

2 The Office of the High Commissioner for Human Rights

When the United Nations General Assembly agreed to the establishment of the Office of the High Commissioner for Human Rights (OHCHR) in December 1993, many human rights advocates were sure that "a new era of commitment to ensuring human rights had arrived."¹ Decades of human rights standard-setting had at last given way to a new age of human rights implementation and enforcement. As Felice Gaer recalls, "During the Cold War years – when Soviet bloc countries routinely challenged the relevance of individual rights – the discussion of specific violations by countries remained a largely taboo topic within UN human rights bodies."² When the Cold War ended, anything seemed possible. All hopes were pinned on the OHCHR and expectations were high that the UN human rights system would mature and its effectiveness would significantly be enhanced.

Ever since the office's founding, then, a heavy burden has been placed on the OHCHR. New challenges are constantly being presented to the High Commissioner charged with leading the office. With the increased awareness of human rights issues and the growing tendency of states to invoke human rights as integral to foreign policy decisions, the expectations upon the UN human rights system have increased dramatically in recent years. Demands on the Office of the High Commissioner for Human Rights further increased as a result of the direction given by the UN Secretary-General, Kofi Annan, as part of his "Agenda for Further Change."³

The Secretary-General's report, submitted to the 57th session of the General Assembly in September 2002, highlighted the importance of the United Nations' work on human rights and the need to build upon achievements while simultaneously strengthening the human rights structures of the organization. Among other measures, the report required the High Commissioner to undertake two enormous tasks: mainstreaming human rights into the work of all UN activities and

agencies,⁴ and developing and implementing a plan to strengthen human rights-related United Nations actions at the country level. Today, the mandate of the office continues to expand even as it remains grossly underfunded and understaffed.

The discussion of the OHCHR in this chapter is divided into three parts. First, the chapter describes the origins of the office, highlights the expectations of the main actors advocating for the office's creation, and identifies the OHCHR's founding mandate. Second, it identifies the key activities of the OHCHR, and in so doing, illustrates the OHCHR's work, using examples from the issue of child rights. Finally, the chapter concludes with a preliminary evaluation of the work of the office, identifying both successes and opportunities for improvement.

Origins and organization

The idea that human rights enforcement would be facilitated by placing broad authority in a single individual can be traced as far back as 1947. At the time of the drafting of the Universal Declaration of Human Rights, Professor René Cassin suggested the establishment of a post of Attorney-General for Human Rights who could assist aggrieved individuals and groups in proceedings before a new international human rights tribunal.⁵ Cassin's proposal was flatly dismissed as unworkable. Subsequent proposals for a human rights commissioner abandoned the idea of a human rights tribunal but instead stressed the general need to create institutions for human rights enforcement. Remembering the lessons of the Holocaust, Jewish organizations were among those taking the lead in pressing for strong international human rights enforcement mechanisms. In 1949, the Consultative Council of Jewish Organizations, an organization that took a significant role in the process because it hoped to prevent another Holocaust, referred to the Cassin proposal in urging the Commission to create an office for a human rights commissioner, even in the absence of an international human rights court.

In 1950 and 1951, Uruguay submitted proposals to the General Assembly for establishing a human rights attorney-general that would provide a means of implementing the International Covenant on Civil and Political Rights, which was being drafted at that time.⁶ The concept was for an attorney-general for human rights to receive and review petitions from individuals and groups and to present complaints on their behalf. Although this proposal was more successful at garnering attention, it also failed to attract substantial support.

Another proposal began circulating in the early 1960s when, in a speech at Columbia University, Jacob Blaustein outlined his proposal for a High Commissioner who could coordinate and facilitate human rights investigations, albeit without the power of an attorney-general. In 1964, non-governmental organizations (NGOs) gathered in a series of three meetings to consider proposals for the creation of the new post: first, in Paris under the auspices of the World Veterans Association; second, in London under the auspices of Amnesty International; and third, in Geneva under the auspices of the International Commission of Jurists. With strong input from the NGOs in attendance, Costa Rica introduced a draft proposal to the UN Commission on Human Rights in 1965 which provided for the establishment of a High Commissioner for Human Rights.

The Costa Rican plan succeeded. Following the completion of the working group's study, the Commission adopted the Costa Rican proposal. The Commission directed the Economic and Social Council to submit its draft resolution to create a United Nations High Commissioner's Office for Human Rights to the General Assembly. Over the objections of socialist states, in 1967, the Economic and Social Council recommended that the General Assembly establish the post of High Commissioner, but each year the Assembly postponed a decision regarding the recommendation and the proposal was perpetually sidelined. Although it was discussed intermittently during the 1970s, the idea of creating a High Commissioner for Human Rights was unable to achieve consensus during the entire Cold War.

Human rights standard-setting and institution-building did progress, however, during the Cold War. Eager to signal their allegiance to human rights, states signed treaty after treaty, and through the procedures of the UN, agreed to a host of new treaty-based human rights committees, working groups and special rapporteurs. These human rights institutions and mechanisms proved effective in setting minimum standards on human rights and in drawing public attention to abuses. Most importantly, throughout the Cold War, international human rights institutions and mechanisms served to provide a focal point around which concerned citizens could organize. Through these structures, information on human rights standards became more accessible, and following this, NGOs and networks of activists made use of the new opportunities for advocacy and for making human rights claims heard. Ultimately, the burgeoning of international human rights organizations and laws provided the framework for advocacy networks to begin identifying human rights abusers and shaming them into addressing their abuses. Benefiting from an infor-

mation and communication revolution that facilitated the growth of advocacy networks and improved the sophistication and quality of their advocacy, human rights NGOs grew in their influence and their efficacy. They began to demand better enforcement mechanisms from within the same structures that had given them this legitimacy.

The human rights landscape looked very different at the beginning of the 1990s than it did at the end of the 1970s, with more advocates and institutions addressing more issues in more places. Yet even as human rights NGOs grew in number and human rights institutions proliferated, the number of claims of human rights violations increased and the record of enforcement grew ever more dismal. Each year, the UN continued to receive an increasing number of complaints relating to serious human rights violations. In its report to the 1993 World Conference on Human Rights, Amnesty International stated that the UN Working Group on Enforced or Involuntary Disappearances had received 17,000 reports of "disappearances" in 1991. At the end of 1992, even the UN Secretary-General conceded that the UN had decidedly failed to put an end to massive human rights violations.⁷ Nearly 50,000 complaints had been received by the Working Group on Enforced or Involuntary Disappearances and transmitted to governments by 2001.⁸

Many of the political struggles that emerged in the wake of the Cold War resulted in new campaigns of repression and new wars in which civilian populations were the targets. To some extent, the United Nations committed itself as never before to protecting civilians, dispatching peacekeeping and peace-monitoring missions in the former Yugoslavia, Cambodia, El Salvador, Guatemala, and Haiti.⁹ But these efforts, emanating from UN headquarters in New York and far away from the UN's human rights mechanisms in Geneva (then centered around the UN Centre for Human Rights), were deeply criticized. The personnel assigned to the missions often lacked training in human rights and their missions were ineffective in protecting international human rights treaty standards. The continuing marginalization and isolation of the United Nations' human rights program proved troublesome: "Denounced by diplomats and bureaucrats as 'political,' the human rights program was considered by some countries as a threat to development assistance, and by others, to the resolution of long-standing armed conflicts."¹⁰

As a solution to the growing human rights enforcement gap, the idea of a UN High Commissioner for Human Rights re-emerged as an attractive prospect. Many human rights NGOs claim credit for having resurrected the idea. According to one of the most persuasive accounts,

the campaign for a new office can be traced to a 1992 meeting of the Dutch section of Amnesty International. Andrew Clapham recounts that "the idea was [then] promoted by Amnesty International at the Tunis regional preparatory meeting to the World Conference [on Human Rights] in December 1992 and became the centre-piece of its proposals to the World Conference."¹¹ At the time, the idea was for a new organizational body to be headed by a high-level UN official to respond promptly to serious violations of human rights.

On the eve of the World Conference, the UN Secretary-General voiced his opposition to the plan. He agreed that both "the principles and practice of human rights are under stress." He suggested, however, that the solution lay in "quiet diplomacy," not in "[p]roposals for new bureaucracies" which "may only arouse discontent and resistance at a time when liberality and leeway are called for."¹² The NGOs flatly rejected this reasoning. Using the preparatory processes for the World Conference and the World Conference itself to voice dissent, the NGOs urged that years of quiet diplomacy had failed and that the new post had the potential of increasing participation in and satisfaction with the UN human rights system.

Ultimately, support for the OHCHR proved to be extremely broad and strong. The NGO and government representatives supporting the proposal succeeded in obtaining the following endorsement for the creation of the office in the Declaration and Platform for Action that emerged from that World Conference on Human Rights:

An Office of a High Commissioner for Human Rights should be established as a new high-level independent authority within the United Nations system, with the capacity to act rapidly in emergency situations of human rights violations and to ensure the coordination of human rights activities within the United Nations system.¹³

Although not a legally binding treaty, the Vienna Declaration was agreed to by the 171 state representatives in attendance at the meeting and, as evidence of international consensus on the matter, it carried great weight as an indication of state consensus on human rights and developing state practice.

The creation of the new office was made official six months after the Vienna Declaration was passed. In December 1993, the UN General Assembly passed resolution 48/141, establishing the Office of the High Commissioner for Human Rights as the umbrella and coordinating body for all of the UN human rights machinery. Based at the Palais

Wilson in Geneva, Switzerland, with an office at United Nations headquarters in New York, the High Commissioner for Human Rights was tasked with leading this office. A ranking Under-Secretary-General of the United Nations, the High Commissioner carries great authority. Because human rights is considered a "cross-cutting issue," the High Commissioner is a member of all four Executive Committees of the United Nations: Peace and Security, Economic and Social Affairs, Development Cooperation, and Humanitarian Affairs.

The mandate of the High Commissioner is to do the following:

- promote and protect the effective enjoyment of civil, cultural, economic, political and social rights, including the right to development;
- provide advisory services, technical and financial assistance to states that request them;
- coordinate United Nations education and public information programs in the field of human rights;
- help remove the obstacles to the full realization of human rights and prevent the continuation of human rights violations throughout the world;
- engage in a dialogue with governments in order to secure respect for human rights;
- enhance international cooperation for the promotion and protection of human rights;
- coordinate human rights promotion and protection activities throughout the United Nations system; and
- rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights in order to improve its efficiency and effectiveness.¹⁴

Of all the political debates that arose over the creation of the OHCHR, none was more significant than that over the decision to give the right to development prominence in the new office's mandate.¹⁵ The US had a long track record of opposing economic rights, but in particular the right to development. As Stephen Marks explains, the US has been "frustrated by what it perceives as the determination of countries in the Non-Aligned Movement (NAM) to force their interpretation of this right on what is essentially the group of donor states."¹⁶ It was over the objections of the United States that the UN General Assembly in 1986 proclaimed development as a human right. At that time, the United States cast the only vote against the Declaration on the Right to Development (eight other countries

abstained).¹⁷ The US position remained unchanged even after the 1993 Vienna Declaration and Programme of Action called the right to development "a universal and inalienable right and an integral part of fundamental human rights."¹⁸ Likewise, the US position did not budge after the General Assembly required the High Commissioner to establish "a new branch whose primary responsibilities would include the promotion and protection of the right to development."¹⁹

In one of the recent statements of the US position on the issue, the US representative to the Human Rights Commission's Working Group on the Right to Development essentially told the group that it should not exist. "States ... have no obligation to provide guarantees for implementation of any purported 'right to development,'" the representative sneered.²⁰ The US NGO community was split on whether to support a right to development, as were many other states and the international community of NGOs. The four main positions on the issue are summarized in Box 2.1 below.

