CHAPTER - III

PROTECTION OF HUMAN RIGHTS – A CHALLENGE TO THE WORLD COMMUNITY
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I. Introduction

The United Nations is engaged in a wide range of activities aimed at fulfilling one of its principal purposes the promotion and protection of human rights. Of great importance is the complex machinery which has been set up under various international conventions and conventions to establish standards, monitor, and implementation, promote compliance and investigate violations of human rights. In addition to these activities, the United Nations also provides practical assistance to states in their efforts to protect and promote human rights, and informs the public about the rights to which it is entitled.¹

These structures and activities permit the United Nations to play a pivotal role in the realization of human rights and fundamental freedoms. However, it is important to acknowledge that the United Nations has finite resources and inherent limitations on its capacity for direct action, particularly in individual cases. As a practical matter, one organization can never hope to keep an eye on every situation. Neither can it investigate every alleged violation of human rights or bring relief to all victims.²

For these reasons, the international system relies heavily on the support it receives from regional human rights systems such as those operating in Europe, Africa, and America. Additional support comes from governments and from concerned non-governmental organizations. Each of these groups has a special role to play in the development of a universal culture of human rights. Non-
governmental organizations, for example, by their nature, have a freedom of expression, a flexibility of action and liberty of movement which allow them to perform tasks which governments and intergovernmental organizations are unable or may even be unwilling to perform. Regional human rights systems have reinforced international standards and machinery by providing the means by which human rights concern can be addressed within the particular social, historical and political content of the region concerned.\(^3\)

The role of national government in the realization of human rights is particularly important. Human rights involve relationships among individuals, and between individuals and the states. Therefore, the practical task of protecting and promoting human rights is primarily a national one, for which each state must be responsible. At the national level, rights can be best protected through adequate legislations, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions. In addition, the most effective education campaigns are likely to be those which are designed and carried out at the national or local level and which take the local cultural and traditional context into account.\(^4\)

When states ratify human rights instruments, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained therein. Therefore, universal human rights standards and norms today find their expression in the domestic laws of most countries. Often, however, the fact that a law exists to protect certain rights is not enough if these laws do not also provide for all of the legal, powers and institutions necessary to ensure their effective realization. This problem of effective implementation at the national level has, particularly in recent times, generated a great deal of international interest and action. The emergence or re-emergence of democratic rule in many countries has focused attention on the importance of democratic institutions in safeguarding the legal and political foundations upon
which human rights are based. It has therefore, become increasingly apparent that effective enjoyment of human rights calls for the establishment of national infrastructures for their protection and promotion. Official human rights institutions have been set up by many countries in recent years. While the tasks of such institutions may vary considerably from country to country, they share a common purpose and for this reason are collectively referred to as national institutions for the protection and promotion of human rights.

The promotion and encouragement of respect for observance of human rights and fundamental freedoms is one of the purposes of the United Nations. The Charter of United Nations mentions the term, ‘promotion’ of human rights seven times, but makes no reference to ‘protection’ of human rights. It cannot be ruled out that the role and scope of United Nations in promoting and protecting human rights have tremendously increased in the last 60 years.

The promotion of human rights may mean setting of international standard of human rights, education and dissemination. The prime responsibility for the promotion of human rights under United Nations Charter rests on the General Assembly, on Economic and Social Council and subsidiary bodies of the Commission on Human Rights. In addition, the responsibility for promotion of human rights rests on regional and national institutions and various treaty bodies.

The term ‘protection of human rights’ which may mean implementation and enforcement action does not find place in the United Nations Charter. Among the United Nations agencies only the Security Council and the International Court of Justice can engage in enforcement action, only they have competence to pass a binding resolution or issue a binding judgment.
The United Nations through its agencies has been playing a pivotal role in the realization of human rights and fundamental freedoms. In addition, an effort has been made to promote and protect human rights in the globe. For this purpose, the charter-based organs have been classified into two groups:

1) The first group, which consists of those principal bodies whose creation has been directly mandated by the United Nations Charter. They are:

- The Security Council;
- The General Assembly;
- The Secretariat;
- The Commission on Human Rights;
- The Commission on Status of Women.

2) The second group, which have been authorized by one of the above principal bodies include:

- The Sub-Commission on the Promotion and Protection of Human Rights;

Charter-based bodies usually reach a final decision on a matter related to human rights through the mechanism of voting and generally pass resolutions documenting such decisions. There are three categories of resolutions, namely: thematic-based resolutions, country-specific resolutions, and resolutions relating to the procedural aspects of the functioning Charter-based bodies. Country-specific resolutions are not legally binding; rather, they are persuasive in nature and work on the principle of ‘shaming’ a nation into compliance. Since these resolutions
reflect international public opinion, nations are often pressured into complying with them to secure their image at international forum.¹²

The Commission on Human Rights

The Commission on Human Rights was established in 1946 and is a subsidiary body of the Economic and Social Council (ECOSOC). At present, it consists of 53 member's government elected by ECOSOC for three years term. The Commission deals with the area of protection and promotion of human rights more directly than any other Charter based bodies. Its jurisdiction of human rights protection was extended or expanded by ECOSOC in 1970s to extend to the entire world. Since its inception, the Commission has influenced international human rights standards. It made contributions to the Universal Declaration of Human Rights (UDHR) in 1948 as well as International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). It has further developed norms and standards relating to civil and political rights, the rights to development, the rights of minorities and indigenous peoples, and economic, social and cultural rights. The Commission also monitors the implementation of the standards outlined. It has the authority to use any number of permanent or special procedures while examining a specific human rights issue.¹³

The permanent procedure was established in 1967 by ECOSOC Resolution 1235 (XLII). It gives legitimacy to two types of UN activity. Firstly it allows for the holding of an annual public debate by which both governments as well as NGOs bring to light certain country-specific situations that require the Commission's attention. Secondly, it allows the Commission to use any technique to study and investigate any situation or individual case it deems necessary.

