Operationalizing Human Rights at the Local Level

ONE PHENOMENON is widely celebrated as the key to making human rights matter: the worldwide proliferation of *national* human rights institutions (NHRIs). International human rights institutions still dominate news headlines with their public condemnation of human wrongs and their highly visible (and often failed) attempts to address them. Yet among human rights advocates, the dominant wisdom is that the promotion and protection of human rights rely less on international efforts and more on domestic action. Whereas energies earlier on in modern international human rights system development concentrated on international and regional human rights standard setting and the establishment of international and regional mechanisms to monitor implementation of human rights norms,[1] more recently, enthusiasm lies with the creation of national-level human rights institutions. To be sure, standard setting and regional and international institution building and strengthening continue, but establishing national-level human rights mechanisms has emerged as a core part of the international human rights agenda, supported by UN technical assistance programs and bilateral donor efforts.

Here I examine the widely held belief that the power of domestic human rights bodies to influence the lived realities of people experiencing human wrongs far exceeds the practical impact of their higher profile international counterparts. Close analysis of a set of country studies both affirms this conventional wisdom on domestication of international human rights norms and challenges it. In terms of shaping local expectations and behaviors related to human rights promotion, what happens on the domestic level is essential for making human rights matter. Indeed, even the most modest

national institution with a limited mandate and restricted goals can have a demonstrable effect on the human rights issues that people care about most. Conversely, the most lavishly resourced and ambitious national institution can be dismissed as irrelevant if it fails to address the human rights concern held to be most important by the populace. Ultimately, domestic human rights bodies are only as good as the local political and economic contexts permit them to be, and even those countries that are most supportive of human rights on the world stage may prove to be highly disappointing among their constituents back home.

Students of human rights often complain that human rights are taught as abstract concepts, lists of norms, and institutional diagrams. "But what do human rights organizations actually *do*?" they wonder. Practitioners of human rights, on the other hand, know a great deal about the day-to-day *doing* of human rights practice—conducting field missions, interviewing victims, lobbying policymakers, drafting grant proposals, conducting workshops—but they miss the larger picture of how human rights norms take root and become effective at the local level. (As humanitarian expert Larry Minear would caution, "Don't just do something, stand there.")[2] Through a close analysis of five country studies of five highly distinctive domestic human rights institutions, I attempt to address the needs of both students and practitioners. I provide both a window into the day-to-day operationalization of human rights for students and insight into long-term organizational design and institutional change for practitioners.

This study is both descriptive and prescriptive. For each country study I describe how the local political context helps shape what NHRIs do to promote and protect human rights.[3] I then pull the country-specific observations together to make some general observations about how NHRIs are useful for promoting international human rights at the national level and to fashion recommendations for bettering their ability to do so. The purpose of this introductory chapter is twofold. First, I provide a basic introduction to the bodies known as NHRIs, clarifying the general features of these institutions and the roles they occupy in the human rights framework and practice. Second, I outline the contours of the present study, identifying research questions and methodology and explaining the criteria for case selection.

Introduction to NHRIs

I focus on a particular type of domestic human rights institution widely heralded as the key to the realization of human rights: NHRIs. Often modest in

design, pragmatic in their strategic approach, and limited in their immediate impact, NHRIs hold promise as "the practical link between international standards and their concrete application."[4]

NHRIs can take different forms, including (1) the national human rights commission model, in which the institution has multiple members and a broad mandate to monitor and promote national and international human rights within the domestic realm; (2) the ombudsman model, which consists of a single member and staff mandated to receive complaints alleging certain violations of domestic norms; (3) specialized commissions designed to tackle a particular human rights issue, such as racial discrimination; and (4) hybrid institutions, which combine various aspects of the other three models.[5] Within these structures, NHRIs can, among other things, offer advice to governments on proposed and existing legislation, monitor international treaty implementation at the domestic level, provide training and research opportunities to both governmental and nongovernmental actors, and, in some cases, assist with individual complaints.[6] Although some NHRIs have jurisdiction over both government and private conduct, most NHRIs can review only government actions. At their core, no matter how broad or narrow their mandate, NHRIs represent attempts by governments to "embed international norms in domestic structures."[7]