Box 2.1: The politicization of the right to development (RTD)²¹

Four distinct political positions can be detected:

- 1 The "Like-Minded Group" (LMG) — view RTD as central to reducing the negative impacts of globalization, differential access to technology, the crushing debt burden, and other distributive justice issues; not necessarily accepting of human rights, but rather focuses on what the international community should do to improve conditions for development (i.e. Algeria, Bangladesh, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, and Vietnam).
- 2 Moderate, human rights-supporting states — seek to integrate their economic, social and cultural rights into national policies and want to maintain a positive relationship with the donor community, the international development agencies, and financial institutions (i.e. many Central and Eastern European Countries).
- 3 Cautious and skeptical countries — support the RTD as a vehicle to improve the dialogue between developed and developing countries and would like to see some progress made in

implementing this right, but aware of difficulties of enforcement and question universality (i.e. European Union).

- 4 Opponent — against recognition of RTD (i.e. United States and, on occasion, Japan, Denmark, and Australia).

As of August 2004, the OHCHR had over 560 employees, with over 260 concentrated in a Geneva office and 9 in a New York office. The remaining personnel were spread out in country and regional offices around the world. The regular budget in 2004 was US\$27.1 million, with an additional US\$54.8 million being sought from voluntary contributions. The mandate of the office is to promote universal ratification and implementation of human rights instruments; assist in the development of new norms; support human rights organs and treaty-monitoring bodies; respond to human rights violations; produce manuals, handbooks and training materials; and develop technical cooperation programs. Today, the work of the OHCHR is divided into an Executive Office, an Administrative Branch and External Relations Branch, and four additional functional branches:

- *The Research and Right to Development Branch* is involved in all activities related to the promotion and protection of the right to development, and is also responsible for carrying out research projects on the protection of human rights.
- *The Treaties and Commission Branch* serves as a secretariat to the six treaty bodies, the voluntary funds, and to the Commission on Human Rights and its subsidiary bodies.
- *The Capacity Building and Field Operations Branch* coordinates all advisory services and technical cooperation projects and the human rights field offices worldwide.
- *The Special Procedures Branch* provides support to the Special Rapporteurs of the Commission on Human Rights and services other special procedures.

Key activities

Technical assistance

The term "technical assistance" refers to a variety of activities, in which OHCHR human rights specialists offer practical help with the

implementation of international human rights standards. (See Table 2.1 on technical assistance) For years, a wide range of actors have sought the expertise of the OHCHR, including both UN bodies and states, as well as non-governmental actors at international, regional, and local levels.

One of the important innovations stemming from the creation of the Office of the High Commissioner for Human Rights is the creation of a streamlined process for requesting and receiving technical assistance in the field of human rights. Instead of involving other parts of the UN (as the previous procedure required), the whole matter remains within the purview of the OHCHR. The technical assistance procedure can be broken down into a five-step process: (1) a request for technical assistance is made to the OHCHR; (2) the OHCHR conducts a needs assessment (based on such factors as the availability of other international governmental and non-governmental organizations to undertake the task and the comparative advantage the OHCHR brings to the project); (3) should there be a need for the project that the OHCHR can address, a project is formulated; (4) the project is implemented; and (5) the project is independently evaluated.²²

Even before the establishment of OHCHR, the UN placed special emphasis on advising states on the domestic implementation of human rights. Since 1955, the United Nations Technical Cooperation Programme in the Field of Human Rights has been assisting states, at their request, in the building and strengthening of national structures that have a direct impact on the overall observance of human rights and the maintenance of the rule of law. The creation of the OHCHR has led to an expansion of activities at national levels, providing assistance in training law enforcement officials, revising national legislation or reforming the justice system to incorporate international human rights standards, and creating strong national structures capable of supporting a human rights-respecting democracy.²³

Assistance has taken the form of expert advisory services, training courses, workshops and seminars, fellowships, grants, provision of information and documentation, and assessment of domestic human rights needs. Technical cooperation often takes place in countries where the UNHCHR has a country office or field presence, but it also can be provided as a stand-alone service.

While technical cooperation activities are not a substitute for the important monitoring and investigating aspects of the United Nations human rights program, they can be seen as an integral part of it. The Secretary-General, as well as the Commission on Human Rights, has repeatedly emphasized that a government's responsibility to account

for the human rights situation in its own territory does not decrease simply because the OHCHR has stepped in to provide technical assistance. Additionally, governments do not become exempt from their monitoring duties if they are engaged in various other United Nations procedures. Rather, technical cooperation activities are meant

Table 2.1 Forms of technical assistance²⁴

Category of assistance	Activities
Administration of justice	Training courses for judges, lawyers, prosecutors and prison officials, as well as law enforcement officers.
Constitutional and legislative reform	Advisory services provided by experts, organization of conferences, provision of human rights information and documentation, assistance in drafting laws, or support for public information campaigns to ensure the involvement of all sectors of society in law-making.
National parliaments	Advisory services on ratification of international human rights instruments, the provision of information on comparative national human rights legislation, the role of parliamentary human rights committees.
The armed forces	Training activities for military officers in international human rights and humanitarian norms.
Electoral assistance	Preparation of guidelines for analysis of electoral laws and procedures, publication of a handbook on human rights and elections, and public information relating to human rights and elections.
Treaty reporting	Training activities for government officials in preparing state reports.
Non-governmental organizations and civil society	Assistance to non-governmental organizations in the context of its country activities, by including them in seminars and training courses and supporting appropriate projects they have developed.
Training materials	Development of a series of training manuals and handbooks, for use by both instructors and participants. See: www.unhcr.ch/html/menu6/2/training.htm .

Human rights education Work to promote human rights education by:

- developing human rights education and training materials;
- supporting national efforts for human rights education, in the context of its Technical Cooperation program;
- facilitating information-sharing, through international and regional seminars and workshops and the development of educational resources;
- supporting local efforts for human rights education through the Assisting Communities Together project, which provides financial assistance to human rights grass-roots initiatives.

National plans of action Advising states in the drawing-up of national action plans identifying what steps needed to improve promotion and protection of human rights.

to support and strengthen state monitoring and investigation. In fact, as the International Council on Human Rights Policy has noted, when technical assistance is done properly, it entails fundamental structural change and thus is even more demanding—and more intrusive—than monitoring and reporting.²⁵

Country offices

The OHCHR has found it necessary to expand its work from merely providing project-specific assistance and advice to actually creating offices in those countries where an intensive, long-term presence is both appropriate and requested. In contrast to technical assistance, which is project-oriented, country offices are geographically-based endeavors. The hope is that the OHCHR staff who live in-country are likely to be more effective as they are able to understand both the mandates and the practical abilities of their organization, in addition to the cultural, political and legal contexts of the countries in which they are working.

The presence of an OHCHR office can also improve the confidence and skills of local staff by providing a measure of much-needed safety and protection. This enables the OHCHR and local partner organizations to engage civil society and enhance political participation, thus

facilitating an end to conflict situations and human rights abuses. Finally, an OHCHR office as a permanent presence can help increase the accountability of governments by acting as a long-term watchdog, ensuring that human rights abuses are addressed openly and honestly—thus increasing opportunities for new democracies to develop.

Field presences (field operations)

Along with country offices, an important new development is the creation of field presences. Over the years, field presences have grown in size and complexity. In 1998, the OHCHR summarized their growth as follows:

The nature and format of OHCHR's field presences have varied considerably over time, ranging from deployment of two field officers in Zagreb with the mandate of providing support to the Special Rapporteur on Human Rights in the ex-Yugoslavia, to the establishment of a fully fledged office in Cambodia with a technical cooperation and monitoring mandate, to the launching of the Human Rights Field Operation in Rwanda, to the recent establishment of field presences linked to the implementation of cooperation projects (Malawi, Mongolia, Gaza).²⁶

Some field presences are aligned with peacekeeping operations while others count observation and documentation as their sole mandate and begin only after conflicts cease.²⁷

The first large-scale field presence was the Human Rights Field Operation in Rwanda (HRFOR), set up during the chaotic aftermath of the 1994 genocide. Deployed following the genocide in 1994, and ending its term in July 1998, HRFOR's goal was not only to meet "the most immediate and pressing needs, but also to put in place medium- and long-term initiatives to promote sustained assistance to the people of Rwanda with respect to human rights protection and promotion."²⁸

According to the agreement reached between the OHCHR and the government of Rwanda, HRFOR had four separate units for these functions, in addition to a headquarters. The Operations and Documentation Unit compiled reports and analyzed the human rights situation based on the information gathered by the field monitors. The Legal Unit focused on projects related to the administration of justice, including monitoring of the genocide trials. In particular, the Legal Unit assisted the Prosecutor's Office, trained the gendarmes and the

communal police, and worked with human rights organizations to increase their capacity in the same areas. The Education and Promotion Unit worked to improve the situations of the most vulnerable groups in Rwandan society, including women and children. Last, the Security and Communications Unit provided for the security of HRFOR staff through liaison work with the Rwandan authorities and by training personnel in safety techniques.

The most striking feature of field presences is their ability to monitor human rights where—and often when—abuses are happening. In Rwanda, the intensive presence of the HRFOR monitors was intended to function as a confidence-building measure; the goal was to produce a climate and an infrastructure capable of accounting for the past, building for the future, and strengthening civil society so that the political solutions absent in the early 1990s are available to the population when the tensions of conflict next begin to rise. Although its early work came too late to prevent conflict, HRFOR helped contribute to the resolution of the horrific violence of 1994 and to the creation of a functioning democracy. It thereby contributed to long-term structural prevention of conditions like those present before the genocide in 1994.

The initial deployments in Rwanda were severely constrained by financial resource problems, and HRFOR came to be seen as part of the United Nations Assistance Mission for Rwanda (UNAMIR) band-aid operation, unable to staunch the extremes of the genocide. Although HRFOR's mission was not able to stop the genocide, one must view the international community's efforts in Rwanda as a whole. It was only later, once some semblance of order was established in the country, that HRFOR's efforts began to pay off through capacity-building and infrastructural development.