The United Nations has created special mechanisms for dealing with specific human rights issues. Although the mandates that are usually given to
special procedure mechanisms differ, they can usually be categorized as country or thematic mandates. Country mandates examine, monitor, advice and publish report on human rights situations in specific countries or territories, while thematic mandates are concerned with human rights violations world wide.\textsuperscript{14} As of October 2005, United Nations experts were covering forty one (41) mandates on a wide range of issues relating to civil, political, social and cultural rights.\textsuperscript{15}

The work of the Commission on Human Rights has been hampered in recent years by claims of politicization, by a system of block voting on resolutions which has served to shield violators from censure and restrict the work of Special procedures, and by the election of egregious human rights violators to the 53 member Commission. As a result a Commission that intended to be primary body of international human rights protection has become a haven of protection from human rights accountability, all legitimized by the procedural shortcomings of the Commission itself.\textsuperscript{16}

The failure of the Security Council to stem the United States invasion of Iraq in 2003 presented the Secretary General, Kofi Annan, with opportunity to initiate radical reforms of the entire United Nations system, in anticipation of the sixtieth anniversary of the United Nations in 2005. Amongst the most decisive recommendations included in the final report on reform in March-2005 entitled 'In Larger Freedom'\textsuperscript{17} was the proposal to disband the Commission on Human Rights in favour of a 'Human Rights Council.'

'In Larger Freedom', presented a cursory framework for this new Human Rights Council. It proposed that the Council would be independent from ECOSCO as a body of standing subsidiary or even equal to the General Assembly; that it would be similar; require strict criteria for membership; sit permanently or at least when required; and be elected by a two-third majority of the General Assembly.\textsuperscript{18}
The above suggestions were put before the United Nations World Summit in September 2005, a meeting convened to discuss all aspects of UN reform. In fact, the agreement to establish a Human Rights Council was one of the few constructive outcomes of the meeting, although it has, at present, only been decided in principle. The actual role and structure of the Council has been determined. However, as of October, 2005, the process is now underway.

**The Sub-Commission on the Promotion and Protection of Human Rights**

The Sub-Commission was established in 1947 by the Commission on Human Rights. It composed of twenty six (26) independent experts, as opposed to government representatives of the Commission. The Sub-Commission works to assist the Commission by undertaking an in-depth analysis of a particular situation or phenomenon. It meets annually for four weeks. The Sub-Commission has to undertake studies with the guidance of the Universal Declaration of Human Rights and to make recommendations to the Commission on Human Rights. It is assigned work by the Commission or ECOSOC, and these assignments are distributed among the working groups of the Sub-Commission.

At present, the Sub-Commission is engaged in studying a wide range of issues. In addition to the activities of the working groups, there are studies by individual experts in a particular field, Special Rapporteurs, on the rights of non-citizens; the concept and practice of affirmative action, globalization and its impact on the full enjoyment of human rights; the elimination of traditional practices poorly affecting the health of women and girls and others. However, the Sub-Commission is allowed neither to adopt country specific resolutions, nor can it include references to specific countries in thematic resolutions.

**The Security Council**

The Security Council is one of the key charter based organs and comprises of five permanent members, namely China, France, Russia, the United Kingdom
and the United States as well as ten (10) non-permanent members elected by the General Assembly. It meets twice a year at the call of President of the Security Council. The Security Council has the primary responsibility for the maintenance of international peace and security. The problem of peacekeeping, peacemaking and peace building inevitably affects human rights outcome and humanitarian law.

The Security Council is the only United Nations body with any real enforcement potential. This is the only body to which the United Nations Charter applies the word ‘enforcement’. It therefore, has a very important role in successfully ensuring the implementation of those human rights resolutions that have a bearing upon international peace and security. The Security Council has at its disposal various enforcement mechanisms such as impositions of sanctions. In extreme situations of threat to peace, breach of peace and acts of aggression by a state, it has the authority to use military force.

In the 1970s, the Security Council played a key role in enforcing the fulfilment of human rights standards in South Africa. The nations continuing practice of apartheid violated international law in a multitude of ways and the Security Council successfully endeavoured to force it into compliance. Chiefly, it imposed a mandatory arms embargo and applied consistent pressure against the State. Ultimately, South Africa conceded and apartheid was abolished. This achievement illustrates the Security Council’s unique ability to implement human rights norms.

Despite this success, the Security Council was largely reluctant to become directly involve in human rights matter until the mid 1990s. However, at present its role in the field of human rights has become increasingly significant. It is becoming more involved in decisions relating to human rights has become increasingly significant. It is becoming more involved in decisions relating to human rights. This holds particularly true for peacekeeping and peacemaking initiatives (in Angola, Burundi, Cambodia, Iraq and Afghanistan). The Security
Council has dealt with human rights violations of South African apartheid; Israel and the populations of occupied territories; and Iraqi atrocities against civilian population.30

The General Assembly

The General Assembly is widely considered the most democratic organ of the United Nations since each of the 188 member states receive a vote apiece.31 It meets from September to December every year and whenever the need arises. The Charter empowers the General Assembly to discuss any matter within its scope, to initiate studies and to make recommendations for the protection of human rights.32 The General Assembly has also adopted numerous declarations and conventions on matters relating to human rights and has mandated several operations in their interest.33

The six main committees of the General Assembly undertake the responsibility to debate and draft the issues that have to be considered by the General Assembly. Most of the items that relate to human rights are referred to the third Committee.34 This committee handles all social, humanitarian, and cultural concerns.

The Secretariat

The Secretariat is one of the principal organs established by the United Nations Charter and is primarily concerned with the administrative work of the United Nations. The Office of the High Commissioner for Human Rights (OHCHR) in Geneva is a part of the Secretariat and is responsible for the overall promotion and protection of human rights. The office is headed by the High Commissioner who is the UN's senior most official responsible for human rights.35

The OHCHR has three branches. The Research and Right to Development Branch is concerned with human rights policy development and research for
OHCHR and related human right bodies. The Support Services Branch provides support to both the treaty and charter based bodies and organs. The Activities and Programmes Branch supports special procedures relating to situations of human rights in particular countries or on thematic issues. It carries out field operations and provides advisory services and technical assistance to governments at their request. The field activities of OHCHR have significantly increased from a marginal number of activities in a few countries in the 1990s to having twenty seven (27) human rights fields in all parts of the world in 2000.36

The Commission on the Status of Women

The Commission on Social and Economic Rights was established in 1946. It reports to ECOSOC on policies aimed at promoting women’s right in the socio-economic, political and educational fields.37 It plays a significant role both in standard setting as well as in the development of further relevant instruments. It consists of 45 government representatives elected for a period of four years who meet for eight days every year.38 The Commission’s mandate includes follow-up to the platform of action adopted by the Fourth World Conference on Women held in Beijing in 1995. In 1999 it completed the task of drafting an Optional Protocol that enabled individual complaints to be lodged under the Convention on the Elimination of all forms of Discrimination Against Women.39

The United Nations Permanent Forum on Indigenous Issues

The Permanent Forum on Indigenous Issues was established in July 2000 by ECOSOC. It consists of sixteen (16) members.40 This United Nations body breaks new ground as it formally integrates indigenous people into the United Nations. It marks first time in history that representatives and non-state actors have been accorded parity in a high level body within the United Nations.41 Also, unlike the Commission on Human Rights, which reports to ECOSOC, the Permanent Forum reports directly to the General Assembly.
Since 1945, human rights have developed into an issue of international significance. The charter based bodies have given human rights international recognition and devised a monitoring system for their protection. They have established universal norms and standards, and internationalized standard setting procedures.