A distinctive aspect of NHRIs is the space in which they maneuver: an imagined space somewhere between the state and civil society. They cooperate with and contribute to the efforts of both government and civil society, yet they are to remain wholly independent of government and other actors. Given that NHRIs are government-financed and government-initiated endeavors, created by legislative decree or through the national constitution, it is extraordinary that they maintain their independent stance, and, in fact, one of the major controversies over NHRIs concerns whether they are ever able to do so. Operating in a highly charged and deeply politicized atmosphere, NHRIs not only are subject to manipulation by governmental actors but must also contend with the often conflicting agendas of the various segments of civil society.

The United Nations has supported the development of NHRIs since the 1960s, but only recently have NHRIs become a worldwide phenomenon, supported by a variety of international and regional institutions and individual states.[8] Until the 1980s, NHRIs were established mainly in Western Europe and Commonwealth countries around the world. Over the next two decades,

however, they spread rapidly throughout Southern Europe, Latin America, Central and Eastern Europe, the Middle East, and Africa.[9] A main boost to their development came in 1993, when many of the governmental delegates and civil society advocates attending the United Nations Conference on Human Rights in Vienna explicitly linked NHRI building to good governance and democracy building.[10] The official document emerging from that conference, the Vienna Declaration and Programme of Action, explicitly encouraged the "establishment and strengthening" of NHRIs.[11] After the Vienna meeting, not only were dozens of NHRIs established in the democratization wave of the 1990s,[12] but NHRI establishment also became de rigueur for peace building.[13] All the peace-building strategies in El Salvador, Bosnia-Herzegovina, Northern Ireland, Sierra Leone, South Africa, Rwanda, Sudan, East Timor, Kosovo, Afghanistan, Liberia, and most recently Iraq have included measures for the establishment of some form of NHRI, and many of these organizations are still in the process of being established. Today, NHRI establishment may be mandated in peace agreements[14] or in postconflict constitutional frameworks[15] or, as in the case of East Timor,[16] as a mandate to a UN transitional administration through the UN Security Council.

The incredible popularity of NHRIs may be a sign of their ability to successfully navigate the competing demands of the state and civil society while maintaining their independence; conversely, their popularity may be an indication of states' successful co-option of their mandate. In other words, NHRIs may succeed because of or despite their effectiveness. There is no question, however, that NHRIs have exploded onto the world stage. For newly emerging democracies and countries transitioning from conflict, NHRIs have become a hallmark of democratic legitimacy.[17] As one recent South Asian study observed, "If in the 1950s, the status symbol of a developing country was a steel mill, in the 1990s, apparently, it was a human rights commission."[18] NHRIs have emerged as a force to be reckoned with.

Fitting NHRIs into the Development of Human Rights

In one sense, the field of human rights has come full circle. Human rights began as a localized phenomenon, embodied in religious and spiritual teaching, highly particularized communal practices, and ethical codes of conduct directed at recognizing and protecting the dignity of humankind.[19] Human rights gradually became internationalized through a series of international treaties, offering protections first for religious minorities and then for ethnic

and national minorities. Some of the provisions from these early treaties found their way into the complex systems for minority rights protections fashioned by the League of Nations in 1919, following World War I.[20] These "minority treaties" sought to achieve the twin aims of granting legal equality to individual members of particular minority groups while preserving the groups' characteristics and traditions.[21] After these efforts failed to prevent the atrocities of World War II, the focus shifted from group rights to individual rights, and emphasis was placed on universalizing human rights guarantees through a series of new international instruments, beginning with the UN Charter and the Universal Declaration of Human Rights (UDHR).[22]

The ideological tug and pull of the cold war impaired human rights enforcement efforts, but human rights standard setting shuffled along in the 1950s and 1960s,[23] emerging as a viable political force in the 1970s and 1980s amid a proliferation of international human rights conferences, treaties, and declarations.[24] The end of the cold war fostered a sudden growth spurt in the number and capacity of governmental and nongovernmental human rights organizations interested in rights promotion in newly emerging democracies.[25] Yet even as the participation in human rights promotion broadened and deepened, involving an array of new actors and agendas, states continued to be the "primary normative units and referents"[26] for human rights promotion. With this turn, the circle was complete, as the focus of the human rights field was once again on the local.