The number of human rights field presences has grown from 0 in 1991 to 48 in 2004. The overarching goal for every field presence is to promote compliance with international human rights standards by governments. In keeping with the second reform goal of the Secretary-General to focus on human rights enforcement at the regional and local level, field presences have begun to focus on strengthening the capacities of UN Country Teams. These measures are intended to build national capacities to implement human rights protection systems. The intention is that as the reforms take place, the OHCHR representatives perform more advisory duties and fewer direct activities.²⁹

Since they are established with the agreement of each country concerned, the specific objectives of different field presences vary. The activities of field presences range from providing technical assistance in such matters as revising national legislation, to offering training for

law enforcement officials, to monitoring country conditions. Human rights monitors often report directly to the High Commissioner, but they also may report to the Commission on Human Rights. Box 2.2, below, is an excerpt from an extremely influential field report from June 2004, from the High Commissioner for Human Rights to the Chairperson of the Commission for Human Rights, regarding the human rights situation in Iraq.

Box 2.2: Example of a field report from the OHCHR

Executive Summary

1. The fall of Saddam Hussein removed a government that preyed on the Iraqi people and committed shocking, systematic and criminal violations of human rights, which were documented in detail since 1991 by the Special Rapporteur of the Commission on Human Rights on the human rights situation in Iraq.
2. After the occupation of Iraq by Coalition Forces there have, sadly, been some violations of human rights, committed by some Coalition soldiers. Governmental leaders of the countries concerned have, at the highest levels, condemned these violations and have pledged to bring those responsible to justice and to uphold the rule of law. It is imperative that this be done, with accountability to the international community.
3. The serious violations of human rights and humanitarian law that have taken place must not be allowed to recur. Preventive and protection systems must be put in place.
4. It is crucial that protection arrangements be strengthened as a matter of the utmost urgency. This concerns oversight of the military forces and the building up of the protection institutions of the new Iraq. As far as the first area is concerned, consideration could be given to the designation of an International Ombudsman on Human Rights and Humanitarian Law vested with competence to issue periodic public reports on compliance by Coalition Forces with international norms of human rights and humanitarian law.

5. The Iraqi Interim Government should rapidly announce the designation of an Iraqi Legal and Judicial Reform Commission to recommend immediate reform to Iraqi laws that violate international human rights standards and where there is an absence of law, make provision for due process protections in accordance with its international obligations. In any event, since laws have not been substantially reformed since the 1960s, the Commission should undertake long-term reform of the legal framework to ensure that certain egregious provisions of the Iraqi Penal Code, suspended by order of the Coalition Provisional Authority (CPA), are eliminated and that the separation of the judiciary into an independent branch of government, as reflected by CPA order and the Transitional Administrative Law (TAL), is maintained.
6. In its approach to transitional justice, the Iraqi Interim Government should develop a strategy for addressing the legacy of brutal authoritarian rule and massive human rights abuses in Iraq. Such a strategy must be centred on the population's needs, attitudes and perceptions of transitional justice. Only effective and meaningful consultation with legal actors and the public at large will ensure a process that is considered legitimate. This process must address such issues as past human rights abuses, justice and accountability mechanisms and non-judicial measures such as vetting, truth seeking and reparations in a holistic, coordinated and coherent manner.
7. The Iraqi Interim Government may wish to undertake a review of the Iraqi Special Tribunal Statute so as to ensure that the criminal justice process complies with international fair trial standards, and that recent developments in international criminal law are taken into account.
8. It would be important to consider the need to establish an Iraqi Truth and Reconciliation Commission.
9. The Iraqi Interim Government should designate a Reparations Commission to develop a reparations programme.
10. Given the continuing violence, the Iraqi Interim Government will need to develop adequate mechanisms so as to ensure

the effective security of legal actors, defendants, victims and witnesses.

11. The Iraqi Interim Government should name the members of the independent Iraqi National Human Rights Commission as soon as possible.
12. The Iraqi Interim Government should also designate the Iraqi Human Rights Ombudsman as soon as possible.
13. The Iraqi Interim Government should consider and take steps to support Iraqi civil society organizations for the promotion and protection of human rights. This task could be facilitated by the Iraqi Ministry of Human Rights, with international assistance.
14. The Iraqi Ministry of Human Rights should be given all support nationally and internationally to help it discharge its responsibilities for the promotion and protection of human rights in Iraq.
15. An International Fund for Human Rights Education in Iraq should be established and supported.
16. There must be accountability for human rights in conflict situations and in the struggle against terrorism. The letter and spirit of international human rights and humanitarian law must be upheld. It is an imperative duty on all involved.

Bosnia and Herzegovina: the OHCHR field office at work

The OHCHR office in Bosnia and Herzegovina provides a good example of the range of activities that may be carried out by the OHCHR through a country office or other form of field presence. The OHCHR in Bosnia and Herzegovina (BiH) was originally established in 1993 to support the mandate of the Special Rapporteur (SR) on the former Yugoslavia.³⁰ In the Dayton Peace Agreement, the OHCHR was given a mandate to monitor the human rights situation in the country as well as to continue to support the SR appointed by the Commission. That element was ended in 2002. Until 2003, the office had a formal cooperation agreement with the UN Mission in Bosnia Herzegovina (UNMIBH) in relation to the provision of gender expertise and the training of International Police Task Force human rights officers. Under the direction of Chief of Mission Madeleine Rees,³¹ the office has concentrated on gender, discrimination, the protection of minorities and the rule of law with an emphasis on

social and economic rights. This has led to involvement in some of the most contentious areas of protection particularly relating to gender-based violence including the trafficking of women and children and the due process rights of those suspected of terrorism.

The OHCHR views its role in Bosnia and Herzegovina as serving "as a catalyst in respect of the promotion and protection of human rights and the rule of law, with a particular focus on those aspects not directly addressed through the mandates of others, and ... ensur[ing] [that] human rights promotion and protection becomes nationally sustainable."³² The office describes its approach as:

- identifying the situation on the ground in critical human rights areas of concern;
- analyzing the legislative and policy framework relating to the issue in light of relevant human rights standards; and
- working toward human rights compliance, including legislative and policy reform, and implementation.

The specific activities of the field office include: (1) treaty body reporting; (2) the Rights-based Municipal Assessment Programme; (3) the design of a Poverty Reduction Strategy Plan; (4) addressing the problem of gender-based violence and the trafficking in persons; (5) protection of the rights of those socially excluded as a result of conflict, such as families of missing persons, camp survivors and victims of torture, civilian war-disabled and witnesses to war crimes. In addition, the Bosnia field office is unique in explicitly making gender a cross-cutting issue throughout all of its activities.

The treaty body reporting activity focuses on strengthening the competency of Bosnian civil society to monitor the government's role in meeting its reporting obligations to the UN treaty bodies (see Chapter 4). BiH was remiss in all of its reporting obligations but since 2001 has tried to make up for its failings by working closely with UNICEF to produce reports on compliance with the specific provisions of the treaty bodies. The OHCHR was, for the first time, able to bring representatives of government to meet with NGOs to discuss and to listen to their views on the issues to be reported upon. This was profoundly effective in relation to the Committee Against Torture (CAT).

The Rights-based Municipal Assessment Programme (RMAP) refers to an effort to undertake rights-based assessments of selected municipalities throughout BiH with the aim of subsequently addressing those issues identified so that there can be real and participatory development. A rights-based approach to development is a conceptual framework for

the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. Craig Mokhiber explains:

Essentially, a rights-based approach integrates the norms, standards, and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations, and in the authoritative interpretations of the bodies established to monitor treaty implementation. The principles include those of participation, accountability, non-discrimination, empowerment and direct (and express) linkage to the international human rights instruments and standards themselves.³³

The very existence of RMAPs is evidence that even as the right to development remains controversial, the human rights framework is entering the practical realm of development implementation and planning.

According to Rees,³⁴ the goal of RMAPs, which are being undertaken in partnership with the United Nations Development Programme, is to train local stakeholders in rights-based analysis of development needs. A further objective of the project, Rees adds, is to generate increased participation of stakeholders. This work is based on the premise that human rights, including the right to development, are interrelated and indivisible. Human rights cannot be measured solely by gross domestic product (GDP), but must be measured by assessing a broad spectrum of indicators. Through rights-based assessments, the RMAP provides reports including analyses, baselines, and indicators specifically relevant to the municipality, against which progress can be measured and targeted programming can be designed and implemented.

As a condition of receiving funding, the World Bank requires Bosnia to create a Poverty Reduction Strategy Plan (PRSP). In helping Bosnia and Herzegovina meet its obligations for developing a PRSP, the OHCHR has introduced a rights-based approach to development. Unlike typical development approaches which emphasize economic efficiency, a rights-based approach seeks to foster the understanding of the human rights dimension of poverty. This approach pushes the OHCHR to focus on the process, to emphasize broad participation and identify gaps in human rights protection that either lead to poverty or are results of poverty, whether directly or indirectly. The OHCHR brought groups which had been excluded into the process, including trade unions, the families of missing persons,

women's groups, and others. This involved field testing the guidelines of the OHCHR on human rights approaches to poverty reduction to help identify the causes of poverty within these groups, and the steps which would be needed to address them. The aim was that this should then become part of the strategy of the government to address poverty at macro and micro levels.

The OHCHR has also spent considerable resources on the issue of trafficking in persons. Beginning in 1998, NGOs working in the border areas with Serbia and members of the International Police Task Force began reporting instances of women being trafficked into Bosnia and Herzegovina to work in the sex industry, primarily for the international workers ready to pay well for their "services." In the year 2000 alone, thousands of women passed through Bosnia and Herzegovina for this purpose.³⁵ To combat trafficking comprehensively, the OHCHR addresses its causes and consequences, emphasizing the rights of the victim, state responsibility, and appropriate law enforcement. Efforts to ensure coordination and collaboration have sought an integrated approach by working with the government, the NGOs and the international community to address the cycle of trafficking from prevention to reintegration. The main focus, given urgent circumstances, had to be on the immediate protection of victims, hence the need to build NGO capacity to run shelters, to train police and to reform legislation so that women were not prosecuted for status offences or prostitution, and ultimately to ensure their legal status in BiH for a sufficient period of time to enable recovery and an informed choice as to their next move. While the framework for this has been largely achieved, BiH is now a country of origin and the emphasis must now be on prevention which in turn is linked to an appropriate poverty reduction strategy.