However, some commentators such as Jack Donnelly have said that as far as implementation and enforcement of human rights are concerned, virtually nothing has been achieved. Two reasons have been suggested for this

1. Firstly, states have developed a culture of non-compliance since commitment to human rights would require major domestic reform, entailing enormous time and effort.

2. Secondly, many states believe that international conditions should not be subject to the jurisdiction of the International Community.

A stronger human rights regime with a strong influence on the domestic affairs of states would be unacceptable to many state parties who are protective of their sovereignty. However, recent United Nations human rights and humanitarian operations undertaken by the charter based bodies indicate that United Nations may be revising its normative policies with respect to intervention in the internal affair of the states.

The charter based bodies have been associated with the promotion and protection of human rights in the universe. These bodies are working under the parameter of the United Nations. It has been found that due to not having proper coordination among these charter based bodies, sometimes difficulty arises. However, the effectiveness of the bodies depends on the United States and its member states.
B. The Treaty Based Organs of the United Nations

Seven principal human rights treaties have been adopted within the United Nations framework. For each of these treaties, committees have been established for facilitating their implementation. These committees are composed of independent experts who are of recognized competence in the field of human rights and are elected to their positions by the state parties to the relevant Conventions. The members are to function in their personal capacity in an independent and impartial manner. The experts, however, represent different social and legal systems within the various state parties. These treaty based organs are as follows.

Table – 3.1 Treaty Based Organs

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<th>Sl. No.</th>
<th>Treaty</th>
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<td>1.</td>
<td>ICCPR</td>
<td>Human Rights Committee</td>
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<td>2.</td>
<td>ICESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
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<td>3.</td>
<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
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<td>4.</td>
<td>CEDAW</td>
<td>Committee on the Elimination of Discrimination Against Women.</td>
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<td>5.</td>
<td>CAT</td>
<td>Committee Against Torture</td>
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<td>6.</td>
<td>CRC</td>
<td>Committee on the Rights of the Child</td>
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<td>7.</td>
<td>International Convention on the Protection of the Rights of all Migrate Workers and Members of their Families</td>
<td>Committee on the Protection of the Rights of All Migrant Workers and Members of their Families</td>
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There are three key aspects of committee functioning namely the State Reporting Process, the Issuing of General Comments or General Recommendations, and Reviewing of Individual Complaints.

Under each Convention, individual state parties are expected to submit periodic reports to the human rights treaty organs dealing the legislative, judicial, administrative or any other measures that the state has adopted to pursue obligations under the Convention. The committee may receive additional information on a country's human rights situation from the other sources including non-governmental organizations and United Nations agencies. After due consideration of these reports and any other information received, the committee makes it 'concluding observation' summarizing the committee's evaluations and recommendations, and highlighting areas of concern. From legal prospective, the concluding observations are not binding in international law but authoritative in nature. They carry out significant moral obligation and weight.

The general comments or recommendations usually focus on a particular article of the treaty and articulate in more detail the standards governments adhere to in implementing that right. Of the seven treaty bodies, five can receive complaints from individuals concerning violations of rights contained in respective treaty. They are the Committee Against Torture, Human Right Committee, Committee on Elimination of All forms of Discrimination Against Woman, and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.

**The Human Rights Committee**

The Human Right Committee was established in 1976 to supervise state compliance with the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee (HRC) consists of 18 members.
The functions of the Human Rights Committee include considering the periodic reports submitted by state parties to assess compliance by making ‘conducting observations’ and developing general comments which address specific articles or issues of the ICCPR. State party may recognize the competence of the committee to hear interstate complaints. The Optional Protocol to Civil and Political Right Covenant has extended the powers of the Human Rights Committee to include the competence to receive and consider individual complaints.

The Human Rights Committee has adopted general comments on the rights of the child, non discrimination and other issues. One interesting comment on the rights to life emphasized the committee’s view that the production, testing, possession and development and use of nuclear weapons should be prohibited and recognized as crimes against humanity. This view of the Committee is particularly significant in the light of the fact that many states to the Covenant posses nuclear weapons.

**The Committee on Economic, Social and Cultural Rights (CESCR)**

In 1986 the United Nations Economic and Social Council established the Committee on Economic, Social and Cultural Rights (CESCR) for the purpose of monitoring the implementation of the Covenant. Like HRC, the CESCR is made up of 18 independent experts.

The functions of the CESCR includes considering the periodic reports submitted by the state parties to assess compliance and providing ‘conducting observations’ developing general comments in order to interpret rights and compliance standards, and holding discussions to promote improved implementation of CESCR obligations. In the general comments of the CESCR, diverse issues have been addressed, ranging from issues relating to non –
discrimination and inadequate housing to issues concerning the rights of people with disabilities and the economic, social and cultural rights of older people.

The Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination (CERD) was established in 1969 to monitor state compliance to the Convention on the Elimination of All forms of Racial Discrimination. The Committee on the Elimination of Racial Discrimination also consists of eighteen (18) independent experts as member.

The functions of Committee on the Elimination of Racial Discrimination include considering the periodic reports submitted by state parties to assess compliance and making concluding observations; the Committee on the Elimination of Racial Discrimination may also consider interstate communications and individual complaints. The Committee also develops similar to the Human Rights Committee’s General Comments. The general recommendations of Committee on the Elimination of Racial Discrimination have addressed issues concerning the situations of indigenous people, the right to self determination, racial discrimination with respect to refugees and displaced persons and other such issues.

