⁸⁷ Remarks at the OSCE First Plenary Session. <http://www.state.gov/secretary/rm/2011/12/178315.htm>. Remarks, Hillary Rodham Clinton. LitExpo Conference Center, Vilnius, Lithuania. December 6, 2011. Accessed: December 7, 2011.

It is important that more be done to reaffirm these principles at the national, regional and global levels in order to counter the technological “counter-revolution” and to establish the basis for human rights law in the years to come. At its core, international law permits individuals to exercise their fundamental freedoms using a panorama of modalities, including cutting-edge technologies that exist today – and in the future.

Article

Leadership and Collective Action in Egypt's Popular Committees: Emergence of Authentic Civic Activism in the Absence of the State

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The Mubarak regime actively repressed civil society and all forms of civic activism throughout its 30-year tenure. The dramatic events of the 2011 Tahrir Revolution created a new space within which local leaders were both required and enabled to challenge the regime's previous monopoly on security operations, its mechanisms of state terrorism, and its prohibition on unsanctioned civil groups. This article, second in a series of working papers on local activism in Egypt, explores whether the local citizen watch brigades, typically called popular committees (PCs), established in late January 2011 to provide security have evolved into community-based organizations for local activism.

Building on findings from the first paper, which analyzed local responses to the withdrawal of security in the two-week period from the start of the revolution to the resignation of former President Mubarak on February 11, 2011, this paper analyzes the evolution of some of the PCs into authentic local organizations for civic activism in the absence of the state, as security has slowly and imperfectly returned to the country. It first profiles seven organizations that have emerged in Cairo and Alexandria at the city or neighborhood level or that were in place prior to the revolution but have adapted their strategy to the new openness and evolving community needs. It then presents a comparative analysis of the presence of popular committees and other youth groups at the national and local level, using information from Facebook. Finally, it assesses the implications for citizen leadership at the community level during the coming phases of the revolution and considers implications of this development for the course of future efforts at public mobilization in support of systemic change.

The two analyses demonstrate the differences between the evolution of the popular committees across different types of community in Egypt, emphasizing the emergence of new forms of activism in the new communities, whether these are well-to-do new suburbs in the desert or informal areas with a severe deficit in government services.

The analysis concludes that the popular committees have empowered citizens in ways that may have a lasting impact on collective action initiatives in the future, particularly during the coming period of revolutionary change, but, at the same time, recognizes that the leadership that emerged in a time of crisis will not necessarily be sufficient to sustain collective action and civic engagement post-crisis without further development of both the leadership structures and the organizational strategies used to affect the lives of those in their communities.

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Introduction

On January 27, 2011, virtually none of Greater Cairo's neighborhoods² had an organized group for self-protection or, indeed, an organized civic group of any kind, barring religious organizations. Two days later, on January 29, not just every neighborhood but virtually every block had an organized group dedicated to protecting the lives, property, and safety of its residents. These groups operated on a continuous basis throughout the first two weeks leading up to the departure of former President Mubarak, substituting for the police who had been withdrawn from the streets.

Six months later, although security has not fully returned, nearly all of these thousands of block-level groups in Cairo have long disbanded. Some, however, have transformed themselves into ongoing grassroots organizations. Similar groups have arisen in Alexandria and other Egyptian cities. These groups represent Egypt's first experience with organized civic activism emerging from the grassroots, rather than from the action of a religious organization, the state, or international actors. Although this experience is very much in its early days, these groups, known as *lagaan shaabiyya* or popular committees (PCs), thus offer an important opportunity to document the emergence of genuine collective action organizations at the local level in Egypt.

Popular Committees in Egyptian communities: Emergence of grassroots civic activism

In the wake of the Tunisian Revolution of January 2011, Egypt's Mubarak regime made the self-destructive decision to attack its own people by emptying the prisons and withdrawing the police from the streets. This cynical attempt to elicit a call for stability from a frightened citizenry resulted instead in the spontaneous formation of local "popular committees," which established a near-universal coverage of residential neighborhoods throughout major urban centers quite literally in a matter of days. With neither precedent nor outside organizing support, the popular committees established effective structures, procedures, and an active cadre of participants sufficient to achieve their primary aim of maintaining neighborhood security.

While some committees disbanded when order returned, others have drawn together to create new federations at the district, city, governorate, and national level. This development, arguably the first instance of broad-based, bottom-up organizational formation in Egypt's history, holds tremendous promise for the emergence of genuine civil society activism in Egyptian localities. Before turning to an analysis of this more recent development, it will be useful to review very briefly the PCs experience during the early days of the revolution.

On the 28th and 29th of January 2011, following the second large-scale demonstration in Tahrir, the government and the ruling National Democratic Party mobilized a concerted attack on the demonstrators, withdrew the police from the streets, hired thugs to rob and terrorize on a wide scale, and opened several prisons. Their apparent aim in loosing the forces of chaos on their own citizens was to create fear and alarm, leading to a cry for the government to restore security and also forcing the demonstrators to return home to protect their families.

² Greater Cairo consists of Cairo Governorate (Cairo proper) plus the urbanized parts of Giza Governorate (adjacent to Cairo on the western shore of the Nile) and the extension of urbanization north into Qalyubia Governorate. It includes the city of Helwan, now absorbed into the urban agglomeration, and the new satellite cities located in the desert to the east and west of Cairo/Giza, such as 6th of October and New Cairo (which includes Rehab and Tugamua al-Khamis), and other new cities.

If these were the government's intentions, they failed. The citizens reacted by arming themselves, taking to the streets, and imposing their own order. No central organization directed this massive if impromptu social movement. Each neighborhood organized in its own way, drawing on Egyptian society's repertoire of cultural models and responding to the dynamic of the situation itself. These groups remained in place for two to four weeks, some disbanding when Mubarak resigned and some gradually scaling back operations as sufficient security returned for normal life to resume.

The first phase of the research reported here documented this early experience (Bremer 2011). Interviews with participants in PCs in 24 Cairo neighborhoods found that this experience was an empowering one for many. They learned in the most concrete way possible that they could not only stand up to the thugs but to the government as well. The PCs taught Egypt's man on the street that he and his neighbors have the capability to govern themselves. This has been a transformative idea in a society that has historically looked always to the leaders at the top of the pyramid to solve their problems and been sharply punished whenever another approach was tried.

Two types of organizations grew out of this initial empowering experience. First, in some localities, neighborhood or area-wide organizations had been created during the first two weeks through a process of aggregation, with block PCs linking together and then upward to their neighborhoods, and neighborhood groups linking together to form city-wide organizations. According to one of the block leaders in Maadi, a middle-class neighborhood, this process, motivated by the urgency of the situation, took place in a matter of days, accelerated by the sense of urgency, the widespread use of mobiles, and Facebook. After the return of security, some of these groups decided to continue and to transform themselves into ongoing neighborhood or citywide organizations for local betterment. In the burst of enthusiasm that followed the departure of Mubarak, the highly publicized cleaning of Tahrir Square had its counterpart in local efforts all over the city.

Second, some of the individuals who had personal experience with the PCs (which means virtually all Egyptian men below the age of 30, at least in urban areas) were motivated to apply their new skills in collective action to the broader problems facing their localities and formed new groups.

Aim of the Research

Six months after Mubarak's departure, development of both types of group is an ongoing experiment. This research aims, first, to document the current phase of this unique civil society experiment and, second, to explore the implications for the future of collective action at the community level in Egypt. Issues meriting consideration in the latter area include not only the nature of the programming that has emerged and whether it can be sustained, but also the emergence of different leadership styles, gender roles, decision-making, new second-tier or national organizations, and, inevitably in Egypt, relations with the state.

This article will not be able to draw firm conclusions in this second area, because the experience is still in its early days, but it will pose issues for the next stage in the research. As further discussed in the article itself, the PCs are still very much in formation and may evolve in any of several different directions, or, indeed, the experiment may fail. The coming election period will pose a new test for the PCs as they seek to define a role for themselves in Egypt's first real election and inevitably must decide how to interact with the much more established and

now newly empowered Islamist groups, and how to cooperate, if at all, with the newly formed (or reformed) parties that are also seeking the support of the citizens, be they Islamist, liberal, or the old regime in new clothes

On a broader level, the PCs offer a unique opportunity to track in real time the emergence of genuine grassroots civil society and collective action at the local level, a key component of a pluralistic democracy that has heretofore been lacking in Egypt and many developing countries. As a result of state repression, civil society, a key constituent of democratic governance, mechanism for local accountability, and nurturer of authentic national leadership, has developed only to a very rudimentary level in Egypt, as confirmed in the interviews conducted in the first phase of this research (Bremer, 2011). As Egypt embarks on the difficult journey toward democracy after decades of autocratic, even totalitarian rule, its success in building a sustainable democratic system will depend in part on whether it can develop local institutions that engage citizens in voicing and addressing their needs directly, in holding government accountable for its performance, and in meaningfully contributing to decision-making beyond the ballot box.