In addition to integrating gender throughout all of its endeavors, the OHCHR project in Bosnia supports gender centers throughout Bosnia and Herzegovina. It also aims to mainstream gender issues throughout the operations of other international organizations at work in Bosnia. An extensive independent review of OHCHR technical assistance programs throughout the world notes that the OHCHR in Bosnia is the only OHCHR country office where activities are equally targeting men and women in design and implementation and ensuring participation of women and their inclusion among the beneficiaries.³⁶

The future of the OHCHR office in Bosnia and Herzegovina will depend upon the future of country offices generally. OHCHR is

reorienting its activities from country-specific programs to regional, issue-specific endeavors. In South-Eastern Europe, OHCHR has identified five issues of region-wide concern, namely: trafficking/smuggling/organized crime; impunity, including missing persons; refugees/internally displaced persons and vulnerable categories of migrants; human rights education and promotion; and rights-based approaches to development.³⁷ Accordingly, future programming will necessarily reflect priority issues of regional concern, while responding to needs that more particularly relate to the Bosnian context. That funding is limited only deepens the difficulty of putting together a responsive and effective program.

National human rights institutions

National institutions for the promotion and protection of human rights are official bodies established by law and resourced by national governments, but they are independent of those governments and have the power to investigate alleged abuses and promote protection of human rights. While the United Nations toyed with the idea of establishing national institutions to protect human rights for a long time, the involvement of the UN in the formation of national human rights institutions (NHRIs) is a relatively new phenomenon.³⁸ Only recently have policy analysis focused on the close link between strong and effective national human rights mechanisms and conflict prevention and, conversely, the relationship between the absence of functioning national human rights mechanisms and violent conflict. The OHCHR has actively supported their establishment and strengthening and their increasing involvement in human rights promotion and protection systems at the national, regional and global levels including participation in the Commission on Human Rights and its subsidiary bodies as well as the United Nations Treaty Body process.

The Secretary-General of the United Nations placed a priority on the development by the United Nations of the capacity of national institutions in his report of 9 September 2002. He noted that "the capacity of the United Nations to help individual countries to build strong human rights institutions will be strengthened." He further noted:

Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The emplacement or

enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principal objective of the Organisation. These activities are especially important in countries emerging from conflict.³⁹

As the centrality of national human rights mechanisms in democracy-building and conflict prevention has become more clear, the United Nations has in turn become more invested in encouraging the development of such institutions and seeking to provide guidelines for how they should operate.

The number of NHRIs increased from 36 in 1993⁴⁰ to 56 in 2004. The majority of existing national human rights institutions can be grouped together in three broad categories:⁴¹

- 1 “ombudsmen”—appointed by the parliament, the mandate of ombudsmen is to protect the rights of aggrieved individuals. Some countries have maintained the name “ombudsman,” while other countries have used different titles that are expressive of the duties of the institution, such as Parliamentary Commissioner for Administration (United Kingdom, Sri Lanka), Public Protector (South Africa), *Protecteur du Citoyen* (Protector of the Citizen, Quebec, Canada), *Volksanwalt* (People’s Advocate, Austria), and *Difensore Civico* (Civic Defender, Italian regions and provinces);
- 2 “human rights commissions,” which function independently from other organs of government, but may be required to report to the legislature on a regular basis (for example, in Canada, Australia, New Zealand, India, Sri Lanka, Uganda and South Africa);
- 3 hybrid institutions that expressly have been given or that in practice undertake two roles: to protect and promote human rights and monitor government administration (for example, in Poland (Commissioner for Civil Rights Protection, 1987), Croatia (National Ombudsman, 1992), Slovenia (Human Rights Ombudsman, 1995), Bosnia and Herzegovina (Federation Ombudsmen, Bosnia and Herzegovina Human Rights Ombudsman, 1995), Hungary (Parliamentary Commissioner for Civil Rights, Parliamentary Commissioner for the Protection of National and Ethnic Minority Rights, 1995), Russia (Plenipotentiary for Human Rights, 1997), Romania (Advocate of the People, 1997), Moldova (Parliamentary Advocates), Georgia (Public Defender, 1995, started operations in 1998), and Albania

(People’s Advocate, 1998, appointed in 2000)).

The overall goal of OHCHR involvement in national mechanisms is to sponsor the creation of human rights institutions that would serve as impartial, independent, and autonomous entities to enforce national and international human rights norms.⁴² NHRIs can further this goal only if their establishment meets certain standards and principles governing their existence and performance.⁴³ It is the OHCHR’s job, in issuing technical assistance, to promote compliance with international norms on national human rights institutions.

Beginning in 1991, states have sought guidance in the “Paris Principles” (named after a Paris meeting of existing national institutions) which define the minimum attributes of a national human rights institution as including adequate powers of investigation and a great degree of independence, as well as accessibility, accountability and pluralistic participation. National institutions that conform with the Paris Principles are invited to join the International Co-ordinating Committee of National Institutions, a group endorsed by a resolution of the UN Human Rights Commission which often works in partnership with the OHCHR. Given the relatively low benchmark set by the Paris Principles, however, this is not tremendously burdensome.

Since the adoption of the Paris Principles, an even more ambitious set of standards has emerged—the *National Human Rights Institutions: Best Practices*.⁴⁴ The emergence of this publication by the Commonwealth Secretariat perhaps indicates that the progressive development of national human rights procedures and institutions will continue.

Box 2.3: Summary of Paris Principles

Summary of “Paris Principles” – on the operation of national institutions for protection and promotion of human rights

Note: 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. 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.

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 ...
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding ...
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 ...

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 referral 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.

The OHCHR operates two assistance procedures to help countries establish human rights institutions. The first procedure, the technical assistance program, integrates support for national institutions with other forms of UN assistance. The second procedure involves the OHCHR gathering information from and working through the Special Advisor to the High Commissioner for the Establishment and Strengthening of National Institutions for Human Rights. Special Advisors have enabled the UN to acquire a wealth of comparative knowledge, which has been used effectively in many countries. The OHCHR has supported the establishment and operation of human rights commissions, ombudsmen and other hybrid institutions in many countries, including Fiji, Ghana, Guatemala, Indonesia, Latvia, Mexico, Moldova, Rwanda, South Africa, Sri Lanka, Tajikistan, Uganda and Uzbekistan. Other countries have received assistance through the United Nations Development Programme, rather than through the OHCHR directly.⁴⁵

The OHCHR has supported many superb broad-based regional human rights organizations. The Asia Pacific Forum of National Institutions is among the most effective. Composed of twelve full and two associate members, the Forum opens up important new avenues for strengthening human rights observance and advancing human rights protection for the peoples of the region in a constructive and cooperative environment.⁴⁶

From a practical standpoint, there are valid justifications for the OHCHR involvement in national human rights mechanisms.⁴⁷ The primary responsibility for human rights rests with the state and, thus,

efforts designed to enhance state capacity to respond to human rights abuses at the national level are imperative. To some extent, national human rights institutions can serve as local counterparts to international human rights bodies.⁴⁸ Moreover, national human rights are thought to be more effective than international mechanisms in promoting a human rights culture. The OHCHR explains:

Human rights involve relationships among individuals, and between individuals and the State. 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 legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions. In addition, the most effective education and information 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.⁴⁹

Furthermore, the relationship between international and national law most often requires some kind of national action. When states ratify a human rights instrument, they usually either incorporate its provisions directly into their domestic legislation or undertake other measures to comply with their obligations. The involvement of UN human rights experts in assisting in the drafting of legislation in line with universal human rights standards is thought to further this process.

OHCHR work on national institutions, however, has not been free from criticisms. One line of criticism focuses on the activities and methodology of the OHCHR. "Because one individual holds the position of Special Advisor, and because the Special Advisor's advice is often generic, it is difficult to obtain country-specific advice," notes one observer.⁵⁰ This is completely untrue, according to OHCHR employees who point to folders upon folders of country-specific information. "The advice is complete and accurate," says Stephanie Kleine-Ahbrandt, a long-term consultant to the High Commission. "The real problem is the lack of political will to respond."⁵¹

Another line of criticism points to the OHCHR's practice of doing its best to assist all countries who seek help, regardless of their human rights record. In such cases, international support may be seen as legitimizing weak human rights commissions that operate to cover up serious governmental abuses. According to Human Rights Watch, many national commissions "see [their] role as being a

mouthpiece to defend repressive government policies or to deny the existence of abuses."

A study on the effectiveness of national human rights institutions by the International Human Rights Council (Geneva) suggested that while many national institutions have won widespread respect from the public they are intended to serve, many more were regarded as illegitimate. To improve public acceptance, the OHCHR could do more to support locally conceived ways of operation—instead of offering heavy-handed suggestions that may seem remote and resisted by their intended public. The report advised OHCHR to:

- Beware of prioritizing particular modes for the development of national institutions that may not be appropriate for the country concerned.
- Beware of prioritizing national institutions at the expense of other important developments needed to protect and promote human rights—strengthening the judiciary, for example ...
- Consult civil society human rights activists ...⁵²

For its part, the OHCHR has defended national human rights institutions against critics, asserting that there will never be a quick-fix for states which consistently abuse human rights:

[National human rights machinery] cannot be expected to solve those problems which governments and the international community have been unable effectively to address. Neither are they set up to replace the human rights organs of the United Nations or 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.⁵³

The OHCHR and its supporters contend that national human rights institutions are essential to bringing the human rights message clearly to individuals regarding their specific circumstances, while international mechanisms can offer best practices guidance and research findings.

Trust funds

In order to help finance budgets that exceeded UN allotments, the UN has begun to establish voluntary funds to which governments and private entities may contribute. In addition to funding grants, the money

helps to incorporate grass-roots work by offering travel grants so that NGOs working in the field can attend working sessions and testify about their work. The majority of the funding comes from governments.

The four trust funds outlined in Box 2.4 below are administered by the Secretary-General, and governed by a Board of Trustees of five members. The members have relevant experience in the field and serve in their personal capacities. The Secretary-General consults with the Chairman of the Sub-Commission on the Promotion and Protection of Human Rights to appoint the members to three-year terms, with due consideration to geographic distribution.