The Committee on Elimination of Discrimination against Women

The Committee on the Elimination of Discrimination Against Women was established to monitor the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and it consists of twenty three (23) independent experts.

Its functions include considering the periodic reports submitted by state parties to assess compliance and making ‘conducting observation’. Under the Optional Protocol, which entered into force on 22nd December 2000, the
Committee considers the complaints of individuals or group of individuals arising under CEDAW. The individual complaint mechanism under the Optional Protocol of CEDAW, however, is yet to be utilized. Under the Protocol, the Committee has been empowered to make confidential inquiries into grave or systematic violations of those rights by a state party. It also issues general recommendations, observations and suggestions. The general recommendations issued by the Committee have addressed issues concerning violence against women. The integration of women into education economy, politics and employment equality in marriage and family relation and other such issues.

The Committee Against Torture

The Committee Against Torture was established in 1987 to monitor the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee comprises of 10 independent experts.

The functions of the Committee include examining state parties report and making concluding observations, receiving and considering individual communications concerning violations of the Convention, and enquiring into alleged systematic torture in state that have accepted the procedure under Article 20. It should be noted that under the mechanism provided by Article 20, state parties have the ability to opt out.

The Optional Protocol to the Convention Against Torture seeks to constitute a Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which is to constitute of 10 members chosen from among persons of high moral character, having proven professional experience in the field of administration of justice, in particular criminal law, prison or police administration. The Sub-Committee is mandated to visit the places of detentions of the state parties, advice the state parties with respect to the
establishment of mechanisms to prevent torture, provide training and technical assistance in order to strengthen the mechanisms and make recommendations to improve preventive efforts.\textsuperscript{57}

**The Committee on Rights of the Child**

The Committee on the Rights of the Child has been monitoring the Convention on the Rights of the Child since 1991. The Committee consists of 10 experts. The functioning of the Committee include examinations of state reports submitted and the making of ‘concluding observations’, the issuing of general recommendations and conducting general discussions on a particular Article of the Children’s Convention, or a specific issue. There is no individual complaints mechanism associated with the Convention, nor is there one associated with either of its two Optional Protocols.\textsuperscript{58} The abovementioned general discussions have concentrated on issues such as the questions of children in armed conflict, the problem of economic exploitation of children, the ‘girl-child’ and that of the administration of juvenile justice.

**The Committee on Protection of the Rights of All Migrant Workers and Members of their Families**

The latest of the United Nation’s human rights treaties the International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families [ICPRMW], was adopted in 1990 and entered into force in July 1 2003. It is mentioned by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. This Committee consists of ten members.\textsuperscript{59}

The functions of this Committee include examining state reports submitted and making concluding observations and also issuing general recommendations. Under the treaty it will be possible to address individual complaints once a minimum of ten (10) states have agreed to the practice.
III. Performance of these Bodies

For achieving a meaningful evaluation of the treaty implementation regime established by the United Nations treaty organs, it becomes necessary to examine its shortcomings, with respect to the reporting procedure, which is an integral part of the system, it must be noted that although reporting has achieved a great deal, critics have identified certain inadequacies in all aspects of the process. In relation to states, there is widespread non-reporting and significant tardiness. Reports are often superficial and governments are reluctant to facilitate domestic debates around the reports. In relation to the committee themselves, the level of expertise and independence of the members has been questioned, the concluding observations on state reports are often excessively general, the approach to different reports is not always consistent within the same treaty body, and there is inadequate follow up to recommendations made to governments. One of the most perplexing questions about every international had, norms and practice in particular states, or on the human rights movement as a whole. It is difficult if not impossible to quantify this effect.

In this context scholar Dominic McGoldrick may be quoted. About Human Rights Committee, he said “it is difficult to provide positive evidence that the existence of the Covenant and the work of Human Rights Committee are having any concrete and positive effect on the human rights position in the State Parties. However, many of the state representatives that have appeared before the Human Rights Committee have played an important role of the national level. It would be immensely helpful if the Human Rights Committee could catalogue and reproduce those claims together with any more specific evidence of wholesale or partial national reviews of the implementation of the Covenant and of account being taken of the Covenant and the Human Rights Committee, for example, in Legislative Assemblies, executive decisions making judicial or administrative decisions."
The evaluation of others committee is likely to adopt a similar tone. It is however, accepted that the work of the most committees and most certainly the Human Rights Committee, has been hampered by tardy and incomplete state reporting, a lack of alternate input by civil society, lack of implementation of recommendations and lack of follow up, and the sheer volume of work to be done over two sessions per year by unpaid independent experts. This is multiplied in the case of Committees that receive individual complaints.

The journey that a treaty can take, from drafting through to ratification and enforceability, can be very long one. First, a country will ‘sign’ the Convention. However, this signature merely constitutes a preliminary and general endorsement of the Convention in question, and is not legally binding. It indicates that the country agrees with the principles of the Convention and intends to consider and examine its terms and establish its own position towards it. It also creates a moral obligation though, not legally binding, for the country to refrain from acts that might undermine the objectives of the Convention. Once the instrument has been examined, and when all procedures required by domestic law have been fulfilled, the country will ratify the Convention, and then will become legally bound by the terms of that Convention. The time period between signature and ratification can take several years.

In addition, there are two factors that can weaken the effectiveness of international treaties.

1. Reservations

When a country eventually ratifies a convention it is permitted to make ‘reservations’ to it. A reservation means a unilateral statement, however phased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state.63 There reservations are
permitted to enable as many states as possible to ratify international instrument, so long they are deemed compatible with the object and purpose of the convention in question. The United Nations Human Rights Committee decides if the reservation is ‘legal’, in that it is not contrary to the purpose of the Convention. Some treaties and Conventions make no allowance for reservation for example, the Rome Statute of the International Criminal Court.

2. Derogations

In addition to recourse of reservation, countries also have the option of ‘derogating’ from a treaty at times of emergency. That is ‘suspending’ a provision of the treaty when conditions ‘threaten the life of the nations’. Derogations are considered temporary measures, put in place until the state of emergency of the country is lifted. There are five named non derogable rights in the ICCPR, which a country can not suspend under any circumstances even during the times of war. These are –

1. Right to life
2. Right against torture
3. Prohibition of Retroactive Criminal Legislation
4. Right to Recognition under the Law
5. Right to freedom of thought, conscience and religion.