All of these functions have been effectively denied to Egyptian communities by state-imposed restrictions on civil society and the state-controlled simulacrum of local governance that exercised a monopoly over local action. Now that the field is open to new entrants, however, there is no guarantee that genuinely representative, responsive, sustainable, or effective institutions will emerge simply because the repressive regime of the past 60 years has been overthrown (nor has it been entirely overthrown, by any means). The evolving PC experience therefore offers a valuable window into the process whereby diverse Egyptian communities react to the new opportunity before them, enabling the mining of this experience for insights into the future evolution of community leadership in Egypt and the Middle East more generally.

The state will not be a passive observer of this phenomenon. Contention between a state constantly on the defensive and a populace mobilized behind its own self-defense groups constitutes a muted but consistent leitmotif in Middle Eastern urban history. Beginning in the Middle Ages and continuing through to the present revolutionary period, forms of local mobilization have arisen periodically that have combined socially informed norms of behavior with collective action for self defense. As described in the earlier paper, these groups have typically arisen at times of urgent need but have not become the locus of sustained local action to demand better services from the state or to provide alternatives to these services. Since at least the 1952 revolution, the potential for such local action has been limited by the state's repression of civil society. Ironically, only banned organizations such as the Muslim Brotherhood have been able to experiment with these roles on a wide scale. Localized actions by individuals or neighborhood spokespersons have naturally occurred, but it has been sporadic and has not been sustained.

As in the first phase of this research, when in-depth interviews were conducted with PC participants in 24 neighborhoods in Cairo (and on a more limited basis in Alexandria), this research examines how groups are evolving in the four broad neighborhood types found in Egyptian cities:

- popular areas occupied by working-class and also some middle-class families,
- middle- and upper-class areas,

- informal areas settled illegally by the poor but also home to working- and lower-middle-class who seek low-cost housing solutions, and
- new suburbs established in the deserts on the margins of the Nile Valley, occupied by upper-middle and upper-class families as well as residents of working-class public housing estates, an uneasy combination.

Across these four neighborhood types, the earlier research found that the PC structure and operations displayed much the same pattern, varying only slightly. Regardless of location, groups developed systems for operating security checkpoints, scheduling shifts, identifying members, and communicating with other groups as well as with the military, which controlled the main streets. Once established, these structures continued with few changes until security was partially restored with the assumption of military control of the country, as described in some detail in the earlier paper.

Despite these similarities, there were important differences in how the residents viewed their experience, with residents of informal areas seeing it as less empowering than did those from other urban neighborhoods. These groups were also required to confront challenges coming from within their own neighborhoods, an experience not shared with those of other neighborhoods.

An important question to be asked here is whether this distinction between the informal areas and other urban groupings carries forward into the new phase of the PCs.

Structure of the article

This article proceeds in four steps. It first provides a brief summary of the emergence of the PCs in the first month of the revolution to introduce the organizations and their origin. A more detailed discussion of this experience and a review of historical and regional counterparts that puts this experience in context may be found in the first working paper in this series (Bremer, 2011).

Following this review, the article presents eight profiles of local civic activist organizations, including four local PCs (three in the Greater Cairo Region [GCR] and one in Alexandria), the national association of popular committees, and three Islamic organizations operating at the local level that have shifted their strategy to respond to new challenges in the post-revolutionary period.

It then explores the PC phenomenon on a national level, based on an analysis of Facebook pages established by the PCs, which examines the geographic distribution, extent of participation, and level of activity in selected groups. The article concludes with an assessment of the PCs seven months after their emergence and the potential that they hold to reshape civic activism in a truly indigenous, genuine, and more effective direction as the revolution moves into its next phase.

Case studies of grassroots civil society organizations and programs in post-revolutionary Egypt

This section draws on in-depth interviews in Cairo and Alexandria with representatives of six organizations having new, expanded, or restructured activities at the grassroots level following the Egyptian revolution and provides brief case studies of these organizations drawing on the interviews, press accounts, organizational websites, and other materials. A seventh

organization is profiled based on the website and press accounts alone. The seven community-based groups include four secular groups and three with an Islamic orientation, as follows:

Secular organizations:

- Popular Committee for the Defense of the Revolution in Alexandria
- Popular Committee for the Defense of the Revolution in Imbaba (GCR)
- Popular Committee group in Mit Oqba (GCR)
- Zamalek Guardians (GCR)

Religious organizations:

- Muslim Brotherhood (Alexandria)
- Salafi movement (Alexandria)
- Al-Nur al-Mashriq Cooperative (GCR)

The first three groups are part of a network of organizations, the Popular Committee for the Defense of the Revolution (PCDR). At the six-month point following the resignation of former president on February 11, the PCDR remains a loose coalition of individual PCs, most of which have adopted the PCDR name and logo (the closed fist). It is broadly leftist in orientation, as shown by its use of the offices of the Egyptian Center for Socialist Studies as its regular meeting place. It is independent of this organization, however.

The PCDR seeks to promote and support the PCs in individual locations and to meld them into a coalition that can be effective on the national level. As its name implies, it has defined itself as a defender of the Egyptian Revolution against those who would undermine it from any direction, be it the previous regime, the Islamists, or others.

The PCDR's statement of purpose on its Facebook page emphasizes its commitment both to action and to independence. It defines its primary role as encouraging local collective action to provide services, whether directly or through pressure on the government, and to advocate for the realization of the essential principles of the revolution – dignity, freedom, and social justice. It eschews contributions except in the form of volunteer time and forswears any involvement with political parties. Its page also provides an extensive list of specific changes that it supports, from an increase in the minimum wage to the swift trial and punishment of the leadership of the previous regime.

Two of those active in PCDR-affiliated PCs are also actively involved in the PCDR. They confirmed that the organization, formed with considerable optimism in the days immediately after the revolution, has had some difficulty sustaining its momentum.

To date, the most publicly visible action of the PCDR has been to organize a demonstration in Tahrir to promote a national coalition of PCs. Attendance was variously estimated by the press as being in the hundreds or around 5,000, a thin turnout for Tahrir (Elmeshad, 2011; Gaber, 2011). Groups from ten governorates were represented, however, indicating that the grassroots of the movement are by no means illusory.

Although its Facebook page is itself a valuable resource for those engaged in local activism, the organization's refusal to accept outside funding sharply limits its ability to provide other services to its members that would sustain their involvement. Whereas twenty or so groups

had been making the journey to its meetings on a regular basis in the spring, participation had fallen off to about half that by July. It remains to be seen whether it will reorganize itself on a more sustainable basis.

Two important strategic challenges face the group, in the view of one leading activist, both relating to the nature of the activities it seeks to promote at the local level. First is the choice between a political, outward-oriented strategy vs. a service, inward-oriented one. Some groups have focused on political issues such as the installation of a civilian transitional government or the design of the elections, while others have placed their emphasis on mobilizing action at the local level to meet neighborhood needs. While these activities are by no means in conflict, they imply different organizational tactics and activities and are difficult to coordinate with each other.

Second, groups have taken different routes to service provision. Some groups, including the Alexandria PC described below and to some extent the Imbaba PC, have worked to replicate the service provision model of the Muslim Brotherhood and other Islamist groups. They have in effect sought to offer a secular alternative to the Brotherhood's charitable activities, but, lacking the broad membership base and tithe-driven financing of these groups, they have not been able to achieve scale of operation. Other groups, such as that working in Mit Oqba, have taken the tack of putting pressure on the government to deliver services to which the neighborhoods are entitled, whether installation of gas lines or lighting, opening of a health clinic, or enforcement of regulations on pricing. This strategy may make more efficient use of scarce manpower and nearly nonexistent financial resources, but can also arouse the enmity of the old guard, as discussed below.

Popular Committee for the Defense of the Revolution in Alexandria

The Alexandria PC (more formally, the Popular Committee for the Defense of the Revolution in Alexandria) ranks as one of the largest community-based organizations to arise from the revolution. It has a hybrid structure, with an organized board and committee structure at the center and twenty to thirty loosely structured committees that operate across Alexandria. Although it does not have a formal head (following the "we are all leaders" ideology of the revolution), one of the members generally represents the PC in the monthly meetings of the PCDR organizations in Cairo. This individual, an engineer employed by a large multinational joint venture in Alexandria, was interviewed by the researcher, along with several others active in the Alexandria PC. These interviews and review of the group's Facebook page provide the basis for this description of their activities.

The Alexandria PC has about 2,000 members on its page, of which about 1,000 are active, in the estimation of one of the activists. Of the twenty to thirty subgroups, which may be neighborhood- or interest-based, about ten to fifteen were judged to be active and to meet weekly at the time interviews were conducted (in early July 2011). The programs of the PC respond to local felt needs and build on the earlier experience in providing security during the revolution.

Although the PC is not a political organization as such, it clearly leans toward a secular and leftist perspective. A reflection of this is the clear intention of its leaders to position the group as an alternative to the Muslim Brotherhood and Salafi groups. It has consequently modeled a number of activities on the programs of these groups, although it lacks their broad financial and organizational base. For example, it has organized delivery of butagas (a common cooking fuel of the poor in Egypt, delivered in canisters) at the official price, purchasing of

vegetables at the farmgate for resale in town, collection and distribution of donated clothing, attempts to find work for the unemployed, and microcredit. The sale of butagas and vegetables is intended to put pressure on private sellers to limit price-gouging. Security activities also continue on an as-needed basis, such as during the referendum on constitutional reforms, school examinations, and major demonstrations. In one case, the police themselves actually requested protection by the PC.