Activities for technical assistance are funded through the regular UN budget and the UN Voluntary Fund for Technical Cooperation in

Box 2.4: Trust funds for human rights activities

- *Voluntary Fund for Victims of Torture*: established in 1982 (GA resolution 36/151) to finance NGOs that provide humanitarian assistance to victims of torture and their families.
- *Voluntary Trust Fund on Contemporary Forms of Slavery*: established by the General Assembly in 1991 (resolution 46/122) to assist NGOs dealing with contemporary forms of slavery to participate in the deliberations of the Working Group on Contemporary Forms of Slavery and to provide, through the established channels of assistance, humanitarian, legal and financial aid to individual victims of such violations.
- *Voluntary Fund for Indigenous Populations*: established in 1985 (GA resolution 40/131) to provide financial assistance to representatives of indigenous communities and organizations who wish to participate in the deliberations of the Working Group on Indigenous Populations.
- *Trust Fund for the International Decade of the World's Indigenous Peoples*: established in 1995 by the Secretary-General pursuant to General Assembly resolutions 48/163, 49/214 and 50/157 "to accept and administer voluntary contributions from Governments, intergovernmental and non-governmental organizations and other private institutions and individuals for the purpose of funding projects and programmes during the Decade of Indigenous Peoples."

the Field of Human Rights, which began operations in 1988.⁵⁴ The Voluntary Fund is supported by voluntary contributions and provides technical cooperation to countries upon requests from individual governments. A Board of Trustees was created in 1993 to assist in fund-raising and to provide expert advice and support for the Voluntary Fund. Members are appointed by the Secretary-General for three years and are chosen for their independence and wide experience in the field of human rights and technical cooperation.⁵⁵

Since April 1999, a senior fund-raising officer has been operating at the OHCHR. As part of a new fund-raising strategy, in the year 2000, the office developed and implemented a global Annual Appeal, which provides a detailed overview of planned activities. It is hoped that the appeal will encourage more predictable and timely funding and permit longer-term planning of activities. The Annual Appeal includes projects to be funded by the Voluntary Fund for Technical Cooperation.⁵⁶

Donations peaked at US\$6.3 million in 1995, and then dropped to half of that the following year. Nonetheless, the OHCHR's Annual Appeal tripled funding for technical assistance from US\$4.7 million in 2000 to US\$14.1 million in 2003.⁵⁷ Technical assistance consumes one-quarter of all voluntary contributions to OHCHR activities.

Beginning in 1993, OHCHR also administers the Voluntary Fund to support the Activities of the OHCHR.⁵⁸ Since the Fund began making annual appeals in 2000, its budget has remained around US\$55 million. This is an exponential increase compared to the US\$5–6 million spent annually in the late 1990s. Donors included 55 governments. The top 10 donors contributed 78.4 percent of the contributions, which the OHCHR notes are decreasingly earmarked. Additionally, the report explains that multi-year pledges and early payment significantly improve the activities of the OHCHR by offering predictability and stability.⁵⁹

Nearly half of the funded projects are placed in Western Europe and other states (89), while the four other regions—Eastern Europe, Latin America, Asia and Africa—combine for a total of 97 projects. In financial terms, Western Europe and other states consume 58 percent of the budget; the others enjoy nearly equal financing for projects of around 11 percent of the total. The United States and other European states are the largest contributors to the Fund.

OHCHR's spending is divided into 16 main activities. In descending order, the four most costly OHCHR expenditures are technical cooperation (26.8 percent), field offices (23.8 percent), human rights trust funds (20.93 percent), and building the capacity of OHCHR (9.2 percent). The OHCHR maintains that the latter category "allowed the office to direct resources to projects with the greatest needs."⁶⁰

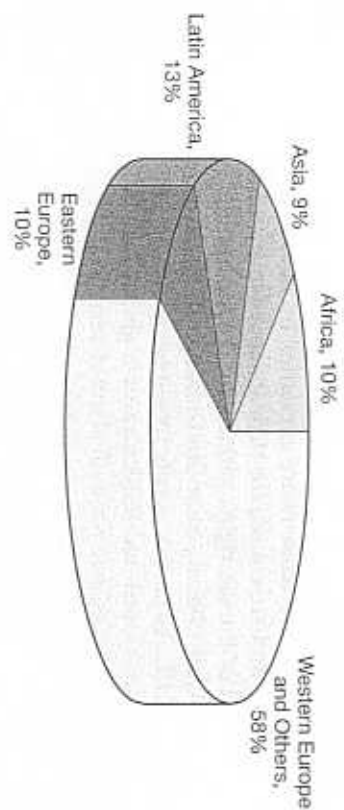


Figure 2.1 OHCHR financing by region

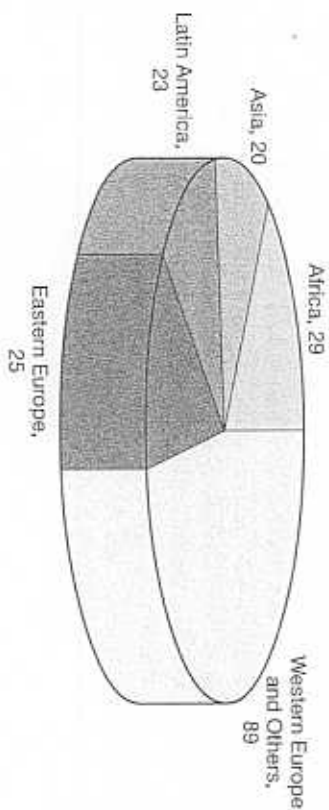


Figure 2.2 OHCHR projects by region

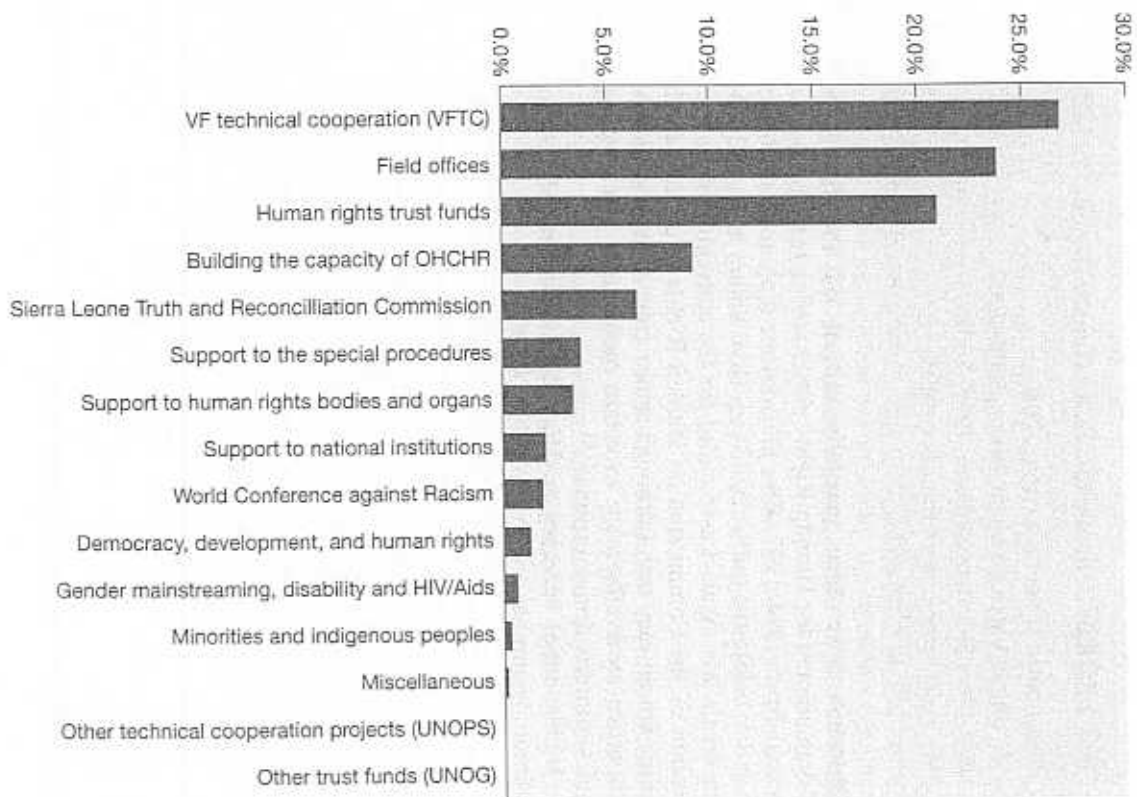


Figure 2.3 OHCHR expenditures by activity, 2003

Preliminary evaluation*Of the individual High Commissioners***Box 2.5: High Commissioners for Human Rights, 1994–2004**

Mrs. Louise Arbour, Canada, 2004–

Mr. Sérgio Vieira de Mello, Brazil, 2002–2003

Mrs. Mary Robinson, Ireland, 1997–2002

Mr. José Ayala-Lasso, Ecuador, 1994–1997

Observers have been generally critical of the first UN High Commissioner for Human Rights, Ambassador José Ayala-Lasso, who served from 1994–1997. The Ecuadorian diplomat began his tenure one day before the outbreak of genocidal killing in Rwanda. Much to his credit, Mr. Ayala-Lasso called for the convening of an emergency session of the Commission on Human Rights to address the Rwanda crisis, not an easy task (although critics argue that he could have used his office more effectively to create momentum for a stronger and quicker international response).⁶¹

In his initial speeches as High Commissioner, Mr. Ayala-Lasso commonly emphasized the sensitivity of the post and called for international cooperation in order to achieve results.⁶² Ayala-Lasso also understood the importance of field presences, urging UN reform in this area. He also understood empowerment. At his opening speech in the Stockholm Conference on Commercial Sexual Exploitation of Children, he said children “must comprehend that they can say no to their exploitation and should be taught when and how to assert their rights. Without such an approach we deprive children of vital information and tools to respond effectively to violations.”⁶³ Despite these and other strong statements, Mr. Ayala-Lasso was widely criticized for being weak on human rights in practice. Ayala-Lasso, working in the “new world order” where the disparity between countries of the North and the South was increasingly stark in terms of wealth and access to resources, was caught between hard debates about the moral authority of human rights as the first High Commissioner.⁶⁴ Southern governments and many Southern human rights activists praised Ayala-Lasso for offering them more technical support for human rights programs. Northern governments and many Northern human rights activists, however, criticized the same technical assistance programs, which they interpreted as praising governments’ human rights efforts “while

downplaying their violations.”⁶⁵ Ultimately, Ayala-Lasso’s term did little to bridge the widening gap between the North and the South in terms of their differing perspectives on human rights practices.

In stark contrast, the second High Commissioner, the former president of Ireland, Mary Robinson (1997–2002), enhanced the reputation of the OHCHR and proved that it could in fact serve as an effective bridge between the North and South on human rights concerns. After being named to the post, she promised to “stand up to bullies” and to be a “moral voice” favoring human rights and aiming to “narrow the gap” between civil and political rights, on the one hand, and economic and social rights, on the other. “Part of [the integrity of the human rights message] is to know what we mean by the agenda of human rights – that it’s not just civil and political rights, it also includes economic, social and cultural rights – the right to food, to education, to health.”⁶⁶ Ms. Robinson declared that extreme poverty is the worst violation of human rights, as it prevents the achievement of other rights.⁶⁷ In a speech in 1998, she implored:

Freedom of speech and belief are enshrined but also freedom from fear and want. Fair trial and the right to participatory democracy and representative Government sit shoulder to shoulder with the right to work, to equal pay for equal work, and the right to education. Both sets of rights are proclaimed as “the highest aspiration of the common people.” ... We must be honest, however, and recognize that there has been an imbalance in the promotion at the international level of economic, social and cultural rights and the right to development.⁶⁸

During her tenure, Ms. Robinson continually used her post of High Commissioner for advocacy. She spoke out and added a new perspective and new issues to the rights debate. She pressed to see that trafficking in persons would be addressed as a human rights issue. Early in her tenure she condemned the governments of Algeria and Democratic Republic of the Congo for human rights abuses. Additionally, she brought the UN closer to national institutions by establishing regional OHCHR representatives at UN Economic Commissions and sub-regional institutions.⁶⁹ Ms. Robinson also spoke out against human rights abuses committed by Russian forces against local civilians in Chechnya and by US prison guards against Afghan prisoners imprisoned in Guantánamo Bay in Cuba. Under her direction, the available resources for the OHCHR increased approximately 33 percent.⁷⁰

Given her strong track record, the UN Secretary-General persuaded

Ms. Robinson to extend her term another year. But, angered by her stance on Afghanistan (where she was critical of US actions), the US opposed her candidacy, as did Russia for her position on Chechnya.⁷¹ Over the strenuous objection of human rights advocates, Ms. Robinson did not receive enough votes to remain in office.