One of the main problems with derogations is that a nation may remain in a state of public emergency for years on end. The number of limitations to which treaties and conventions are subject, namely reservations and derogations severely hamper the reach of international law, and greatly diminish the effectiveness of international human rights standards and norms.
The treaty based bodies have also been associated with the promotion and protection of human rights in the universe. These bodies are working under the various International Conventions and Treaty. It has been found that these treaty bodies solely depend on the member states of the respective treaties. The procedure of submission of reports by member states is not concrete. It has been seen that the most of the member states are reluctant to submit their periodic reports timely. It brings a big question mark regarding the credibility of these bodies. Moreover, there is no solid sanction provision for not submitting the reports by member states.

IV. The Protection and Promotion of Human Rights at Regional Level

The term 'region' means an area embracing the territories of a group of states. A region may be created by grouping the states on the basis of economic social, cultural or political factors. It may also be constituted by states having affinities of race, institutions or political interests. The idea of regional arrangements for promotion and protection of human rights has been gaining recognition since the adoption of Universal Declaration of Human Rights. The absence of any effective international agency for protection of these rights required the need for the existence of regional arrangements comprising of such states which have a common heritage of political traditions, ideals freedoms human rights in a more effective manner than to the machinery in a more effective manner than to the machinery of the United Nations which is already very complex and over-burdened.

The work of the United Nations in the human rights field, for which the provisions of the Charter have been the point of departure, has also inspired important developments in the protection of human rights on the regional level by the Council of Europe, the Organization of American States, and the Organization of African Unity.
The European Convention on Human Rights

Under the auspices of the Council of Europe, the European Convention on Human Rights was signed in 1950 and entered into force in 1953. The Convention is based on a draft of what is now the International Covenant on Civil and Political Rights. It was concluded by the governments of European countries “to take the first step for the collective enforcement of certain of the rights stated in the Universal Declaration of Human Rights.” It was subsequently supplemented by five additional protocols. As far as the substantive provisions are concerned, the European Convention and the International Covenant on Civil and Political Rights cover, more or less, same ground, although there are a number of important differences between the two instruments.

The European Convention established two internal organs "to ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention"-that is, the European Commission on Human Rights and the European Court of Human Rights. Any party to the Convention has the right to refer to the Commission any alleged breach of the Convention by another party. The Commission may also receive petitions from any person, non-governmental organization, or group of individuals claiming to be the victim of a violation, by one of the parties, of the rights set forth in the convention and in the relevant protocols. The exercise of this power by the Commission is subject to the condition that the state against which the complaint is directed has recognized this competence of the Commission.

If the Commission does not succeed in securing a friendly settlement on the basis of respect for human rights as defined in the Convention, it draws up a report on the facts and states its opinion as to whether the facts found disclose a breach by the state concerned of its obligations under the convention. The final decision is taken either by the Committee of Ministers of the Council of Europe, a political
organ, or, if it has jurisdiction and the matter is referred to it, by the European Court of Human Rights.

**The European Social Charter**

The European Social Charter is the European counterpart to the International Covenant on Economic, Social and Cultural Rights. The provisions of the European Social Charter, however, are more specific and detailed. It has established a reporting procedure. The reports are examined by a committee of independent experts, which submits its conclusions to a governmental social subcommittee. The Consultative Assembly of the Council of Europe is consulted. In the final stage, the Committee of Ministers may make any recommendations that it considers necessary to any contracting party in the areas of economic, social, and cultural rights.

**The American Convention on Human Rights**

In 1948, several months before the adoption by the General Assembly of the Universal Declaration of Human Rights, the Ninth International Conference of American States, meeting in Bogota, adopted the American Declaration of the Rights and Duties of Man. This declaration was followed in 1969 by the signing in San Jose, Costa Rica, of the American Convention on Human Rights. The Convention, in force since 1978, is a very comprehensive instrument, similar to both the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The organs of implementation of the Pact of San Jose are the Inter-American Commission on Human Rights (corresponding to the European Commission and to the Human Rights Committee under the International Covenant on Civil and Political Rights) and the Inter-American Court of Human Rights. While the right of petition of individuals is optional under the European Convention and the International Covenant on Civil and Political
Rights, in the inter-American system, every state party accepts the right of petition automatically.

The African Charter on Human and Peoples' Rights

In 1981, the Assembly of Heads of State and Government of the Organization of African Unity, meeting in Nairobi, Kenya, adopted the African Charter on Human and Peoples' Rights. The Charter, which came into force on 21 October 1986, provides for an African Commission on Human and Peoples' Rights, composed of eleven (11) members elected by the assembly, to promote and protect the rights set forth in the Charter. The provisions of the Charter are similar to those of the Universal Declaration of Human Rights but with special reference to African traditions of rights and freedoms, including the right to self-determination and the right of peoples to dispose of their wealth and natural resources.

Promoting and Protecting Human Rights by Association of South East Asian Nations (ASEAN)

The Association of South East Asian Nations has attracted a great deal of public attention with its new commitment to enhance regional cooperation on human rights with the establishment of an ASEAN human rights body.

The six ASEAN Member States (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand) took an active part in the Regional Meeting for Asia of the World Conference on Human Rights, held in Bangkok from 29th March to 2nd April 1993, as well as in the World Conference on Human Rights in Vienna, 14th to 25th June 1993. Subsequently, in the Joint Committee at the 26th ASEAN Ministerial Meeting (AMM) in Singapore, 23rd and 24th July 1993, Foreign Ministers of these six ASEAN Member States announced the collective view about human rights, which remain valid and relevant today.
The process to consider the establishment of "an appropriate regional mechanism on human rights" slowed down after 1995 partly because of increased political diversity following the arrival of four new members; Viet Nam joined Association of South East Asian Nations in 1995; Laos and Myanmar in 1997; and Cambodia in 1999. Moreover, the East Asian financial crisis, which broke out first in Thailand in July 1997, created new and serious challenges, forcing Association of South East Asian Nations to concentrate on addressing new and more urgent priorities. One of them was how to narrow the development gaps within the Association of South East Asian Nations membership.\textsuperscript{71}

The Association of South East Asian Nations' strategic response to new challenges in the 21\textsuperscript{st} century was to embark on community-building in 2003. The Association of South East Asian Nations adopted in 2004 the Vientiane Action Programme (VAP), which was the first seven (7) year master plan for building the Association of South East Asian Nations Community on three pillars; political-security, economic, and socio-cultural.