Does this mean that human rights have returned to where it started? No, too much has changed in the intervening years. A host of domestic and international human rights systems and mechanisms for protecting human rights now exist.[27] People working on human rights concerns in governmental and nongovernmental offices have become better trained and more professional in their work processes and outputs, and, although still in need of improvement, public awareness about human rights has improved greatly.[28] The expansion in the number and variety of actors involved in human rights work can be seen as occurring in three directions: vertically, horizontally, and diagonally. The image of vertical growth refers to the way that the same human rights issue can now be addressed on at least three levels: local, national (also termed state or domestic), and international (transstate). Expansion has also occurred in a horizontal manner in that the kinds of human rights work accomplished at the same level has expanded dramatically, both in its subject matter and in its impact. Advocates operating at the level of global civil society, for example,

almost without exception articulate their demands for social justice, environmental responsibility, cultural recognition, economic security, and civil rights using the moral, legal, and political language of human rights.

Closely related to the horizontal changes are developments of a diagonal nature. This diagonal movement is seen in the growth of transnational advocacy networks and the accompanying increasing ability of human rights staff working on one level to voice their concerns in new ways, with new allies working on another level (on the same or different issue). One illustration of the diagonal movement is the boomerang effect, where nonstate actors, faced with repression and blockage at home, seek out state and nonstate allies in the international arena; in some cases these nonstate actors are able to pressure their governments from above to carry out domestic political change.[29] All these changes have left a deep imprint on the understanding and operation of human rights.

Nonetheless, the sense of coming full circle on human rights is supported by a sense of renewed urgency for human rights promotion and protection at the local and national levels.[30] The notion that states bear the primary onus of human rights protection is a basic tenet of the human rights field and can be found in numerous international instruments. The Universal Declaration of Human Rights, for example, states that human rights must be protected by the rule of law,[31] a reference to the role of domestic legal systems. All international human rights agreements ask that individual states make certain concessions and/or recognize certain rights, although none of them attempt to apply international rules without reference to domestic processes. As early as 1955, with the creation of the Program of Advisory Services and Technical Cooperation in the Field of Human Rights, the United Nations began what would become a long track record of supporting states in living up to their responsibilities for domestic human rights promotion. Three noteworthy indicators of UN support for domestic human rights efforts were the UN secretary-general's 1987 decision to establish the Voluntary Fund for Technical Cooperation in the Field of Human Rights; the willingness of the UN to use the World Conference on Human Rights in Vienna in 1993 to underscore the centrality of national-level human rights efforts;[32] and the UN secretary-general's decision in 2002 to use his hallmark address on UN reform to underscore the need to improve implementation of human rights norms at the national level, especially in countries emerging from war or transitioning from authoritarian regimes to participatory democracies.[33]

Answering the call to improve the protection of human rights at the national level, human rights advocates and governments turned to the creation of NHRIs. In the 1980s, NHRIs spread rapidly throughout Southern Europe, Latin America, Central and Eastern Europe, and Africa, becoming the chosen tool for states seeking to transition from authoritarian and other nondemocratic governments to fully participatory democracies.[34] Provisions encouraging the creation of NHRIs were also included in peace treaties, and, more recently, transnational activism has fostered their development in Asia and the Middle East.[35]

In addition to being the *product* of transnational activism, NHRIs have become the *producer* of activists themselves. This phenomenon was propelled through three stages. First, the door for NHRI activism opened in 1993, when the Vienna Declaration, an authoritative document adopted by the World Conference on Human Rights, explicitly "encourage[ed] the establishment and strengthening of national [human rights] institutions."[36] Second, transgovernmental activism by NHRIs drew greater recognition as an important advocate after a special post devoted to NHRIs was created in the UN Office of the High Commissioner for Human Rights (the Special Adviser on National Institutions, Regional Arrangements, and Preventative Strategies).[37] Finally, NHRI activism spread even further and became more institutionalized after the establishment, in 1994, of the International Coordinating Committee of National Human Rights Institutions. This new umbrella organization was charged with organizing and overseeing all international and regional linkages.[38]