Participation in programs is open to individuals only after they have been vetted, following a significant effort to filter out undesirable elements who had been involved in the PCs during the revolution, work that had to be done district by district.

The PC is also involved in political and social justice issues. It has launched a campaign to improve the lot of an informal community whose children must cross the Desert Road (the Cairo-Alexandria Highway) in order to get to school. It plans to support candidates in the fall elections and is active in the national federation.

Popular Committee for the Defense of the Revolution in Imbaba and PC in Mit Okba

The large, informal communities of Imbaba and Mit Oqba are located near to each other in Giza. Both organizations are part of the Popular Committee for the Defense of the Revolution network, although the Imbaba group is larger and somewhat more formalized.

The Imbaba community PC follows a similar pattern to that described above for the Alexandria PC, also a PCDR affiliate. It has organized subgroups in seven areas, including Ard al-Gamaiyya, where the leader interviewed is most active. Overall, the group has 800 to 1,000 area residents active at some level. Like the Alexandria group, it has established subgroups, although these are more structured than their equivalents in Alexandria. In Ard al-Gamaiyya, for example, the organizational structure includes a volunteer board made up of the heads of various committees and a coordinator (not a director). The board meets weekly. Committees in the PC work on such issues as public security, health, awareness, political issues, women's affairs, and media. Specific initiatives have worked to bring natural gas lines to the area, to clean the streets by removing dust and garbage piles, and to press bakers to sell bread at the approved prices. The group has a leadership base of fifteen to forty residents, most of whom are themselves lower-working-class in origin.

The group has been successful in pressuring the government to install natural gas lines, an important improvement over the cumbersome and potentially dangerous gas canisters used by many residents of low-income areas. Their strategy to achieve this rested on meeting with the government and then working systematically to remove every constraint put forward by the authorities, whether the lack of a place to put the pipes during the installation, the lack of an apartment as a base of operations, missing data on the area, etc.

A similar success was achieved by the Mit Oqba PC, but their experience, as reported by the Associated Press in Al-Arabia (2011), demonstrates that the supporters of the old regime recognize that these activities threaten their monopoly on relations with the ministries, an important source of their power. As the Mit Oqba program went forward, youth leaders' families began to receive threats, for example. Local leaders of the now-dissolved National Democratic Party also sought to take credit for the new installations by posing for pictures in front of them. As Egypt enters the election period, this tension is likely to increase. The activist interviewed

stated that Mit Oqba, a comparatively small neighborhood, has historically provided 73 percent of the votes registered for the large Doqqi-Agouza district of which it is a part.

Despite its successes, the reliance on volunteers is straining the organization as the enthusiasm of the post-revolution period inevitably thins and the realities of pressing recalcitrant Egyptian government agencies sinks in. From a height of around 200 activists immediately after the revolution, the group is now down to perhaps thirty to fifty active members.

Zamalek Guardians

Although the groups formed by the bawabs disbanded in the wake of the revolution as order was restored, one PC group by residents has transformed itself into an ongoing organization, the Zamalek Guardians. Launched by a group of six men in the first days of the revolution, it had 980 members registered on its website on the reference date. Unusually, it operates a regular website rather than a Facebook page, parts of which are password protected. It has moved beyond its original mandate of protecting the residents to take on an agenda very similar to those adopted by other PCs. As stated on the website, its objectives are to:

serve as a model to our neighboring areas and our beloved country; protect our families, neighbors and friends; to make Zamalek a better place to live and work; join hands to fight corruption, pollution, illiteracy, crime, and any thing that would threaten our peaceful life; get organized to better serve our community; ensure a decent and a democratic life style; [and] beautify our area and our behaviors.

The Zamalek Guardians have formed committees, although the structure adopted is more reminiscent of a corporation than the service- or location-oriented structure of other PCs, with committees outlined for event management, accounting and finance, website management, and legal affairs, as opposed to butagas distribution, donated clothing, and microcredit. Committees common to both reflect the core concerns of the PCs for security and police relations, media, education, and service delivery. As security issues have continued to rise as a priority for residents of all income levels, the Guardians have begun exploring the hiring of a private patrol to increase protection for Zamalek residents.

Three features of the Zamalek Guardians evidenced by their website and an account of their activities in the press (Itameri, Kirsti, 2011) are noteworthy as examples of PCs' rhetoric. First, the agenda and rhetoric demonstrate the strong vein of local pride that has long been a feature of Egyptian culture, but that has heretofore not found expression in collective action.

Second, the rhetoric displays a desire to reassert the role of morality in public life and a commitment to taking an active role in bringing this about. Corruption and pollution are linked to each other and contrasted with cleanliness and morality. The need to "beautify" the inner self is seen as an element of national reform to be carried forward in parallel to neighborhood cleanup, the fight against corruption, and the spread of democracy. Although the Guardians are not a religious group, these beliefs express mainstream Muslim beliefs regarding the need to safeguard the morality of the umma (community of Muslims) through righteous behavior.

Finally, the Guardians' rhetoric displays, perhaps unintentionally, the belief that the educated elite, typified by Zamalek residents, need to set the standard and show the way for others less fortunate. Thus the website speaks of the group as being "unique due to the fact that we are all neighbors and friends who simply CARE about each other and about the rest of our beloved country," although in fact the group is very similar to other groups described in this

article. It goes on to state that the Guardians “have showed our neighboring areas the way to protect themselves, their families and friends,” whereas all of the PC participants interviewed describe a process of formation essentially identical to that of the Guardians and some of them, such as the Imbaba and Mit Oqba PCs, have been more proactive in confronting local problems (which are considerably more pressing in their low-income and under-served neighborhood than in prosperous Zamalek).

Muslim-centered Community Organizations

By comparison to the organizations discussed above, all of which have been newly launched since the revolution, the community activities of long-established faith-based organizations operating in the community were affected by the revolution in different ways. The impact was nonetheless significant, as they responded to the increased opportunities for programming open to them in the newly permissive environment for collective action and attempted to respond to the needs of their constituents, both preexisting and arising from the disruption of the revolutionary period. Although the organizations discussed here all existed prior to the revolution and were active on the local level, the impact of the revolution on their activities was significant.

Three different experiences are discussed, based on in-depth interview with representatives of these groups in Alexandria and Cairo, supplemented with press accounts. The best-known of the groups, the Muslim Brotherhood, was formed in Egypt in 1928, but has operated since 1954 as a banned organization. Despite its illegal status, it has functioned openly on a nationwide basis, controlled the largest opposition bloc in the parliament (elected as “independents”), reportedly funds estimated in the tens of millions of dollars annually through its semi-mandatory tithing system, and provided social services, such as clinics, in many communities across the country.

The second organization, the Salafi movement, had received little attention prior to the revolution. Its sudden emergence onto the national scene came as something of a surprise to many observers and its origins remain somewhat mysterious, although ideologically it can be traced to the influence of Saudi Wahhabist ideology and its spread through Egyptian employment in the Gulf and Saudi support.

The third organization is a local religious cooperative operating in one of Egypt’s largest informal communities, the al-Nur al-Mashriq (Eastern Light) cooperative of Ezat al-Haggana (further described below).

These organizations share a key difference that distinguishes them from the secular PC groups described above, in that they were present, organized, and active prior to the revolution. At a more detailed level, they differ, however. While the Brotherhood has a formalized and generally well-known leadership structure, it remains unclear even now whether the Salafis are a movement, an organization, or a collection of localized groups loosely acting in concert. (The cooperative, by contrast, was formally registered in 2008 with the Ministry of Social Solidarity, which oversees Egypt’s civil society.)

Muslim Brotherhood and Salafi Movement

What is evident from the interviews conducted in Alexandria is that, after the revolution, both of these organizations’ groups have been able to operate much more openly than previously, even though there has been no formal change in the civil society laws. Indeed, like the secular

PCs, the Brotherhood and the Salafis coordinated openly and a very widespread basis with the military during the period prior to the departure of President Mubarak. These issues were discussed more fully with the representative of the Salafi movement interviewed than with the Brotherhood representatives. This reflected the knowledge base of the subjects interviewed: the Brotherhood representatives were women actively engaged in the ongoing community social programming, but had not been involved in the earlier security operations. The Salafi representative had been engaged in both sides of the operation.

Community residents interviewed had earlier told the team that the Brotherhood and the Salafi movement had been heavily involved in organizing PCs in Alexandria, and this was confirmed by an Alexandrian representative of a major national newspaper, who estimated that 80 percent of the PCs were organized by Islamic groups. The Salafi movement representative interviewed also described their collaboration with the military in detail, not only during the revolution but continuing up until the time of the interview in early July. The overall nature of this coordination was very similar to that of the secular PCs, but conducted on a larger and more organized scale. Whereas the secular PCs had only a loose, hastily assembled structure or, more often, no real structure at all for joint operations, the Salafis had a previously established network of neighborhood connections, anchored in mosques. This network naturally became the mechanism for coordinating with the army for the whole neighborhood.