Cooperation on human rights appeared as part of political development in the Association of South East Asian Nations Political-Security Community. Measures to be undertaken included: establishing a network of cooperation among existing national human rights mechanisms (in Indonesia, Malaysia, the Philippines and Thailand); promoting education and public awareness on human rights; elaborating on an Association of South East Asian Nations instrument for the protection and promotion of the rights of migrant workers; and establishing an Association of South East Asian Nations Commission on the Promotion and Protection of the Rights of Women and Children.\textsuperscript{72}

It is now commonly accepted in Association of South East Asian Nations that human rights are comprehensive, indivisible and cross-cutting in nature; they encompass all dimensions of human life. Therefore, they should be addressed holistically, but not selectively. In Association of South East Asian Nations,
promotion and protection of human rights has already been undertaken through functional cooperation to promote and protect the rights of women, children, and migrant workers.

At the 12th ASEAN Summit in Cebu, the Philippines, in January 2007, the heads of state or government of the ten ASEAN Member States signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The Association of South East Asian Nations leaders tasked the Secretary-General of ASEAN to submit an annual report on the progress of implementation of their Declaration.73

Subsequently, the ASEAN Committee on the Implementation of the Cebu Declaration was established in July 2007, during the 41 AMM in Singapore. The Committee is composed of one senior representative from each of the 10 ASEAN Member States, as well as a representative from the ASEAN Secretariat. The Committee reports to the ASEAN Senior Labour Officials Meeting (SLOM). One important task of the Committee is to develop an ASEAN legal instrument for the protection and promotion of the rights of migrant workers. Within ASEAN, the Philippines is so far the only country that has ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The ASEAN Committee on Women (ACW) and the ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSWD) are undertaking ground work for establishing the ASEAN commission on the promotion and protection of the rights of women and children. A multidisciplinary working group will soon be established to start drafting the Terms of Reference (TOR) for the proposed commission in the first quarter of 2009.74

Cooperation on the promotion and protection of the rights of women and children in ASEAN has the advantage of the shared platform of the International
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC) to which all the ten ASEAN Member States are parties to it.75

Charter of Association of South East Asian Nations

In the 2004 VAP, ASEAN included a commitment to develop an ASEAN Charter as part of the political-security cooperation to shape and share norms. The ASEAN Charter was signed by the ten heads of state or government during the thirteen ASEAN Summit in Singapore on 20th November 2007. The Charter has now been fully ratified by all ASEAN Member States, and all of them have deposited their instruments of ratification with the Secretary-General of ASEAN. Consequently, the Charter has entered into force on 15th December 2008.

The commitment in Article 14 of the ASEAN Charter to establish an ASEAN human rights body to handle the promotion and protection of human rights within the ASEAN region is in itself an encouraging and significant step forward. Once established, the AHRB will be the first of its kind in Asia.76

ASEAN can learn from other regional and international organizations on how they go about promoting and protecting human rights through regional and international cooperation.77 At the same time, ASEAN also needs to develop its own modality of regional cooperation on human rights, which will take into account its political, economic and social diversity. This is why the collective views about human rights in the 1993 Joint Communiqué of the ASEAN Foreign Ministers remain relevant and valid today.

The Asia-Pacific region is the only United Nations defined region without a specific regional human rights treaty and without some form of region-wide mechanisms directed towards the protection and promotion of human rights. The Office of the High Commissioner for Human Rights has organized a number of workshops to promote regional arrangements in the Asia-Pacific region (Manila m...

In 1998 in Tehran, governments of the region adopted the so-called Tehran Framework for Technical Co-operation in the Asia-Pacific region (Tehran Framework), which sets out a program for regional arrangements aiming to contribute to the development and strengthening of national capacities for the promotion and protection of human rights in the Asia-Pacific region. Adopted by consensus, the Tehran Framework identifies states' commitment to four regional priorities: national plans of action for the promotion and protection of human rights and the strengthening of national capacities; human rights education; national institutions for the promotion and protection of human rights; and strategies for the realization of the right to development and economic, social and cultural rights.78

The Seventh Asia-Pacific Workshop on Regional Cooperation for the Promotion and Protection of Human Rights, held in New Delhi in February 1999, called upon OHCHR to develop and implement the proposals made in the four areas identified under the Tehran Framework.79 In July 1999, a Regional Workshop on National Human Rights Action Plans was held in Bangkok, Thailand. In December 1999, a Sub-Regional Workshop on Human Rights Education in Northeast Asia was organized in Seoul, Republic of Korea. A Workshop on National Plans of Action for Human Rights Education was held in Tokyo, Japan, in January 2000 and in February 2000 a Workshop on Strategies for the Realization of the Right to Development and Economic, Social and Cultural Rights took place in Sana'a, Yemen. Furthermore, two meetings on National
Institutions for the Promotion and Protection of Human Rights were held in Colombo, Sri Lanka, and Manila, the Philippines. At regional level also, various efforts have been undertaking to promote and protect human rights. It is observed that the European Countries have been very successful in doing this comparing to the other regions. The European system for promotion and protection of human rights is very systematic and independent from the state. It brings effectiveness and efficiency in the promotion and protection of human rights.

V. Protection and Promotion of Human Rights at National Level

While the world wide interest in national institutions is a relatively recent phenomenon, the original concern of the United Nations with such institutions dates back to 1946 when the issue was first addressed by the Economic and Social Council. The Council asked member states to consider the desirability of enabling information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights.

In 1960, the Economic and Social Council, in a resolution which recognized the unique role national institutions could play in the protection and promotion of human rights, invited governments to encourage the formation and constitution of such bodies as well as to communicate their ideas and information on the subject to the Secretary General. This process in an on-going one and reports on information received are regularly submitted by the Secretary General to the Commission on Human Rights, General Assembly and to member states.