The third High Commissioner, Sergio Vieira de Mello (2002–2003), was a prominent, long-time UN employee. He stressed in his initial speeches that human rights was now “fully at the centre of intergovernmental debate” and that strengthening the “rule of law” was the key goal of his term of office. The Brazilian diplomat brought to the post a strong record of success in working human rights into UN programs, having served as chief UN official in Kosovo following the NATO bombing campaign and head of the UN East Timor Transitional Administration. As transitional administrator in East Timor, he received praise for adopting a philosophy of involving the East Timorese as much as possible in these decisions and deferring as many fundamental decisions as possible to an elected East Timorese government.

In 2003, after only a short time in office as High Commissioner—only eight months—Mr. Vieira de Mello took a leave of absence in order to serve as the UN representative in post-war Iraq. The decision of the US and its allies to recruit Vieira de Mello for the position and his decision to accept set off an outcry in the human rights community. “The highest ranking UN human rights position was vacant,” said one OHCHR employee. “That indicated a lack of respect for the position and a low priority placed on human rights.” Mr. Vieira de Mello was at his desk at work on 19 August 2003 when a suicide bomber slammed a truck into UN headquarters in Iraq, killing Mr. Vieira de Mello and 16 others.

Mr. Vieira de Mello’s death drew new attention to the work of the UN and its ability to address the human rights abuses that create the conditions for violent conflict. After taking office in July 2004, the new High Commissioner, Louise Arbour, pledged to continue to improve her office’s effectiveness at implementation of human rights standards. In her speech before the 81st session of the Human Rights Committee, held the week after she took office in July 2004, Arbour explicitly linked breach of human rights obligations in Afghanistan and Iraq to the continued violence there. In her words:

These examples show us that the prevention of, and solution to, conflicts depend on the implementation of fundamental human rights standards. Respect for human rights and human security are inextricably linked. Rights are invariably violated in situations of

violence; history is replete with examples of this terrible linkage and, all too sadly, this is still the situation in the world today. Conflict not only has an immediate devastating impact on the rights of those caught up in its unfolding; it also has a malevolent, lingering presence, hindering progress in all spheres of life, civil, political, as well as cultural, economic and social.

A member of the Supreme Court of Canada who had also served as chief prosecutor for the International Criminal Tribunal for the former Yugoslavia and Rwanda, Ms. Arbour had a reputation for taking on difficult organizational challenges, and human rights advocates hoped that she would indeed prove to be an effective ally in their efforts to open and reform the UN human rights system. Judge Louise Arbour, in her 22 July introductory press briefing, highlighted “extreme poverty” as “the most widespread denial of human rights [which] is at the root of many conflicts and abuses.” While she acknowledged the need for “legitimate and robust responses to terrorism ... within legal constraints,” she urged that “the war on terrorism should not obscure all other pressing social problems. There are very few burning issues today that don’t have a human rights component.” As for her strategy for tackling the challenges ahead, she said, “I intend to focus on the most vulnerable – the very poor, the imprisoned, the disenfranchised, the targets of intolerance and hatred, and I intend to come to their assistance through the most effective legal means at my disposal.”

Pressures for reform

Suggestions for reforming the OHCHR were voiced almost immediately after the office was created. A review process was formally initialized in 2002, when the Office of Internal Oversight Services of the United Nations Secretariat (OIOS) undertook a comprehensive review of the OHCHR in accordance with a General Assembly resolution. The OIOS distributed questionnaires to OHCHR staff members and interviewed staff and management members in Geneva. Also, the OIOS made sure to interview representatives of Member States and NGOs. The following observation was made:

A critical requirement for effective management is the ability to learn from experience and to seek improvements in work methods. The leadership of OHCHR should be given credit for its commitment to these goals. Numerous internal and external evaluations were carried out ... These exercises produced a considerable body

of proposals and recommendations ... However, executive follow-up on these recommendations was insufficient and uneven throughout OHCHR. The common pattern that emerged was one in which a review or evaluation was launched with vigour, was conducted with commitment and produced pertinent recommendations. Then, only *ad hoc* follow-up arrangements were made and such follow-ups were neither continuous nor consistent. New priorities claim management's attention, and while some recommendations are implemented, the majority remain pending and gradually drift out of sight.

The preceding observations by OIOS regarding the OHCHR's efforts at reforming its own office are consistent with their observations about the OHCHR's operations worldwide. OIOS recognized that the OHCHR had been very effective as far as promoting visibility for human rights, emphasizing human rights in conflict prevention and development, and mainstreaming human rights objectives throughout the United Nations system.

However, OIOS observed—and many Member States, private observers and academics and NGOs agreed—that the OHCHR suffers from a lack of balance. There is what OIOS calls a "weakness in strategic direction" that creates problems when the OHCHR attempts to problem-solve and to create a long-term vision for both its own office and for Member States. There are voids in cooperation, a lack of coordination among offices and staffs, and confusion when identifying strategic "bottom lines." The OIOS has identified three key problems that must be addressed if the OHCHR is to be more effective:

- *Unplanned expansion of activities.* OHCHR activities have been driven largely by an extemporaneous accumulation of new mandates, reaction to emergencies and decisions responding to various requests. The office needs to be more strategic and develop priorities for its work.
- *Ad hoc growth of office.* The organizational structure of OHCHR has evolved largely in an *ad hoc* manner and has become unwieldy. It needs to be streamlined and made more functional, with clear and effective reporting lines.
- *Inconsistent management.* The management of the office was urged to become more consistent and coherent.

These observations can provide fertile ground for the OHCHR to make internal changes so as to improve its efficacy.

Concluding thoughts

In the final analysis, there is no doubt that the OHCHR's efforts have helped the UN move beyond human rights standard-setting. The process of mainstreaming, monitoring and implementing human rights norms through its programs, funding and field presences has contributed significantly towards the growth of a strong international system of human rights. The incremental and *ad hoc* growth of the OHCHR can also be viewed as a process of addressing new needs as they arise and as organizational capacities grow. The office is very much beholden to the financial constraints and mandate constraints provided by the nations participating in the UN system. While changes in leadership of the OHCHR do have profound impacts upon the functioning of the office, in general, the organizational role of the OHCHR has consistently increased the relevance of human rights issues within the United Nations and improved human rights practices at the regional, national, and local levels. One significant aspect of the OHCHR's leadership concerns the supportive role it plays for UN Charter-based and treaty-based bodies, a topic to which we now turn.

3 UN Charter-based bodies (and other non-treaty bodies)

The drafters of the UN Charter knew that they were writing the constitutive document of an important organization, one which they hoped would save the world from future world wars. Yet they never imagined that they were creating an international system of human rights. To be sure, human rights provisions were scattered throughout the Charter. But these, rather scattered references (see Table 3.1) were never intended to serve as a *system* for human rights protection. Even the vague provisions on human rights which were included in the Charter had a tough time squeaking in over the objection of the Soviet Union. The consensus among states in attendance at the founding of the UN meeting in San Francisco, however, favored making reference to human rights without defining the concepts used or listing in any detail specific human rights obligations.

Article 1 of the UN Charter makes clear that one of the aims of the UN is to achieve international cooperation by "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." The remaining human rights provisions of the Charter establish a nascent infrastructure and goals for human rights enforcement. Significantly, Article 55 identifies three purposes which the States of the United Nations vow to promote: "(a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." By agreeing to the Charter, Article 56 of the Charter elaborates, "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the [three] purposes set forth in Article 55."

UN Charter-based bodies 45
Table 3.1 Human Rights Provisions in the UN Charter for Human Rights

Article	Provision
Article 1	UN aims towards "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."
Article 13(1)	General Assembly will "initiate studies and make recommendations for the purpose of ... promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."
Article 55	Member States pledge to promote: <ul style="list-style-type: none"> • higher standards of living, full employment, and conditions of economic and social progress and development; • solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and • universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
Article 56	"All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the [three] purposes set forth in Article 55."
Article 62	Authorization for the Economic and Social Council to "make or initiate studies and reports" and "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all."
Article 68	Authorization for the UN Economic and Social Council (ECOSOC) to set up commissions for "the promotion of human rights."
Article 76	UN trusteeships will incorporate human rights.

A question remained, however, as to whether another important UN Charter article – Article 2(7), prohibiting the U.N. from intervening in matters essentially within the domestic jurisdiction of a state – excluded human rights issues from the agenda of the organization. Indeed, governments have continually invoked article 2(7) to shield themselves from

securing of human rights abuses in their own country. Nonetheless, human rights conditions have become recognized as core indicators of the maintenance of international peace and security. Over the years, the UN Charter human rights provisions have been interpreted and applied to create an expansive system of UN human rights protection, offering many opportunities for states and advocates to raise their concerns. These human rights bodies which draw their authority and existence from the UN Charter are referred to as "Charter-based bodies." This chapter's discussion of Charter-based human rights bodies is divided into four parts. First, it begins with an overview of the main Charter-based bodies addressing human rights concerns (The Security Council does not appear in this section because it is discussed separately in Chapter 5; the OHCHR is discussed in Chapter 1.) Second, it focuses in more detail on the Commission on Human Rights (CHR) and Sub-Commission on the Promotion and Protection of Human Rights ("the Sub-Commission"), outlining the role both bodies have played in the promotion and protection of human rights. Third, it presents a more in-depth example of the workings of the CHR by reviewing excerpts from the primary documents of a recent CHR session. Finally, the chapter examines critiques of the CHR and Sub-Commission and reviews suggested reforms.