Representatives of the Muslim Brotherhood and the Salafi movement painted very similar pictures of their organization's activities in the wake of the revolution. For them, the experience of providing security during the first three weeks of the revolution was not so much a transformative experience as a distraction from their regular programming, which has now not only resumed but expanded in the more open environment post-revolution. They also seek to respond to increased need resulting from the economic downturn and disruption of government services as well as continuing to deal with security affairs, as further discussed below. Because the two organizations are broadly similar in terms of their post-revolution activities and the impact on the organizations themselves, they will be discussed together.

The two organizations carry out a wide range of social programs, such as micro-credit, assistance to poor people in gaining access to the government support to which they are entitled, after-school tutoring for low-income residents (a necessity in Egypt's shambolic education system but beyond the reach of many poor families), and so forth. They have expanded sale of vegetables by creating weekly markets outside their mosques and instituted butagas distribution programs, reflecting market disruptions post-revolution.

The Salafi group has continued to be active in security issues, particularly in seeking to resolve a serious continuing dispute between the police and the residents of Raml, an Alexandria neighborhood where some seventeen people were killed by police firing from the roof of their station in the early days of the revolution. The combination of intense neighborhood anger over this incident and the increased availability of firearms in private hands has caused the police to refuse to return to the area. The Salafis are working to negotiate blood money payments with the families to reach a resolution, but at the time of the interview had been able to get only some of the families to accept the offer.

This activity is an outgrowth of the close relationship developed between the armed forces and the Salafis, who were assigned the task of coordinating in at least one major Alexandria neighborhood, overseeing not only the groups formed in their thirty-three mosques in

the area but also the Muslim Brotherhood and secular PCs. Similar to the occurrences reported in Cairo's Bulaq and Bulaq al-Dakrur neighborhoods (reported in an earlier paper resulting from this research; Bremer, 2011), the Salafis organized the recovery and return of stolen goods. The Salafis have also provided protection to police stations at the time of major protests and negotiated the return of family members kidnapped for ransom.

Other cooperation with the military at the local and national level has included organization of community dialogues among the army, police, and neighborhood residents to promote a return of order as well as participation in national dialogues with the supreme command.

Both the Salafis and the Muslim Brotherhood are able to draw on large pools of resources that come from the obligation on members to tithe five to ten percent of their income if they are able to do so.

A final change in the activities of the two organizations since the revolution is the increased involvement of women, particularly in the charitable work of the organizations. Although women were involved before the revolution, the ability to operate more openly and the close relations with the government have encouraged women to get more fully involved than previously.

Al-Nur al-Mashriq Cooperative

Ezbat al-Haggana, one of Cairo's largest informal areas, offers a different model of institutionalized local collective action in the newly permissive atmosphere post-revolution. Although the Ezba had its own PCs (and was regularly accused of being the source of thugs and criminals terrorizing other neighborhoods), the activity described here is being undertaken by preexisting Muslim charitable areas, al-Nur al-Mashriq (Eastern Light), founded by area residents in 2008.

Their initiative began as a response to the upsurge in sectarian conflict that included conflict between groups armed with sticks and Molotov cocktails and the burning of churches in Imbaba and Manshiet Nasr (both informal areas) and cities in Upper Egypt where sectarian strife has arisen in the past. (It remains unclear how much of this conflict was genuine and how much was orchestrated by remnants of the regime eager to sow disruption and discord.)

Fearing that similar incidents could arise in the Ezba, the cooperative leaders reached out to local church leaders to convene a meeting of some 200 respected community members. This group ratified the selection of a ten-person Committee for Dispute Resolution, including several of the cooperative board members.

Their selection reflects the status of these board members as highly experienced practitioners in Egypt's informal and customary dispute resolution system, part of the customary ("orfy") legal system that exists in parallel to the official system to serve as a substitute for the courts and, to some extent, for the police, serving low-income residents and informal businesses that do not have access to the formal system. Under the customary system, an experienced arbiter is called in by one of the parties to a dispute, although both sides must accept arbitration. They then meet with the individuals involved, generally in the presence of their families. After hearing both sides, they arbitrate the dispute and impose a solution. This may involve award of a monetary judgment or other actions by the parties.

The system depends fundamentally on the status of the arbiters. Recognition as an arbiter is gained after years of experience and apprenticeship to practitioners, who are often religious leaders. The practice is sometimes passed on from father to son. Arbiters do not receive formal payment, but may receive informal payment in the form of a donation. The leading practitioners on the al-Nur board are highly regarded for their expertise in this area and are regularly brought in to resolve disputes not only in the Ezba but throughout Cairo and elsewhere in Egypt.

The dispute resolution committee is currently seeking funding to establish a center where disputes will be held and to bring together a group of seven young men and women to be trained in customary dispute resolution while staffing the center.

The findings from the profiles may be summarized in five main points. First, although only a small minority of the original PCs have continued, there has been a new flowering of organizations that are building directly or indirectly on the PC experience. While many have chosen to work at the national level, diverse, experimental organizations have also arisen at the local level and are working to address community needs in new ways.

Second, while these organizations are adopting diverse strategies, two of the most important approaches are adoption of direct service provision and exerting collective pressure on governments to deliver social services and infrastructure. The former strategy constitutes a leftist alternative to longstanding Islamist models, in some cases adopted explicitly to challenge the Islamists for community leadership. The latter strategy is new to Egypt, however, as civil society groups were essentially barred from confronting the government on behalf of citizens. Some groups have adopted a third strategy of political rhetoric, but the impact of this approach will depend on how events unfold during the coming election period.

Third, the revolution has clearly empowered the Islamists, whose local organizations are freed from the constraints under which they previously operated. They have been able to capitalize on their strong financial base to expand their service, to operate completely in the open, and to collaborate with the army in ways that were previously unthinkable. To date, their strategy has remained focused on charitable work and service provision, rather than grassroots mobilization. It, too, is poised to move to another stage in support of Islamist parties and candidates.

Fourth, both the local programs of the established Islamist groups and the secular and the new local and generally leftist organizations have tapped into new human and technological resources. Most importantly, women can be seen in leadership and managerial positions in all of these organizations, including the Muslim Brotherhood's local structures. Educated professionals and local activists inspired by the revolution have stepped forward to lead groups in their own areas and to assist groups working to transform informal and working-class areas. See, for example, press accounts and blogging by a young Egyptian doctoral researcher working with PCs in Imbaba (Mossallam, 2011). All of these organizations have made innovative use of new technological tools, such as Facebook, to reach new partners and to communicate their perspectives to broader audiences. This latter phenomenon is the subject of the following section.

Finally, the two groups differ markedly in their financial and organizational infrastructure. The Islamists have a strong financial base in mandatory tithing by their members and an established management system. The new, locally based, generally leftist organizations have not yet evolved a model that can meet their managerial and financial needs and enable them to become sustainable. It is still in the very early days for these groups, however, and several of

them have strong and committed volunteer leaders as well as a core of dedicated supporting players. They have come a very long way in only six months, and the coming election period offers them numerous opportunities to expand and refine their roles in the community.

Evidence from Facebook on the evolution of the popular committees into grassroots civil society

Along with other social media, Facebook has emerged as a key organizing tool for the Arab Spring. The PCs have been among the groups making the most use of this new mechanism for mobilization at both the grassroots and national levels.

After the first days of the PCs, when mobile communications and the internet were blocked by the regime, the groups made use of technology to communicate with each other and with the army, as group members used mobiles to coordinate the PC and leaders exchanged mobiles with army officers in the areas they were covering.

Within days, indeed, as soon as internet and mobile access were restored, technologically savvy residents in middle- and upper-class areas mobilized social networking to organize beyond individual PCs, first into neighborhood and then into city-wide structures. Facebook groups, already very widely used in Egypt, became the organizing mechanism of choice, whether to communicate within a neighborhood, on a city-wide or national basis, or even across national borders. A Muslim Brotherhood activist interviewed pointed to social networking links between the Tunisian and Egyptian Brotherhood organizations as a channel through which tactics developed by Tunisian PCs then spread to Egyptian PCs organizing a few weeks after them.

Although, as discussed above, most PCs disbanded in mid- to late February, following the resignation of President Mubarak, some groups continued to operate. The PC experience also inspired young activists committed to the revolution's aims at the national or local level to work toward a broader mobilization to foster and defend the revolution's aims.

Methodology of the Facebook study. The Facebook pages used by these PCs and other youth organizations provide what is arguably the only source of information on these groups beyond scattered press accounts. These groups are continuing to evolve as the situation changes and as activists gain greater experience. Building on the interviews summarized above, this exploratory study of popular committees' Facebook presence offers a picture of the status of PC organizations in early August 2011. The study of PC Facebook pages focused initially on the organizations affiliated with the Popular Committees for the Defense of the Revolution (PCDR), discussed above, but also looked at the presence of PCs in general and other politically or community-oriented youth groups on Facebook as a way of documenting the evolution of grassroots civil society in the more permissive environment of the Arab Spring.