In 2000, the Coordinating Committee began registering members based on their compliance with the Paris Principles,[39] international standards for NHRIs.[40] The Paris Principles prescribe several criteria essential for an effective and functioning NHRI: incorporation into legislation; operation independent from government; a membership that broadly reflects the composition of the society; and cooperation with civil society.[41] Only NHRIs that were able to attest to their own compliance with the Paris Principles were eligible to apply for membership in the Coordinating Committee. Starting in 2008, existing members of the Coordinating Committee also agreed to submit to a "universal periodic review" mechanism to prove their continued full compliance with the Paris Principles. Under this system, each NHRI receives one of four grades: (1) those in full compliance are awarded an A; (2) those seeming to comply with the Paris Principles but that do not have adequate documentation are given a grade of A(R) (accommodation with reserve); (3) those falling short of full compliance are given a B and are granted observer status; and

(4) those who are noncompliant with the Paris Principles are given a grade of C and are not permitted to participate or observe.[42] Current membership status can be found on the Coordinating Committee website.[43]

Even though the mandate of the NHRIs is geared toward the national level, many NHRI activities take place at the international level. In fact, one of the main platforms for NHRI activism at the international level has been United Nations treaty-monitoring bodies. With increasing frequency, NHRIs have found that they can use their "privileged access to public authorities" to act as a "channel through which civil society can carry the provisions and concerns to officials."[44] Significantly, the decision of the UN Commission on Human Rights in 1999 to allow NHRIs to participate in relevant meetings from a special section of the floor devoted to "national institutions" was extended in 2005 by the new UN institution replacing the Commission, the United Nations Human Rights Council.[45] On the regional level, NHRIs also exert influence through regional bodies. The Asia Pacific Forum, to take one illustration of a particularly active regional body, has a strong record of responding to requests from governments in Asia for assistance in the establishment and development of national institutions.[46]

The proliferation of NHRIs and their increased visibility at both the international and national levels is in direct response to the changing field of human rights. Human rights have in a sense come full circle—from local, to international, and back to local—but they have done so within the context of enormous growth in human rights instruments and institutions. The explosion in NHRIs has created a paradox: Governments throughout the world have agreed to be criticized by institutions of their own making, based on criteria that they routinely fail to meet.[47]

Research Questions

The sudden proliferation of NHRIs has inspired a flurry of academic scholarship,[48] conference papers,[49] and reports of nongovernmental advocacy groups.[50] Book-length reports on NHRIs have been published by the leading UN expert on the topic, Bertrand Ramcharan,[51] and by a leading NHRI (the Danish Institute for Human Rights);[52] and a survey of African NHRIs has also appeared.[53] The existing literature largely concentrates on the creation of NHRIs, often advocating for the adoption of NHRIs with certain organizational structures and mandates.[54] A sizable percentage of the scholarship in this area is devoted to evaluating specific NHRIs under the Paris Principles. Although I recognize the

importance of the Paris Principles (see summary in Appendix 1), I want to move beyond them and focus not only on mandate creation and independence of NHRIs but also on their day-to-day workings.

The overarching research question informing this study is, How does the local context influence the operation of NHRIs? By situating NHRIs in the particularities of local politics, I seek to present a rich and more complex understanding of the social and political experience of NHRIs and, consequently, their contribution to the advancement of human rights.[55]

One measure of the efficacy of nongovernmental organizations (NGOs) is their ability to address the issues that matter in people's everyday lives. For each country study in this book, I begin with factual information, not just to provide context for readers otherwise unfamiliar with the country (although that is important), but to help identify the political and social issues that could be addressed by the NHRI. Unpacking this question, I ask, What is the link between the local narrative and the work of the NHRI? Does the NHRI choose to work only on a limited slate of issues and to ignore others? Does it favor work on some types of issues over others (e.g., civil and political rights over economic and social rights)? To what extent does the NHRI remain relevant by addressing the issues people care about most?