As standard setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focused on the ways in which these bodies could assist in the effective implementation of these international standards. In 1978, the Commission on
Human Rights decided to organize a seminar on national and local institutions to
draft guidelines for the structure and functioning of such bodies. Accordingly, the
Seminar on National and local institutions for the promotion and protection of
Human Rights was held in Geneva from 18th to 29th September 1978 during
which a series of guidelines was approved. These guidelines suggested that the
functions of national institutions should be –

1. to act as a source of human rights information for the government and
   people of the country;

2. to assist in educating public opinion and promoting awareness and
   respect for human rights;

3. to consider, deliberate upon and make recommendation regarding any
   particular state of affairs that may exist nationally and that the
   government may wish to refer to them;

4. to advice on any questions regarding human rights matters referred to
   them by the government;

5. to study and keep under review the status of legislation, judicial
   decisions and administrative arrangements for the promotion of human
   rights, and to prepare and submit reports on those matters to the
   appropriate authorities;81

6. to perform any other functions which the government may wish to
   assign to them in connection with the duties of that state under those
   international agreements in the field of human rights to which it is a
   party.

In regard to structure of such institutions, the guidelines recommended that
they should –
1. be so designed as to reflect in their composition, wide cross sections of the nation, thereby bringing all parts of that population into the decision making process in regard to human rights;

2. function regularly, and that immediate access to them should be available to any member of the public or any public authority;

3. in appropriate cases, have local or regional advisory organs to assist them in discharging their functions.\[^{82}\]

These guidelines were subsequently endorsed by the Commission on Human Rights and by the General Assembly. The Commission invited all member states to take appropriate steps for establishment, where they did not already exist, of human rights, and requested the Secretary General to submit a detailed report on existing national institutions. Throughout the 1980s, the United Nations continued to take an active interest in this topic, and a series of report, prepared by the Secretary General, was presented to the General Assembly. It was during this time that a considerable number of national institutions were established often with the assistance of the Advisory Services Programme of the Centre For Human Rights.

Today, human rights considerations are relevant to almost every sphere of governmental activity and indeed, too many other areas of public and private life. The number and range of 'institutions' concerned with human rights issues reflects this reality. The activities of Churches, Trade Unions, the mass media and many non-governmental organizations touch directly on human rights issues, as do those of most government departments, the courts and legislature.

The concept of a national human rights institutions is, however, far more specific-referring as it does to a body whose functions are specifically defined in terms of the promotion and protection of human rights. While no two institutions are exactly the same, a number of similarities can be identified which serve to separate these institutions from the various entities. The national institutions being considered here are all administrative in-nature-in the sense that they are neither
judicial nor law-making. As a rule, these institutions have ongoing, advisory authority in respect to human rights at the national and or international level. These propose are perused either in general way, through opinions or recommendations, or through the consideration and resolutions of complaints submitted by individuals or groups. In some countries, the construction will provide for the establishment of national human rights institution. More often, such institutions are created by legislation or decree. 

While many national institutions are attached, in some way or another, to the executive branch of government, the actual level of independence which they enjoy will depend on a number of factors including membership and the manner in which they operate.

The majority of existing national institutions can be grouped together in two broad categories; "Human Rights Commissions" and "Ombudsmen". Another less common, but no less important variety is the "specialized" national institutions which function to protect the rights of a particular vulnerable group such as ethnic and linguistic minorities, indigenous populations, children, refugees or women. These three categories of national institutions are considered in detail below.

Human Rights Commissions

In many countries, special commissions have been established to ensure that the laws and regulations concerning the protection of human rights are effectively applied. Most commissions function independently from other organs of government, although they may be required to report to the legislature on a regular basis.

In keeping with their independent nature, commissions are generally composed of a variety of members from diverse backgrounds but each with a particular interest, expertise or experience in the field of human rights. Each country may have its specific requirements or restrictions for the selection of
members, such as quotas on the number of representatives or candidates from different professional categories, political parties, or localities.\textsuperscript{84}

Human Rights Commissions are concerned primarily with the protection of nationals against discrimination and with the protection of civil and other human rights. The precise functions and powers of a particular Commission will be defined in the legislative Act or decree under which it is established. These laws or decrees will also serve to define the Commission's jurisdiction by specifying the range of discriminatory conduct that it is empowered to investigate. Some commissions concern themselves with alleged violations of any rights recognized in the constitution. Others may be able to consider cases of discrimination on a broad range of grounds including race, colour, religion, sex, national or ethnic origin, disability, social condition, sexual orientation, political convictions and ancestry.\textsuperscript{85}

One of the most important functions vested in Human Rights Commission is to receive and investigate complaints from individuals (and occasionally, from groups) alleging human rights abuses committed in violation of existing national law. In order to properly carry out its tasks, the Commission will usually be capable of obtaining evidence relating to the matter under investigation. Even if only used rarely, this power is important in that it guards against the possibility of frustration through lack of cooperation on the part of the person or body complained against. While there are considerable differences in the procedures followed by various Human Rights Commissions in the investigation and resolution of complaints, many rely on conciliation and arbitration. In the process of conciliation, the Commission will attempt to bring the two parties together in order to achieve a mutually satisfactory outcome. If conciliation fails to resolve the dispute, the Commission may be able to resort to arbitration in which it will, after a hearing, issue a determination.\textsuperscript{85} It is not usual for a Human Rights Commission to be granted authority to impose a legally binding outcome on parties to a complaint.
However, this does not mean that the settlement or appropriate remedial steps recommended by the Commission can be ignored. In some cases, a special tribunal will hear and determine issues outstanding from an unresolved complaint. If no special tribunal has been established, the Commission may be able to transfer unresolved complaints to the normal courts for a final and binding determination.

Another important function of the Human Rights Commission is systematically to review the government's human rights policy in order to detect shortcomings in human rights observance and to suggest ways of improving it. The Human Rights Commissions may also monitor the state's compliance with its own and with international human rights laws and if necessary, recommend changes. The ability of a Commission to initiate enquiries on its own behalf is an important measure of its overall strength and probable effectiveness. This is particularly true in regard to situations which involve persons or groups who do not have the financial or social resources to lodge individual complaints.

The realization of human rights cannot be achieved solely through legislations and the administrative arrangements. In recognition of this fact, Commissions are often entrusted with the important responsibility of improving community awareness of human rights. Promoting and educating about human rights may involve informing the public about the Commission's own functions and purposes; provoking discussion about various important questions in the field of human rights; organizing seminars; holding counselling services and meetings; as well as producing and disseminating human rights publications.

The Ombudsman

The office of Ombudsman is now established in a number of countries. The Ombudsman (who may be an individual or a group of persons) is generally appointed by the Parliament acting on constitutional authority or through special legislation. The primary function of this institution is to protect the rights of
individuals who believe themselves to be the victim of unjust acts on the part of the public administration. Accordingly, the Ombudsman will often act as an impartial mediator between an aggrieved individual and the government.