The approach to analyzing the Facebook presence of these groups utilized three types of searches to identify Facebook pages for analysis. Following an exploration of Facebook pages to obtain a sense of the overall population, the pages of known PCDR groups were searched to identify other groups, generally those shown on the group's page as "Likes" or posting on the pages. Second, a search was conducted for all pages using the Arabic term for "popular committee." Third, searches were conducted for selected neighborhoods using the Arabic term for "youth of [place name]," e.g., youth of Imbaba. For simplicity, the term "group" is used for both Facebook groups and pages that have names with the subject terms. Similarly, the term "member" is used for both members of groups and "likers" of pages.

No claim is made that these searches identified all of the activist groups nor that all such groups are on Facebook in the first place. Given resource limitations and the continuing security concerns in much of Egypt, however, this approach provided a feasible alternative to personal interviewing as a way to track the development of these groups.

The results of these searches were then cleaned to assemble a database for analysis. The most widely used pages in each category, generally those with more than 200 members (for groups) or “likers” (for pages), were then examined to determine whether they showed political and/or community involvement, based on the page description or information provided by the page managers, as well as the identifying graphics and “likes,” or, conversely, whether they were oriented primarily to social or other purposes. The pages identified as activist-oriented were then assessed on the frequency and currency of postings. A limited number of recent posts were also examined to gain insight into group objectives, activities, and perspectives.

Several caveats are in order before proceeding to the analysis of the findings. First, in the analysis presented below, both “likers” and members are treated as equivalent, although it is recognized that a greater effort and commitment may be needed to join some (but by no means all) groups. As there is no practical means of assessing how often either class of user visits or participates in any given site, much less to measure use by other Facebook users who do not choose to register on the page, a decision was made to treat all user classes as equivalent for purposes of site comparison. Further work is needed to refine the methodology for social research through Facebook, which offers a promising means of tracking evolving social phenomena.

Second, the high likelihood that many of the most active individuals are members of multiple groups and/or participate in multiple pages should also be stressed. For this reason, the analysis of total membership levels in the various populations studied cannot be regarded as by any means definitive, but only as an indication of relative levels of activity.

Finally, no claim is made that the analysis covers all of Egypt, all of Cairo, or, indeed, all groups in the neighborhoods examined. There is simply no mechanism available to identify all groups that discuss political- or community-organizing issues. Moreover, there is not a definitive mapping of Cairo’s many neighborhoods or their borders; one person’s Imbaba may be another’s Ard al-Liwa. Naturally, it cannot be assumed that all groups in any given neighborhood will include their neighborhood’s name in the page name, even if the purpose is related to community development. Many smaller groups in low-income areas would not be expected to have a Facebook page, although almost all larger groups and those in middle- or upper-class neighborhoods would be expected to have such a page if they do not have another webpage at this point.

Findings of the Facebook study. Tables 1 to 5 present the results of the above analysis. Table 1 shows the number of groups and members in those groups for all those identified having the term popular committee (or committees) in the Arabic title. In all, more than 400 such groups were identified. (Note that it is not possible to say how this compares to the total number of groups, because many groups are formatted as pages, and every individual user has a page.)

The largest ten percent of these groups account for seventy-seven percent of all members, however, and the top eight groups account for more than half of all members, indicating a high degree of concentration. These large groups, shown in Table 2, demonstrate the variety of groups growing out of the PC movement. Two of the three largest groups are Islamic in orientation,

although not identifiably associated with either the Muslim Brotherhood or Salafi movements. This underscores the strength of the Islamic orientation among Egypt's youth, as distinct from the leftist or socialist orientation associated more commonly with the PCs. Two of the largest groups are members of the generally liberal/leftist PCDR grouping, including the national group and the Alexandria group. One represents a grassroots youth campaign to reassert the core objectives of the revolution, and another is the page of a (non-youth) candidate planning to run for office from a large Cairo neighborhood, perhaps suggesting the role of the PCs in the parliamentary campaign expected to take place in fall 2011. The final two groups are youth-oriented pages, both emphasizing efforts to rebuild the country. The agenda of the eighth group is worth quoting in its entirety, as the elements given are found repeatedly on the websites of the continuing PC groups:

- 1 - Build Egypt
- 2 - Channel the energies of young people toward the benefit of the nation
- 3 - Strengthen and spread good morals among the people
- 4 - Harness efforts to help [needy] organizations and individuals
- 5 - Spread awareness among the people through publishing periodically
- 6 - Achieve social justice and equality
- 7 - Apply democracy and freedom to express opinions
- 8 - Fight exploitation and greed
- 9 - Purge Egypt of corruption
- 10 - Create jobs to fight unemployment

<http://www.facebook.com/groups/shababallegan/>

The remaining three tables provide a progressively more detailed look at PC mobilization at the local level. It should be emphasized that most groups do not identify themselves with a specific location or, in a few cases, have a location name that recurs in many different places. Some of these may well be location specific groups that have simply adopted a generic title rather than groups that seek a national role. Localities range from individual villages to governorates (provinces). It may be assumed that some of the latter groups have adopted the name of the governorate more out of hopefulness (or hubris) than realism.

These data make several points about the PC movement:

1. Cairo accounted for a disproportionately large share of the PCs. Whereas Greater Cairo accounts for about twenty percent of the national population, it accounted for more than a third of the PCs with an identifiable location.
2. Cairo's groups are not larger than those in other urban localities, however, perhaps reflecting the diversity of Cairo's neighborhoods and the greater complexity of its geography.
3. Alexandria's groups are dominated by the large PCDR group there, which represents about eighty-five percent of the identifiable total for the city.

4. Rural groups tended to be smaller, not surprisingly. It may also be assumed that fewer of the rural groups established a Facebook presence or have remained active.
5. Overall, about three-quarters of the groups identifiable by location were in the urban areas, and one-quarter in rural areas (although this conclusion may not be meaningful, given the expectation of lower Facebook participation in the rural areas).

Overall, this analysis suggests that the PC movement is not confined to the major cities, although, not surprisingly, it is concentrated there. Further work is needed at the local level to determine the extent to which activities have continued in towns and villages that have simply not developed a presence on Facebook.

It is noteworthy that, within the urban areas, Alexandria and the Canal cities of Port Said/Port Fouad, Ismailia, and Suez have a proportionately higher level of PC activity. Although these cities have only thirty-eight percent of the population of the Greater Cairo Region, their population of PC groups is seventy-six percent that of Cairo and their membership actually outnumbered Cairo (accounting for fifty-two percent of the total compared to Cairo's forty-eight percent). Thus, their groups are larger, as well, with an average of membership of 162 vs. 119 in Cairo.³

Further research is needed to determine why this is the case. The Canal cities, in particular, are noted for their independence and resistance to oppression. It is significant that the January 25th demonstrations were held on Police Day, a holiday that commemorates the heroic (if unsuccessful) stand of the Suez police force against the takeover by Great Britain in the 19th century. Both Port Said and Suez have also been centers of labor activism.

An alternative possible explanation is that activists in Cairo may be more likely to join groups with a national orientation, either because it is more convenient as they are located in Cairo or because they more naturally see themselves as acting on a national plane as residents of the capital city.

Table 3 takes a closer look at the PCs in Greater Cairo, where most of the first round of PC interviewing was conducted. The Greater Cairo Region (GCR) includes extensions of Cairo proper into Giza Governorate (where Imbaba and Bulaq al-Dakrur are located) and into northern and southern suburbs. Over the past thirty years, the government has also established a ring of "new cities," which are characterized by expensive private developments and large public housing blocks. Unsurprisingly, this combination has not necessarily conducive to the development of a cohesive urban culture, and a large share of both types of housing remain unoccupied.

The GCR groups have been categorized into four neighborhood types: informal areas, new suburbs, popular or working-class, and middle-class. This analysis, presented in Table 4, shows that the formation of groups in all areas except the new suburbs is close to the share of the population living in these areas. Although the low incomes and limited access to the internet in the informal areas might be expected to reduce their participation in Facebook groups, in fact their membership is nearly equal to their share in the population, at fifty-seven percent compared to sixty-four percent (Sims, 2010). Participation in the established areas (popular/working-class

³ GCR population taken from Sims (2010); other cities from Brinkhoff (2011).

and middle/upper-class) also tracks broadly with these areas' share in Cairo's population. Group formation in the new suburbs, by contrast, has far exceeded these areas' share of the GCR population. Although these areas account for less than two percent of the GCR total (Sims, 2010), they accounted for seventeen percent of the groups and twenty-one percent of the membership, indicating that their groups were also slightly larger than the average.

Participation in PCs with a Facebook presence in the post-revolutionary period has thus been very broadly spread across the Egyptian population, particularly the youth, who have predominated both in the revolution itself and in Facebook use in the region. Mourtada and Salem's 2011 study of social media use in the region reports that account for an estimated seventy-five percent of Facebook users in Egypt fall in the fifteen- to twenty-nine-year-old age bracket.