Overview of Charter-based bodies (non-treaty bodies)

The General Assembly

The General Assembly's competence to address human rights issues is broad, since Article 10 of the UN Charter allows it to "discuss any questions or any matters within the scope of the present Charter" and to make "recommendations" to the Member States on these subjects. Furthermore, Article 13(1) of the UN Charter specifically authorizes the General Assembly to "initiate studies and make recommendations for the purpose of ... promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

Making good use of this broad mandate, the General Assembly has authorized studies and issued recommendations on a variety of human rights issues, often in response to the concerns of NGOs. Resolution 49/184 (1994), for example, established a UN Decade for Human Rights Education and Resolution 56/115 (2001) announced a comprehensive world program of action on human rights and disability. Among the most significant of any General Assembly resolutions were

the 1948 declaration proclaiming the Universal Declaration of Human Rights, the 1956 declaration affirming that genocide is a crime against international law, and the declaration identifying "the principles of international law" with regard to war crimes and crimes against humanity, which were included in the Charter and Judgment of the International Military Tribunal at Nuremberg in 1945.¹

A General Assembly recommendation can effectively draw attention to an issue, and may shame states into taking action. Although they are not legally binding on states, General Assembly resolutions may wield considerable influence. In some cases, a human rights issue will begin its journey through the international human rights system as a non-binding General Assembly resolution and eventually form the basis of a binding treaty. The Declaration on the Right of the Child of 1959 is but one case in point. A General Assembly resolution, or some of its provisions, may also acquire the status of customary international law over time. The impact of a General Assembly recommendation also may be particularly strong in the case of a text adopted unanimously and when a state is specifically named as committing egregious human wrongs. At any given time, the General Assembly may meet to discuss a specific country. Afghanistan, to take one example, was the subject of Resolution 56/176 (2001).

Two of the six Main Committees of the General Assembly participate in the drafting of international instruments concerning human rights: the Social, Humanitarian and Cultural Committee (Third Committee) and the Legal Committee (Sixth Committee). These Committees, which are known as "committees of the whole" because all UN members are entitled to be represented on them, often add comments and changes to proposed human rights documents before they are submitted to the plenary General Assembly for approval.²

All of the treaty bodies and the Economic and Social Council submit human rights reports to the General Assembly. Upon considering a case, the General Assembly has the power to authorize the creation of a special rapporteur to study and report on the issue further. Member States also may draw publicity to a particular human rights situation by raising it in public debate on the floor of the General Assembly.

Critics of the General Assembly point out that in such a large, openly politicized body, "human rights are more susceptible to being subordinated to non-human rights considerations ... [and] voting, including 'bloc voting,' has led to 'selective targeting' of some States, sometimes exaggerating their violations, and overlooking some of the other States, including some that are guilty of gross violations."³ In contrast, politics is thought to play less of a role in international bodies composed of independent experts, as well as in smaller bodies composed of government representatives.

The Economic and Social Council

Like the General Assembly, the Economic and Social Council (ECOSOC) has considerable competency to address human rights issues. Article 62 grants the ECOSOC the authority to "make or initiate studies and reports" and "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all." ECOSOC has used its Article 62 authority to address a variety of human rights concerns, "including genocide, prevention of statelessness, discrimination, protection of minorities, the organization of the 1948 Conference on Freedom of Information, the establishment of the Yearbook on Human Rights and, in cooperation with the International Labour Organization (ILO), the protection of the right to form trade unions and the prevention of forced labour."⁴

Article 68 of the Charter further authorizes ECOSOC to set up commissions for "the promotion of human rights." As explained further below, it was pursuant to Article 68 that ECOSOC established the Commission on Human Rights and created an intergovernmental Commission that would report directly to it on issues concerning the status and rights of women.

The Commission on Human Rights and Sub-Commission

The primary bodies established by ECOSOC in 1946 and 1947 were the Commission on Human Rights (CHR) and the Sub-Commission on the Promotion and Protection of Human Rights (formerly known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities; the body was renamed by ECOSOC in 1995). The CHR was specifically charged with setting the standards for human rights on a worldwide basis, and the Sub-Commission was tasked "[t]o undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the CHR concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities."⁶

Today, the CHR and Sub-Commission are the political cornerstones of the United Nations human rights system. The original membership of the CHR has expanded from 18 to 53 Member States. ECOSOC chooses Member States according to a formula designed to promote equitable geographic distribution of delegates. Member States, once chosen, identify their individual representatives. While representatives may have

human rights expertise, they serve as government representatives and not as independent experts. Thus, the CHR is a highly political body.

Over 3,000 delegates from UN Member and Observer States and from non-governmental organizations participate in yearly session meetings in March and April for six weeks in Geneva. Since 2003, the CHR also meets two months in advance of its annual six-week session to elect the Chairperson and the rest of the CHR's Bureau. This new process was agreed on in 2002, following recommendations made to ECOSOC in 1994 and 1997. The procedure is intended to enable the CHR to work more efficiently by having the Bureau in place well before the annual session begins. Election is usually by consensus, but the US called for a vote in 2003 when the African Group proposed the Libyan Najat Al-Hajjaji as Chair. (The vote was 33 in favor and 3 opposed with 17 abstentions.)

During its regular annual session, the CHR adopts over a hundred resolutions, decisions and Chairperson's statements on matters of relevance to individuals in all regions and circumstances. The Commission also may meet exceptionally between its regular sessions in special sessions to address urgent and acute human rights situations in an expeditious way.

While the CHR has gained the reputation as the main UN human rights political body, the Sub-Commission is widely regarded as a key UN human rights expert body. To be sure, the Sub-Commission is not totally apolitical. After all, the 26 members of the Sub-Commission are elected by the CHR from a list created by UN Member States, and this process can be politicized. However, members of the Sub-Commission serve in their personal capacities and are chosen because of their human rights expertise, unlike members of the CHR. The main functions of the Sub-Commission are twofold:

- (a) To undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the CHR concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities; and
- (b) To perform any other functions which may be entrusted to it by the Council or the CHR.⁷

The Sub-Commission meets annually during July and August for three weeks in Geneva. Meetings attract not only members and alternates, but also national observers, United Nations bodies and specialized agencies, other intergovernmental organizations and

non-governmental organizations in consultative status with the Economic and Social Council. Both the CHR and Sub-Commission have established a number of subsidiary bodies, including a number of thematic working groups and special rapporteurs (special investigators) who work on a thematic and country-specific basis. The working groups and rapporteurs are discussed later in this chapter, under "Special procedures" (see also Appendix C).

The Commission on the Status of Women

The Commission on the Status of Women (CSW) was established by resolution by ECOSOC in 1946. CSW is charged with preparing recommendations and reports to the Council on promoting women's rights in political, economic, civil, social, and educational fields. The CSW also makes recommendations to the Council on urgent problems requiring immediate attention in the field of women's rights. The mandate of the CSW has been expanded several times. Instead of addressing specific cases of violations of women's rights, the CSW has tended to focus its activities on the coordination of and follow-up to UN world conferences and other promotional activities.⁸

After the 1995 Fourth World Conference on Women, the General Assembly mandated the CHR to integrate into its program a follow-up process to the Conference. This has involved regularly reviewing the critical areas of concern in the Platform for Action and drawing on the Platform and follow-up activities to promote the mainstreaming of a gender perspective in United Nations activities.

CSW, which began with 15 members, now consists of 45 members elected by the Economic and Social Council for a period of four years. Members, who are appointed by governments, are elected on the following formula: 13 from African states; 11 from Asian states; 4 from Eastern European states; 9 from Latin American and Caribbean states; and 8 from Western European and other states. CSW meets annually at the United Nations headquarters in New York for a period of ten working days. The Division for the Advancement of Women (DAW), located within the UN Secretariat, is partially responsible for servicing CSW.⁹

*The International Court of Justice*¹⁰

The International Court of Justice (ICJ), made up of 15 independent judges elected by the General Assembly and the Security Council, is the principal judicial organ of the United Nations. The ICJ was estab-

lished by the Charter and is governed by its own Statute, which is annexed to the UN Charter. According to Article 34, paragraph 1, of the Statute of the Court, "only States may be parties in cases before the Court." Individuals, juridical persons and international or non-governmental organizations may not be parties in litigation before the Court. The ICJ may, however, address human rights issues by interpreting conventions incumbent upon states or by evaluating state conduct implicating human rights concerns. The ICJ's Advisory Opinion on the Continued Presence of South Africa in Namibia (South West Africa)¹¹ illustrates the way in which the jurisprudence of the ICJ may create pressure to change state behaviors. This 1971 decision ruled not only that South Africa's occupation of Namibia was illegal, but also that all UN Member States had the duty to avoid recognizing or supporting the illegal behavior of the occupying force. The political implications of this opinion were monumental as it paved the way for the arms embargo and other restrictions imposed on Pretoria. In this way, human rights are both addressed and enforced through such judicial proceedings.

Other non-treaty bodies concerned with human rights

Several other parts of the UN system address human rights. The names and addresses of many of them are included in Appendix A. To provide an overview of the breadth of human rights activity within the UN, this section outlines the human rights mandates of three such organizations: the United Nations High Commissioner for Refugees; the United Nations Children's Fund; and the United Nations Development Programme.

The United Nations High Commissioner for Refugees

The UN General Assembly established the office of the United Nations High Commissioner for Refugees (UNHCR) on 14 December 1950. The agency's original mandate was only for three years, but as the number of refugees has increased exponentially, its mandate is now almost automatically extended every five years. Today, the organization's staff of more than 6,200 people assists refugees in 115 countries throughout the world. The UNHCR's programs are approved by an executive committee of 64 Member States which meets annually in Geneva. A second working group, or "Standing Committee," meets several times a year. Additionally, the High Commissioner consistently reports on the UNHCR's activities to the General Assembly through

the Economic and Social Council. There have been nine High Commissioners since the agency's inception.

The UNHCR mandate is to provide international protection to refugees and others of concern to the UNHCR, and to seek durable solutions to their plight. Activities in fulfillment of this mandate include provision of material assistance, legal advice and assistance, and cooperation with other agencies. UNHCR staff do human rights work through defending the rights of refugees by providing them with protection and assistance.

The UNHCR considers international protection to be the "cornerstone" of its work—the main goal of the organization is to maintain the protection of refugees' basic human rights and to ensure that no one will be returned to countries where they will be persecuted. The UNHCR promotes international refugee agreements and monitors government compliance with refugee laws and works to find long-term solutions to refugee problems. The UNHCR has projects in locations ranging from urban areas to rural refugee camps. The work of the UNHCR on establishing guidelines for protection of refugee women and on other protection issues has made strong contributions to the progressive development of international human rights and humanitarian norms.¹²

The United Nations Children's Fund (formerly known as the United Nations International Children's Emergency Fund)

The United Nations Children's Fund (UNICEF) was started by the United Nations in December 1946 in order to bring humanitarian aid to European children affected by the Second World War. In 1953, the General Assembly voted to extend the organization's mandate and UNICEF became a permanent part of the United Nations. UNICEF has had numerous successes in a wide variety of issues, from education to health care to helping children in areas of armed conflict. While UNICEF world headquarters is in New York, the organization does work in 157 countries worldwide. It is eight regional offices and 126 country offices, as well as a research center in Florence, a supply operation in Copenhagen, and offices in Tokyo and Brussels.