The narrative of each country also helps to expose potential limitations on the work of the NHRI. The degree to which people are open to and interested in certain human rights issues, as well as their receptiveness to NHRI efforts at rights promotion, is informed by their history and by the local political context. People with a historical distrust of government, for example, may be wary of government action in any area, whereas people accustomed to government beneficence may not view rights as relevant for the betterment of their already good lives. Whether the country is in transition from war to peace and/or from one political system to another will also affect the agenda and operation of an NHRI, as will the source of the impetus for the NHRI. Thus my inquiry leads to such questions as, To what can the establishment of the NHRI be attributed? The demands of civil society within that country? The interests of the state? The interests of other states?

Case Selection

The list of examples of NHRIs under study here is atypical: Denmark, Northern Ireland, Bosnia-Herzegovina, Germany, and the Czech Republic (see Appendix 2 for each country's mandate). The first criterion for case selection was

geographic and was motivated by a desire to emphasize that the local political context is important for the domestication of human rights norms in all countries, not just in the "south." Studies of the impact of local politics on the domestication of international human rights norms typically involve a European look at some faraway "other," examining Asia, Africa, and, increasingly, the Middle East.[56] But European political contexts also influence the processes through which NHRIs support the domestication of international human rights. By focusing on Europe, I address a geographic area that is largely overlooked in the literature on NHRIs and, more broadly, in work on international human rights institutions and norm diffusion.

The second criterion for case selection concentrates on the nature of the political sphere. Much of the existing literature on NHRIs focuses on the role these organizations play in countries seeking respectability and on countries desiring full entry into regional and international security and trade bodies. For well-established stable democracies, however, NHRIs also wield considerable influence over domestic expectations and help to shape both the domestic and foreign policy agenda. In addition, by addressing social and political problems at home in more mature democracies, a well-functioning NHRI can build a state's perceived legitimacy for entering into human rights disputes abroad. Thus I have tried to include both mature and transitional democracies and to look at countries where an NHRI was created in response to problems within the country and at countries where an NHRI was created primarily as a response to external factors. At the same time, I have chosen cases to reflect the fact that the creation of some NHRIs is primarily in response to political demands arising from outside state borders, whereas the existence of other NHRIs reflects domestic pressures.

The third criterion for selection was the NHRI type. In particular, I considered whether the NHRI adopts a narrow ombudsman's model, where great authority is vested in a single person in the ombudsman position, or whether a broader commission or committee model is followed, in which decision making is made by a collective. The goal was to provide as broad and inclusive a picture as possible while also acknowledging that pragmatic considerations prevent examination of all types of NHRIs in Europe.[57]

Weighing these criteria in balance, I selected the countries in this study because of the different insights they provide into the domestication of international norms and the competing pull of local politics. Denmark was chosen to lead the country studies because of the leadership role it plays in NHRI

advocacy. Regarded as a model NHRI by many states, Denmark's experience with NHRIs shows how these institutions can play a key role in states regarded not only as human rights supporters but also as human rights leaders. At the same time, the Danish country study exposes some of the limitations of NHRIs in progressive countries.

Northern Ireland and Bosnia-Herzegovina were included to open discussion on the significance of NHRIs in states emerging from conflict. These two country studies differ greatly in the nature and degree of international involvement in the creation of their NHRIs. The Bosnian system was imposed entirely by outsiders, and the Northern Ireland institution was more locally conceived and thus enjoys more local legitimacy. However, both cases also illustrate the difficulties inherent in creating NHRIs in deeply divided societies and under considerable international pressure. In both countries, the general public views human rights with mistrust; in addition, the human rights advocates themselves face difficulty in transitioning their approach from one of divided struggle against an enemy to one of common struggle for human rights for all. These two country studies suggest that a successful NHRI founded in postwar times must find a way to address present and ongoing violations and adapt and change as the state matures and evolves.