The results of the analysis of Facebook groups with the term "youth of [place name]" or a close variant in the title gave the results shown in Table 5. This table also includes further analysis of the groups that are affiliated with the PCDR or that use that name, both for convenience and for comparison, and data on the twelve largest groups in each area. Two of the areas shown, Bulaq al-Dakrur and Imbaba, are informal areas in Giza governorate, part of the GCR, while Maadi is an established upper/middle-class suburb south of Cairo.

On first appearance, it would seem that Maadi is the more active area, with by far the highest number of groups and members and more large groups (those with over 200 members). The examination of the largest twelve groups in each area, however, indicates that the Maadi groups are less likely to have a political or community development orientation than do the groups in the informal areas. Thus the number of members in PCs among the top twelve "youth of" groups is higher in Bulaq al-Dakrur and Imbaba than in Maadi, although Maadi's politically active groups are larger. The non-PC groups in Maadi included two chapters of a leading charity (Resala), with the remainder being social groups, as were the non-PC groups in the other areas. Naturally, the distinction is not a strict one: social groups may include political or community-development commentary and vice-versa.

Searches for PCs were conducted for informal areas outside of Giza (such as Marg and Ezbet al-Haggana in Cairo Governorate), but these searches found a much lower level of activity in these areas. A handful of groups with a community-development purpose were identified in Marg, but none in Haggana.

Nearly all of the larger groups in all areas (those with 200 or more members) show a high degree of activity, with up-to-date postings as of early August. Many of them have a hundred or more posts per month, demonstrating that these are active groups and not relics of the revolution. An analysis of the top forty PC groups (those with PC in the title) indicated that two-thirds of them had current postings and a total of eighty percent had postings within the past month.

A preliminary content analysis of the websites indicates that the PCs are engaged in a wide variety of activities, from exchange of information and commentary on political events to organization of group activities, such as those discussed above with regard to the Imbaba PCDR. It is noteworthy how large a role discussions of solid waste play in many of the groups' discussions and activities. Training and other self-help discussions also emerge as a common theme, along with concern over corruption and ways to combat it. Further analysis of the content is planned for the next stage of the research.

To sum up this second part of the paper, the analysis of PC presence on Facebook confirms that a new community of community organizations has arisen in the wake of the popular committee experience during the revolution. These groups range in size up to several thousand members and show regular and sustained activity. While the numbers joining these groups on Facebook remains well below the tens or hundreds of thousands who have signed on as members of leading political groups in Egypt, Facebook has nonetheless helped to mobilize large and active groups for community development and political affairs in Egypt's communities, representing an important step forward in the development of a pluralistic society. Participation in these groups is by no means confined to the middle class or well-to-do members of society; indeed, among the most active are groups working in some of the poorest neighborhoods. A key question for the future is whether these groups will be mobilized in the coming parliamentary campaigns, the first truly open elections in Egypt in more than sixty years.

Conclusions and Questions for the Next Steps in the Popular Committee Research Project

The foregoing exploratory study of the popular committees emerging in post-revolutionary Egypt, while confirming that most PCs discontinued operations in February 2011, has shown that a minority of popular committees have remained in operation and have shifted their focus on community organizing, serving as a voice for their communities to hold governments accountable, and service delivery. They hold tremendous potential for developing into a new and authentic voice for people who have long lacked any voice at all.

To realize this potential, they will have to overcome organizational challenges that are only beginning to be identified, much less addressed. It is still too early to say whether these organizations will develop models of leadership, financing, and operations that will enable them to thrive or even to survive in the new Egypt. The coming period, as Egyptian political life is reshaped in the nation's first truly competitive elections in six decades, will be a crucible in which these organizations may be forged into a new grassroots social movement or, conversely, may melt away as a new, party-based politics emerges.

In tracking these events over the coming months, three questions, suggested by the foregoing discussion, will guide the next stage of the field research and analysis:

1. Have the popular committees been able to mobilize and to sustain a leadership cadre and rank-and-file membership base drawn from the local communities that they serve?
2. Have they developed a financial model that can sustain their activities, whether through dues, support from local business communities, or revenue-generating activities?
3. Have they set one or more models for their operations that can achieve concrete results for the people of the communities and win them a place in the democratic decision-making processes that will, one hopes, replace Egypt's authoritarian system?

Table 1. Distribution of all Popular Committee Facebook Groups* by size

Membership:	Number of:			Percentage of all:	
	Groups	Members	Members/ group	Groups	Members
Over 1,000	8	35,982	4,498	2%	54%
500-1,000	8	5594	699	2%	8%
200-499	29	9528	329	7%	14%
100-199	51	7700	151	12%	12%
50-99	49	3767	77	11%	6%
20-49	80	2494	31	19%	4%
Fewer than 20	202	1240	6	47%	2%
Total	427	66,305	155	100%	100%
Over 200	45	51,104	1,136	11%	77%

*Includes all groups with the Arabic term for “Popular Committee” in the group title (or description).

Source: Facebook pages and author’s analysis

Table 2. Popular Committee Facebook groups with more than 1,000 members

Group name:	Members	Orientation
Good Youth/Union of Popular Committees	14,341	Islamic
Popular Committees for the Defense of the Egyptian revolution	6,314	PCDR-national
Islamic Popular Committees	4,944	Islamic
Popular Committees for the Defense of the Revolution in Alexandria	2,914	PCDR-local
Popular Committees of the Second Egyptian Revolution of Anger	2,396	Youth-oriented
Let’s Reconstruct Our Country Campaign	2,136	Youth-oriented
Solomon Ibn Hisham Victory	1,612	Political campaign
Movement of the Youth of Popular Committees	1,488	Youth-oriented

Note: adds to a slightly different total than shown in Table 2 because data were collected several days apart.

Source: Facebook pages and author’s analysis

Table 3. Location-specific Facebook websites by type of location

Category of location	Number of:			As a percentage of location-specific total	
	Groups	Members	Members/ group	Groups	Members
1. Urban					
Cairo	41	4,661	114	34%	35%
Alexandria	13	3,447	265	11%	26%
Canal cities (Port Said/Fouad, Ismailia, Suez)	18	1,655	92	15%	12%
Subtotal, urban governorates	72	9,763	136	61%	73%
2. Non-urban					
Delta	9	1,059	118	8%	8%
Upper Egypt	17	1,774	104	14%	13%
Other rural (unidentified)	21	788	38	18%	6%
Subtotal non-urban governorates	47	3,621	77	39%	27%
Subtotal, location-specific groups	119	13,384	112	100%	100%
For comparison:					
Groups with no identified location and more than 100 members	80	36,799	460		

Source: Facebook and author's analysis

Table 4. Greater Cairo Facebook groups for Popular Committees

Category of location	Number of:		Members / group	As a percentage of all Egyptian:		As a percentage of all Cairo:	
	Groups	Members		Groups	Members	Groups	Members
Informal areas	21	2,663	127	18%	20%	51%	57%
New suburbs	7	964	138	6%	7%	17%	21%
Popular (working-class)	5	724	145	4%	5%	12%	16%
Middle/upper-class	7	306	44	6%	2%	17%	7%
Cairo, unspecified	1	4	4	1%	0%	2%	0%
Total, Cairo	41	4,661	114	34%	35%	100%	100%

Source: Facebook and author’s analysis

Table 5. Popular Committee for the Defense of the Revolution and all youth-titled groups on Facebook for selected neighborhoods in Cairo

Sub-group:	All groups		Members/ group	Groups with >200 members		Groups with >200 as percentage of all:	
	Groups	Members		Groups	Members	Groups	Members
1. Summary							
PCDR	28	18,965	677	19	17,926	68%	95%
Bulaq al-Dakrur	59	7,079	120	9	5,186	15%	73%
Imbaba	111	12,229	110	16	8,855	14%	72%
Maadi	279	34,474	124	35	22,047	13%	64%

2. Largest 12 groups	Top 12 groups only		Members/ group	PCs as a percentage of totals for top 12:	
	PCs	Members in top 12		Groups	Members
Bulaq al-Dakrur	9	5,186	576	75%	92%
Imbaba	7	6,414	916	58%	80%
Maadi	3	4,276	1425	25%	30%

Note: the Bulaq al-Dakrur, Imbaba, and Maadi entries refer to all groups with the term “Youth of Bulaq al-Dakrur” (etc.) in their titles. See text for further discussion.

Source: Facebook and author’s analysis.

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Article

NGOs in Azerbaijani Legislation as Institutions

Azay Guliyev¹

Non-governmental organizations (NGOs) share similar and common features with other civil society institutions no matter which country they are functioning in. Thus, NGOs should take into account the effective laws of the state and abide by the existing legislation in their activities. In other words, NGOs should constantly feel their responsibility and accountability within the frame of their competences and activities.

In order to establish this responsibility in any country where civil society institutions exist, including Azerbaijan, there are laws and regulations constituting a legal framework for the functioning of NGOs. Some of these laws and regulations play an exceptionally direct role while others an indirect role in the regulation of the NGO sector.