In many respects, the powers of the Ombudsman are quite similar to those of Human Rights Commissions. Both may receive and investigate individual complaints. In principle, neither has the power to make binding decisions. There are nevertheless some differences in the functions of the two bodies which explain why some countries establish and simultaneously maintain both types of institution.

In most cases, the primary function of the Ombudsman is to ensure fairness and legality in public administration. Human Rights Commissions are more specifically concerned with discrimination and in this respect will often address themselves to the actions of private bodies and individuals as well as the government. In general, the principal focus of activity for an Ombudsman is individual complaints. However, Ombudsmen are increasingly engaged in a wider range of activities for the protection and promotion of human rights.

**Specialized institutions**

Vulnerable and minority groups differ from country to country, but the most common problem affecting them all is that of discrimination. Members of the community who are most often recognized by governments as needing specialized human rights institutions to protect their interests are persons belonging to ethnic, linguistic and religious minorities, indigenous populations, aliens, migrants, immigrants, refugees children, women, the poor and the disabled.

In general terms, such specialized institutions are established to promote government and social policy which has been developed for the protection of that particular group. For the most part, these institutions perform functions similar to those of the less specific Human Rights Commissions and Ombudsmen described
above. They are usually authorized to investigate instances and patterns of discrimination against individuals in the group and against the group as a whole. While generally able to investigate complaints brought by a member of the group against another person or against a government body, these specialized agencies are, like other national human rights institutions, rarely empowered to make binding decisions or to initiate legal action.88

As well as providing material and consultative assistance on an individual and collective basis, such agencies will frequently be responsible for monitoring the effectiveness of existing laws and constitutional provisions as these relate to the group. In this way, they often act as consultants and advisors to Parliament and the executive branch of government.

Principles relating to the status and functioning of national institutions for protection and promotion of human rights

In October, 1991, the Centre for Human Rights convened an international workshop to review and update information on existing national human rights institutions. Participants included representatives of national institutions, States, the United Nations, its specialized agencies, intergovernmental and non-governmental organizations.89

In addition to exchanging views on existing arrangements, the workshop participants drew up a comprehensive series of recommendations on the role, composition, status and functions of national human rights instruments. These recommendations, which were endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the General Assembly in its resolution A/RES/48/134 of 20 December 1993, are summarized below
A. Competence and responsibilities

A national institution shall be vested with competence to protect and promote human rights. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence. A national institution shall, inter alia, have the following responsibilities

(a) to submit to the government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institutions may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

i. Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

ii. Any situation of violation of human rights which it decides to take up;

iii. The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
iv. Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;

b) To promote and ensure the harmonization of national legislations, regulations and practices with the international human rights instruments to which the state is a party, and their effective implementation;

c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;

e) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights,

f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.
B. Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

Non-governmental organizations are responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; trends in philosophical or religious thought; Universities and qualified experts; Parliament; government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.92

c. Methods of operation

Within the framework of its operation, the national institution shall
1. Freely consider any questions falling within its competence, whether they are submitted by the government or taken up by it without referring to a higher authority, on the proposal of its members or of any petitioner;

2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly consulted;

5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);

7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to protecting and promoting 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 specialized areas.

D. Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such
circumstances, and without prejudice to the principles stated above concerning the other powers of the Commissions, the functions entrusted to them may be based on the following principles:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

There are some who see no good reason for establishing special national machinery devoted to the protection and promotion of human rights. They may argue that these bodies are not a wise use of scarce resources and that an independent judiciary and democratically elected Parliament are sufficient to ensure that human rights abuses do not occur in the first place.

Unfortunately, history has taught us differently. A body that is in some way separated from the responsibilities of executive governance and judicial administration is in a position to take a leading role in the field of human rights. By maintaining its real and perceived distance from the government of the day, such a body can make a unique contribution to a country's efforts to protect its citizens and to develop a culture respectful of human rights and fundamental freedoms.

Some countries have a long tradition of protecting human rights at the national level through the creation of such organs as Human Rights Commissions.
or Ombudsman offices. The majority of institutions however have been set up since 1980. This trend, which has been actively encouraged by the United Nations, is evidence of a growing momentum, both national and international, in support of human rights. Increasing interest in national human rights institutions should also be viewed in light of recent democratization and reform processes which have been taking place in a great number of countries.

In the course of its involvement in the work of national institutions, the United Nations has come to realize that no single model of national institution can, or should, be recommended as the appropriate mechanism for all countries to fulfil their international human rights obligations. Although each nation can benefit from the experience of others, national institutions must be developed taking into account local cultural and legal traditions as well as existing political organization.

At national level also, various countries have been taking initiative to promote and protect human rights by creating national institutions in this regard. The countries have been taking legislative and administrative steps for promotion and protection of human rights. However, it has been observed that due to having local limitations of law, various countries are unable to take solid steps for promotion and protection of human rights in their respective jurisdiction.

VI. Conclusion

The United Nations has also recognized that all states are eager to develop or strengthen national institutions but do not have the necessary technical and financial capacity to do so. The Centre for Human Rights, under its Programme of Advisory Services and Technical Cooperation, has provided expert and material assistance in this area to a number of countries in the last few years. It encourages member states to request assistance for building or strengthening national institutions for human rights. Practical assistance for that purpose may be made available in the context of the advisory services programme of the Centre for Human Rights.

Human rights machinery of the kind described in this Fact Sheet cannot be expected to solve those problems which governments and the international
community have been unable to address effectively. Neither they set up to replace the human rights organs of the United Nations nor non-governmental organizations working in the same area. Their role is clearly complementary, and a strengthening of such institutions can only enhance the effectiveness of both national and international systems for protection and promotion of human rights.
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3. ibid

4. Ibid

5. Supra n2

6. ibid


8. Supra n 1

9. Supra n 2


11. Ibid, at 597.


18. Ibid, p 181


22. Supra n. 1. at 601.

23. These are the working Group on communications (which considers complaints regarding a consistent pattern of grass and verifiable violations of human rights within the scope of communications, together with any existing replies from government), the working group on contemporary forms of slavery, the working group on Indigenous populations, the working group on Indigenous populations, the working group on minorities, the working group on Administration of Justice and working group on transnational corporations.


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