The Czech Republic was identified for its ability to disclose how NHRIs matter in states experiencing relatively smoother transitions to participatory democracy. Unlike Northern Ireland and Bosnia-Herzegovina, the Czech Republic does not seek to use its NHRI as a means for addressing deep communal divisions created through a recent (or ongoing) conflict. Nor, unlike Denmark, does the Czech Republic harbor ambitions of becoming a world leader on NHRIs. The Czech Republic seeks simply to use its NHRI to improve the public trust in government and to initiate public dialogue on human rights concerns as they arise. The success of the Czech ombudsman's office in meeting these more modest goals illustrates the old adage that sometimes less is more.

Finally, Germany was selected because of its comparability to all the other cases. Like its neighbor, the Czech Republic, Germany shares a history of Soviet dominance; however, in many respects Germany is a polar opposite. Unlike the Czech Republic, only one part of Germany was under Soviet control, and eventually the two halves of the country were reunited. This difference had a profound influence on the historical development of human rights politics in both the German Democratic Republic (GDR) and the Federal

Republic of Germany (FRG). The points of convergence between Germany and Denmark relate to different aspects of history: the growth of industrial and labor safeguards and an ethos of egalitarianism and solidarity. Germany, Bosnia-Herzegovina, and Northern Ireland all share a historical relationship to conflicts and the manner in which those conflicts are reflected in everyday political and social life. Yet the conflict that has long provided the reference point for West Germans, World War II, differs significantly from the conflicts in Northern Ireland and Bosnia-Herzegovina, both in the nature and degree of human wrongs perpetrated and in the timing. Given the resulting differences in the political and economic context in Germany, it is no wonder that the German NHRI carries its own unique challenges in meeting its mandate.

To be sure, I have not included many European NHRIs of interest. However, practical considerations required narrowing the selection to a manageable number. Future work might involve additional NHRI country studies in Central and Southern Europe, in particular, the Commission Nationale Consultative des Droits de l'Homme (National Consultative Commission on Human Rights, France),[58] the Greek National Commission for Human Rights,[59] and the ombudsman's offices in Spain[60] and Portugal.[61] However, the intention of this project is not to present an overview of *all* types of NHRIs.[62] Rather, I seek to use close scrutiny of a handful of countries to better understand how they operate, paying explicit attention to whether and how the effectiveness of the NHRI in question is linked to the political context of the country.

"Snowball Interviewing"

The research methodology I used for each country study can be described as the snowball approach.[63] Snowball sampling relies on referrals from initial interview subjects to generate additional subjects. For this project, I began by collecting primary source material, such as organizational mandates and publications, and then expanded the study to interviews with current and recent NHRI staff and constituencies, including journalists, academics, members of other advocacy groups, and social justice initiatives. I then followed up on leads from these initial inquiries, both in person and by e-mail, thus expanding the scope and depth of the research.

The snowball approach has been criticized for introducing bias because the technique itself reduces the likelihood that the sample will represent a good cross-section from the population. However, this danger does not al-

ways apply. When, as in this case, a study does not seek to use interviews as a means of sampling a population, the bias inherent in snowballing is rarely troubling. This is especially true if the interviews are not being conducted for the purposes of determining factual accuracy for a given population. Indeed, throughout the text, references to interview subjects occur only where the assertions are more than contextual in their importance. The resulting text could not have been written without my having spent time in the various countries and without having the benefit of collegial exchanges in all countries under scrutiny here. Any errors that have made it into print, however, are mine alone.

Book Structure

The structure of this book is straightforward. Each of the five country studies is presented in its own chapter. Realizing that readers of this text will often have limited knowledge about the human rights context of the areas under study, the first sections of each chapter outline the relevant political, economic, and social context and introduce the reader to the immediate human rights concerns in each particular country study. The last section of each chapter examines the work of the country's specific NHRI. Although each country case illustration in this volume individually contributes to understanding the importance of local context in the domestication of international norms, the richness of the analysis comes from reading the resulting country studies against one another. In the concluding chapter I draw together the collected findings to offer specific recommendations and applications to other cases.