The main law providing the legislative framework for the activities of the NGO sector in Azerbaijan is the Constitution of the Republic of Azerbaijan, adopted in 1995. Article 58 of the Constitution, providing for freedom of association, envisages a right for any citizen to associate with others and to form any union, including political parties, trade unions, and other public unions, or join the existing ones. Along with enshrining this right, this provision of the Constitution also fully guarantees the free functioning of these unions.

The Law of the Republic of Azerbaijan “On Grants,” adopted in 1998, has crucial importance in regulating the key sources of financing NGOs and in governing donor-recipient relations as a whole. Article 1 of the Law stipulates the spheres in which NGOs are directly involved and which are considered to be priority fields for financing, such as “programs related to humanitarian, social and environmental issues, works related to restoration of social facilities and infrastructure, education, healthcare, culture, legal consultations, information, publication and sports, as well as scientific, research and design programs, as well as other spheres constituting interest for the state and society.”

The Law “On Non-Governmental Organizations (Public Unions and Foundations),” adopted in 2000, brings clarification to a number of issues related to NGOs. This Law tries to regulate all spheres of NGO activities, from the issues that may emerge during their establishment to their relations with the public institutions. In addition, the Law bears the main principles for the functioning of NGOs, their reorganization, liquidation, and management.

Article 2 of the Law defines public unions and foundations:

A public union is a voluntary, self-governing non-governmental organization that does not aim at making profit as a major objective, and not distributing generated profit among its members, and that is created upon initiative of several individuals and/or legal entities having common interests, for purposes defined in foundation documents of such organization. *A foundation* is a non-membership, non-governmental organization that is founded by one or several individuals and/or legal entities on the basis of voluntary

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property shares, and is aimed at social, charitable, cultural, educational and other public activities.

Pursuant to the Law, NGOs are entitled to be involved inside and outside of the country in any activities which are not prohibited by the legislation of the Republic of Azerbaijan and are not contradicting to the objectives envisaged in the charter of the NGO. The organizational-legal forms of NGOs are identified in the Article 4 of the law, which states that “NGOs may be founded in any organizational-legal forms.”

One of the important and relevant issues related to NGO activities is linked to the title of a newly established entity. Article 3.1 of the Law “On Non-Governmental Organizations (Public Unions and Foundations)” stipulates that any NGO shall have a title indicating its organizational-legal form and the nature of its activities. The title of a non-governmental organization must be included in its charter. While indicating the title of a foundation, it is compulsory to use the term “foundation.” In principle, NGOs may use any title so long as this title is not in use by another NGO officially registered in the Republic of Azerbaijan in the order prescribed by the Law. Legislation does not provide for the language in which the title of NGOs shall be written. Nevertheless, given that the state language in Azerbaijan is Azerbaijani pursuant to the Constitution, the title of non-governmental organizations shall be indicated in Azerbaijani. The title of a NGO may be indicated in a foreign language alongside Azerbaijani.

The law provides for two ways of establishing a non-governmental organization: foundation and re-organization.

Pursuant to the Law “On Non-Governmental Organizations (Public Unions and Foundations),” the location of a non-governmental organization is determined according to its legal address indicated in its Charter (Article 3.2). Article 51 of the Civil Code stipulates that the place where the permanent body of the legal entity is functioning is considered to be the place where legal entity is based.

The right of natural persons to become participants of NGOs functioning in the Republic of Azerbaijan does not depend on their nationality (citizenship). Thus, both nationals of the Republic of Azerbaijan and aliens and stateless persons may become participants of the NGOs functioning in the Republic of Azerbaijan. By contrast, the number of legal entities that may become participants of non-governmental organizations is rather limited. For example, bodies of public authorities and local self-governance may not become participants (founders, members, or assistants) of non-governmental organizations.

A Charter of a NGO is considered to be the main foundation document of it. All relevant information related to NGO shall be reflected in the Charter, such as its objective, organizational structure, order of management, and other issues related to its activities. Pursuant to the Article 13 of the Law “On Non-Governmental Organizations (Public Unions and Foundations),” the following issues must be clarified in the charter of any NGO:

- 1) Title and place of location of a NGO;
- 2) Objectives of its activities;
- 3) Management order;
- 4) Sources of formation of its property;
- 5) Order for adoption of a Charter, as well as making changes and amendments to it;

- 6) Order for liquidation of a NGO;
- 7) Rules for using its property in case of liquidation.

This information must be included in the charters of both public unions and foundations.

When necessary, changes and amendments may be made to the Charters of NGOs. The legislation provides general instructions for administering these processes. According to the Article 14.1 of the Law “On Non-Governmental Organizations (Public Unions and Foundations),” changes and amendments to the charter of a NGO may be done upon the decision of its supreme governing body.

A non-governmental organization may have any type of property at its disposal (ownership or operational use) not prohibited by legislation. Pursuant to the Article 24 of the Law “On Non-Governmental Organizations (Public Unions and Foundations),” the following are the sources of NGO property:

- 1) Lump sum or regular membership fees paid by the founders or members of public unions;
- 2) Voluntary property fees and donations;
- 3) Proceeds obtained as a result of sales of goods, rendering services, and implementing works;
- 4) Dividends and other income received from shares, bonds, other securities, and deposits;
- 5) Income generated as a result of the use and sales of its own property;
- 6) Grants;
- 7) Other revenues not prohibited by legislation.

Like all other organizations, NGOs may also generate income. This has been stipulated in different laws. Article 22.2 of the above-mentioned law, for example, indicates that a non-governmental organization may not share the generated income among its founders and members; and it may be involved only in entrepreneurship activities that are directed toward attaining the objectives prescribed in its charter.

Another important Law related to the activities of NGOs is the “Law on State Registration and State Registry of Legal Entities” adopted in 2003. This Law sets forth the order for state registration of entities intending to acquire a legal status. Article 8.1 of the Law provides for registration of non-governmental organizations intending to obtain the status of legal entity to be performed as a rule within 40 days. In exceptional cases, if there is a necessity for additional verification, this term can be extended for no more than 30 days. In the submitted documents contain deficiencies which do not form a basis for refusal of state registration, the relevant executive authority of the Republic of Azerbaijan will return these documents to the applicant and set a period of additional 20 days for elimination of these deficiencies.

According to the legislation, NGOs not intending to acquire the status of legal entity shall submit the notification on foundation of the organization to the Ministry of Justice in a written form no later than 30 days from the adoption of a decision on foundation. It is considered to be the legal basis for their activity.

The Labour Code also contains certain provisions related to NGOs, or to be more precise, provisions regulating activities of people working for NGOs on the contractual basis (alongside contractors, there are also volunteers working for the civil society institutions). The Labour Code creates no problem, because it requires only that NGOs, like other organizations, sign contracts with their employees. These contracts shall be in line with the requirements of the Articles 42-53 of the Labour Code and the sample forms reflected in the Enclosure 1 to the Labour Code.

As we have already mentioned, there are also volunteers in NGOs having no remuneration alongside the employees working on a contractual basis. The legal state of this category of workers is not regulated according to the Labour Code, which can lead to certain problems.

NGOs, like other institutions, are not exempted from taxes. Nevertheless, there are certain concessions envisaged by the state for non-profit organizations. According to the existing legislation, NGOs having state registration benefit from the tax concessions provided in the tax legislation. Thus, pursuant to the Article 165.1.2 of the Tax Code of the Republic of Azerbaijan, “Zero (0) rate VAT shall be applied for the provision of following works, services and transactions: *import of goods, provision of goods, implementation of works and rendering services to grant recipients* on the expense of financial aid (grants) received from abroad.” This provision in the tax legislation creates serious problems for NGOs in practice, as the procedure of zero (0) rate taxation is a very complicated one. Thus, according to the Article 175.7, “Operations, as per which VAT is deducted at zero (0) rate, are considered the operations liable to VAT, and VAT amount, paid by cashless transfer by VAT deposit account (with exception of payments made in cash to the bank account of the provider of goods, works and services) when buying goods (works, services) by the persons, carrying out such operations are to be compensated according to the provisions of this Code.” Thus, NGOs have hard times trying to reimburse the amounts paid as VAT for delivering goods, implementing works, and rendering services from the grant money. Mainly, they face serious problems while reporting to the donors providing grants.

Pursuant to the Tax Code, the following shall be exempted from profit tax: (1) income of charitable organizations, except for the income from entrepreneurial activity; and (2) grants, membership fees, and donations received by non-commercial organizations.

Besides the above-mentioned, all the income of NGOs, including income generated through entrepreneurial activity, is subject to profit tax. In regards to the property tax, it is envisaged to exempt only public organizations of disabled persons (Article 199). In all other cases NGOs must pay taxes on the same basis as other institutions and organizations.

A Law adopted on 27 December 2001, “The Law on Public Procurements,” sets forth the economic, legal, and organizational grounds for public procurements in the Republic of Azerbaijan. It establishes the principles and rules for efficient and thrifty use of public funds during public procurements, and for creating equal and transparent conditions and opportunities for all contractors during tendering period. The Law does not create any hindrance for participation of NGOs in public procurements. Thus, Article 8.1 of the Law stipulates that except the cases indicated in regulations governing public procurements, all resident and non-resident legal or physical persons or union of legal persons, irrespective of state, shall be entitled to take part in public procurement procedures held in the Republic of Azerbaijan. Nevertheless, a

number of terms included in the Law and factual situations make it impossible for NGOs to participate in public procurements.

When we analyze the position of NGOs in the legislation of Azerbaijan as institutions, it becomes clear that there is a sufficient legal framework for their comprehensive involvement in the social and political life of the country. Alongside the abovementioned functions, NGOs may observe presidential, parliamentary, and municipal elections held in the Republic of Azerbaijan.

Pursuant to the Law “On Freedom of Assembly,” NGOs may hold meetings, demonstrations, pickets, and rallies.

Pursuant to the Law “On Mass Media,” NGOs are entitled to establish mass-media outlets (Article 41). The reality of Azerbaijan today proves that NGOs are able to actively exercise this provision of the law.

Pursuant to the Law “On Prevention of Disability, Rehabilitation and Social Protection of the Disabled,” in the cases provided for in the legislation, public institutions and other entities shall settle the issues related to the interests of the public organizations of the disabled with involvement and participation of the public organizations of the disabled (Article 51).

Pursuant to the Law “On Protection of Environment,” NGOs may develop and promote programs aimed at protection of the environment; protect rights and interests of citizens in the field of environmental protection; carry out public monitoring in the field of environmental protection; participate in discussions of the environmental draft laws; demand temporary or permanent termination of activities of an enterprise that affects environment and human health and limitation of the activities, location, construction, reconstruction, and operation of such enterprises, buildings, and installations, hazardous from an ecological point of view; bring to a court the claims of those endangered by violation of environmental protection regulations that caused health and property damage; and so on.

Summarizing all the above-stated, it is possible to say that all legal procedures are in place for the functioning of the NGOs in the territory of the Republic of Azerbaijan. Some gaps and shortcomings existing in the legislation are eliminated periodically through changes and amendments to the laws. At the same time, new requirements arise alongside the development of the society which necessitate improvement of the legislative framework for NGO activities in our country. From this viewpoint, I believe that the process of improvement of the legislative framework for the efficient functioning of NGOs and adoption of new and needed laws will go on in the future in order to eliminate all the problems that remain in this field.

Book Review

Rae, Bob. *Exporting Democracy: The Risks and Rewards of Pursuing a Good Idea*. Toronto: McClelland and Stewart, 2010. 275 pages.

Bob Rae is the best Foreign Minister Canada never had. A prominent Member of Parliament, and former Rhodes Scholar, labor lawyer, and Premier of the Province of Ontario, Rae is one of his country's most gifted politicians. But his Liberal Party, already in decline, was crushed in the 2011 federal election, the victim of its own inertia and infighting, Conservative attack ads, and vote-splitting on the center-left. Now, as its Interim Leader, Rae is devoting his time to rebuilding the party and to holding Stephen Harper's increasingly right-wing national government to account.

In the meantime, Rae has given us his new book, *Exporting Democracy*, an erudite tool to think more deeply—"more strategically," in his words—about the idea of democracy and its underlying principles: pluralism, the rule of law, an independent judiciary, respect for constitutional order, and equality and human rights. It's not an academic, book, though. Instead, as Rae writes, it is "a reflection by a practicing politician who occasionally likes to think."

And think he does. The early chapters take us on a sweeping, insightful tour of the history of democracy, beginning in ancient Greece with the Athenians' narrow-gauge system of citizens' rights, through the Protestant Reformation and the Enlightenment, and then focusing much of his analysis on the ideas of the conservative British statesman Edmund Burke. Working some 250 years ago, Burke understood the balance of competing forces that underpinned the British Constitution. He also held that equality and utility are the twin foundations of law.

Next, Rae examines the work of Thomas Paine, "democracy icon" and activist of the American Revolution, whose writings attacked the monarchy, the aristocracy, and the evils of oppression, declaring the rights of a citizenry of equals to throw out any government that didn't heed the will of the people. The author then moves on through the slave trade, the Industrial Revolution, Karl Marx (whom Rae says offered a powerful critique of capitalism but noxious, elitist political solutions), the First and Second World Wars, and into the Cold War and its global chess game of proxy-driven, contending "isms." Indeed, Rae develops a thoroughgoing analysis of the contradictions and exploitative nature of British colonialism and later American imperialism as the West tried to impose its values and culture on subjugated peoples across the world—even as it attempted to manage democratic unrest within its own borders.

Although he generally understates the role that an ascendant and non-democratic China has already begun to play in the world economy, Rae does, in fact, observe that the independence and subsequent development of China, India, and many other nations have underscored the fact that, for better or worse, the era of Western political and economic dominance is over. Accordingly, he maintains, it is essential that Western advocates of democracy work more humbly with their counterparts in other countries as peers, listening carefully and offering a menu of options that may or may not be accepted, and understanding that lasting political change

takes decades rather than months. Rae's contribution lies in locating this guidance within the long arc of world history.

The second half of the book is quite different from the first. These chapters survey sites of protracted conflict around the world, with a focus on countries that Rae himself visited as an advisor on democratic constitution-building and federalism. Reflecting on his work with the Canada-based Forum of Federations and the U.S.-based National Democratic Institute, he takes us inside his interactions with the protagonists in Sudan, Pakistan, Israel and Palestine, Afghanistan, Iraq, and Sri Lanka. Rae is deeply committed to using constitutional negotiations and legislation to establish and maintain peace among contending military adversaries and to build pluralist, democratic societies. Yet he is also a realist. For example, although there was duplicity and horror wrought by both sides of the Sri Lankan conflict, he cites the decision of the Tamil Tiger leadership to assassinate India's Rajiv Gandhi, its ruthless eradication of internal rivals, and its sole focus on a centralized, unitary homeland for Tamils all as key factors undermining the prospects of a negotiated peace, setting the stage for the final, brutal defeat of the Tigers by the Sinhalese national government.

Rae also includes a chapter on why the Canadian experiment matters. While he understands better than most the limitations, contradictions, and complexity of Canadian democracy, federalism, and multiculturalism, he also argues that the continuous negotiations and expenditures to maintain functional relations with Quebec (a nation within a nation), Aboriginal communities (a network of "first nations"), and the great wave of new Canadians that has diversified the country's cities, as well as between the federal and provincial levels of government, all help maintain civic participation and social peace and keep the experiment evolving and moving forward. "Federalism is about self-rule and shared rule," writes Rae. "It sanctions autonomy and requires cooperation. It constitutes the foundation of every institution and structure in Canada."

The final chapter asks: "Is global democracy imaginable?" Rae traces gains in the democratic agenda in Latin America and South Asia. He notes the obstacles it faces in places like Burma. Authoritarianism in Russia and China are significant factors in the world today, as well. And he affirms the lesson he takes from the Iraq war: that democracy cannot be imposed in the Middle East or elsewhere by force by the West. Nonetheless, Rae argues that the ideas and advantages of human rights, the rule of law, and open markets "are widely understood in a way that was inconceivable even twenty or thirty years ago." Today, and into the future, new forces must be understood and addressed by the international community. These include the rise of the new economic powers (especially China, but also India, Brazil, Indonesia, and others), extreme poverty and the mass migration which it triggers, borderless and lightning-fast pandemics, environmental scarcity driven by climate change, the international trafficking of drugs and human beings, and the continued proliferation of nuclear weapons.

All of these problems call for more rather than less global governance and multilateralism—the collective action of nations. For Rae, this means the increased use of a stronger, more effective United Nations and its pivotal instruments, notably the Convention on Genocide, the Universal Declaration of Human Rights, and the International Criminal Court.

Exporting Democracy is not a perfect book. Its pacing is uneven, and Rae's voice shifts from political historian in the first half to political practitioner in the second, though that is fair enough. More serious, however, is his lack of attention to organized civil society as a key

element in democratic practice. Apart from some early references to social movements of workers, women, and gays and lesbians shaping modern Western politics, and the important role of humanitarian NGOs in conflict zones in the South and East, Rae fails to incorporate a detailed, systematic examination of civil society into his analysis. This is a curious omission.

Still, the value in this book lies in its ambitious and instructive interrogation of the large, framing concept of democracy and its underlying principles, which can, and do, set the legal and institutional context for the flourishing of civil society. In turn, a robust civil society can counterbalance the excesses of elites, the state, and the market in the interests of peace, fairness, and opportunity.

The global struggle for democracy, Rae writes, “is an arduous journey that takes us through difficult terrain. We shall need much courage and wisdom along the way.” Governments cannot be sustained by brute force, he concludes. “Legitimacy and authority are the real coin of politics, and that is what the democratic conversation is about.”

At one point in *Exporting Democracy*, Rae refers to Edmund Burke as “a man of influence and inspiration.” The same can be said of Bob Rae. And, while he may never become Foreign Minister (though in politics one never knows), Rae has produced a wise and sophisticated road map that places democracy, law, and equality at the center of progressive international policy.

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