In 1989, the UN General Assembly adopted the Convention on the Rights of the Child, which formally entered into force in September 1990. This was the first Convention that charged a specific UN organization—UNICEF—with overseeing its implementation. Article 45 of the Convention assigns UNICEF with the legal duty to promote and protect child rights. As such, UNICEF provides expert advice on the

implementation of the Convention, assists in consideration of states' reports, and submits its own reports regarding children's rights worldwide. While UNICEF was an extremely important organization prior to 1989, the role of UNICEF in the Convention on the Rights of the Child brought children's rights into the broader field of human rights in an unprecedented way.

Just as UNICEF has played a role in the interpretation of the Children's Convention, the Children's Convention has influenced UNICEF's interpretation of its own mandate. Despite some initial resistance within the organization, today UNICEF adopts a rights-based approach to programming. This is reflected in all of UNICEF's operations worldwide, and is a strong example of how the broader commitment made by the United Nations to mainstream human rights is implemented.¹³

The United Nations Development Programme

The United Nations Development Programme (UNDP) administers and coordinates most of the technical assistance provided through the UN system. Formed by General Assembly resolution, the current Mission Statement "is to help countries in their efforts to achieve sustainable human development by assisting them to build their capacity to design and carry out development programmes in poverty eradication, employment creation and sustainable livelihoods, the empowerment of women and the protection and regeneration of the environment, giving first priority to poverty eradication." Poverty reduction is the overarching goal of the UNDP. It also focuses on democracy and democratic governance, the environment and energy policy, crisis prevention, and HIV/AIDS.

Human rights often figure into UNDP programming, often under "good governance" programs, but in other areas as well. The OHCHR and other UN human rights bodies frequently have contact with UNDP. For example, the Human Rights Committee (established to monitor the International Covenant on Civil and Political Rights; see Chapter 4) has been "mandated to cooperate with UNDP in the development of human rights indicators for common country assessments."¹⁴ The field offices of OHCHR at times work in conjunction with CHR in implementing technical and economic assistance projects. As the Bosnia case study in Chapter 2 demonstrated, UNDP works closely with the OHCHR to ensure a "rights-based approach to development,"¹⁵ highlighting the crucial linkages between poverty, economics, and human rights.

As the field of technical assistance has expanded, so has UNDP. The UNDP now has more than 130 country offices throughout the world, and has a presence in more than 166 countries.¹⁶

Role of the UN Human Rights Commission and Sub-Commission

Standard-setting

One of the most important tasks entrusted to the UN Human Rights Commission is the elaboration of human rights standards. Eleanor Roosevelt, the CHR representative from the United States, served as the Chairperson of the CHR when it first met in early 1947.¹⁷ She was accompanied by several other distinguished diplomats and intellectuals, including Charles Malik, a Lebanese existentialist philosopher and spokesperson for the Arab League; René Cassin, the French legal scholar, who had lost 29 relatives in the Holocaust; and Pen-Chung Chang, the Chinese Confucian philosopher/diplomat, who served as Vice-Chairman.¹⁸ The initial task of the new organization was to make reports and draft proposals for an "International Bill of Rights." Debate over the Bill of Rights centered on the legal character of the document, in particular whether it should be drafted as a legally binding treaty or as a non-binding declaration. The Commission chose the latter option, and drafted a non-binding document which the General Assembly adopted as the Universal Declaration of Human Rights (UDHR) in 1948. In adopting the UDHR, the General Assembly simultaneously directed ECOSOC to mandate the CHR to prepare a draft treaty on human rights.¹⁹

The plan at the time was to make the Declaration the first of three parts to the International Bill of Rights. A second binding document would spell out the rights identified in the UDHR, and a third document was to provide for measures of implementation. This plan was blocked by disputes over the role of international bodies in implementation. While some states pushed for strong international oversight, others insisted that human rights should remain primarily a matter of state authority. States also were split over the indivisibility of human rights, with some states arguing for the primacy of social and economic rights and others stressing instead civil and political rights. As a compromise, the CHR decided to place these two groupings of rights into two different treaties, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on

Economic, Social, and Cultural Rights (ICESCR). In 1954, ECOSOC submitted the CHR's draft documents to the General Assembly for review. These treaties, as substantially amended by the General Assembly's Third Committee, were not adopted by the General Assembly until 1966. They did not receive enough state signatures to enter into force until 1976.

In addition to the International Bill of Rights, the CHR has developed standards on a wide range of issues. The treaties that the CHR has helped create on these topics are legally binding for the States Parties (states that sign and ratify the treaty). Each treaty establishes an "international enforcement system designed to ensure that States Parties comply with their obligations."²¹ (Chapter 4 examines the international enforcement system created by the seven main treaty bodies.)

Box 3.1: Main themes addressed by the CHR²⁰

- the right to self-determination;
- racism;
- the right to development;
- the question of the violation of human rights in the occupied Arab territories, including Palestine;
- the question of the violation of human rights and fundamental freedoms in any part of the world;
- economic, social and cultural rights;
- civil and political rights, including the questions of torture and detention, disappearances and summary executions, freedom of expression, the independence of the judiciary, impunity and religious intolerance;
- the human rights of women, children, migrant workers, minorities and displaced persons;
- indigenous issues;
- the promotion and protection of human rights, including the work of the Sub-Commission, treaty bodies and national institutions;
- advisory services and technical cooperation in the field of human rights.

Protection activities: 1235 and 1503 procedures

For the first two and a half decades of its existence, the Commission on Human Rights narrowly interpreted its own mandate and focused principally on promotional activities and standard-setting through the preparation of draft human rights instruments. As soon as it was established, the UN was flooded with communications from individuals and groups seeking UN intervention for alleged violations of human rights. Yet in 1947, the CHR ruled that it had "no power to take any action in regard to any complaints concerning human rights."²² Interpreting the word "promoting" in the Charter's human rights provisions as something less than "protecting," the CHR refrained from establishing any monitoring and human rights enforcement mechanisms. ECOSOC confirmed this decision in 1947, through passing resolution 75(V).²³

Thus, in its early years, the CHR utilized communications with offending states only as a means of identifying general trends without responding directly to the violations at issue. The breakthrough did not come until the 1960s, when public pressure on the United Nations to respond to apartheid and gross human rights abuses in southern Africa allowed the CHR to create its first monitoring body, the Ad Hoc Working Group on Southern Africa.²⁴ The opportunity provided the foundation for pushing ECOSOC in other human rights directions: ECOSOC agreed in 1967 to allow the CHR and Sub-Commission to examine gross violations of human rights that come to its attention (ECOSOC resolution 1235)²⁵ and in 1970 to establish a Commission procedure for the consideration of complaints of gross and systematic violations of human rights (ECOSOC resolution 1503).

The "1235 procedure" mandated the CHR and Sub-Commission to thoroughly study situations where human rights were consistently violated, and particularly drew attention to apartheid in South Africa and racial discrimination in Southern Rhodesia. Initially, many states attempted to restrict the reach of the 1235 procedure to cases similar to the two examples provided in the declaration: apartheid and extreme racial discrimination. These efforts failed, however, and 1235 was read to apply to *any* violation of human rights and fundamental freedoms. "At that time," Nigel Rodley observes, "NGOs were not allowed to make written or oral interventions or circulate written statements complaining about human rights violations in UN Member States."²⁶ Thus, "it came as something of a shock" when the Sub-Commission used its authority under 1235 to establish a Committee of Experts to investigate the human rights situation not only in Southern Rhodesia but also in Greece. "This initiative goaded the CHR into

developing a procedure under which information from nongovernmental sources could be considered in a less directly threatening manner."²⁷ The result was the "1503 procedure."²⁸

The 1503 procedure allows the CHR to process individual complaints that help identify those that "appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms" and pass them on to the relevant human rights bodies. The oldest human rights complaint mechanism in the United Nations system, the mechanism is exercised only in the case of large-scale or systematic denials of human rights. Overall, an average of 50,000 complaints are received annually. Only a tiny fraction of these complaints are ever investigated. The majority of these cases concern patterns of human rights violations involving torture, arbitrary detention, summary or arbitrary executions, and disappearance.

The procedure for resolution 1503, as modified in 2000 by ECOSOC resolution 2000/3, can be summarized as a four-step process. First, communications are received by the Office of the UN High Commissioner for Human Rights. The initial screening of those complaints takes place at the OHCHR, where staff eliminate untimely and manifestly ill-founded claims. Second, the complaints that pass this first hurdle are examined by the Working Group on Communications of the Sub-Commission which conducts its own evaluation. Third, if this body identifies reasonable indication of a consistent pattern of gross violations of human rights in a given country, it forwards its recommendations to the Working Group on Situations of the CHR. The Working Group on Situations then evaluates the claims and makes recommendations to the full Commission. Finally, the CHR undertakes its own evaluation in light of the recommendations.

When the CHR takes up consideration of a country situation, the government in question is invited to participate in a discussion of the human rights situation in private session. Resolution 2000/3 gives the CHR a repertoire of responses to these cases, including appointing an independent expert to make direct contact with the government and the people concerned, keeping the case under consideration, transferring the case to the public procedures,²⁹ or dismissing the situation altogether.

The new procedure considerably opens the 1503 process to public scrutiny. Under the modified form found in resolution 2000/3, the CHR announces the names of the states under consideration and indicates the ones that have been dropped from consideration. ECOSOC also has the ability to publicize cases. As the UN website makes clear: "If a pattern of abuses in a particular country remains unresolved in the early stages of the process, it can be brought to the attention of the

world community through the Economic and Social Council.²⁹ Furthermore, under the new procedures, the text of any final decision on the merits of a case or of a decision of inadmissibility is to be posted on the OHCHR's website.³⁰

These improvements in the 1503 procedure, although considerable, did not resolve other complaints about the process. The 1503 procedure is still criticized for its slowness, complexity, and vulnerability to political influence. In addition, the procedure is only capable of considering an extremely limited number of complaints. Nonetheless, for the few advocates fortunate to be selected for review, the 1503 procedure provides a useful technique for placing increasing pressure on offending governments while encouraging them to engage in a constructive exchange of views to improve the situation.

Preparing an individual communication

Individuals wishing to use the 1503 procedure can direct communications to the UN High Commissioner for Human Rights in Geneva. Communications must include specific mention of the rights violated and descriptive facts, such as names, dates and places, and should include evidence, such as testimony. They should demonstrate exhaustion or unavailability of domestic proceedings (e.g. because domestic courts do not have the ability to hear the particular kind of complaint or to entertain cases by the particular type of complainant). Additionally, complaints should be made within a reasonable amount of time after national procedures have been exhausted. Anonymous, overtly political, or verbally abusive complaints are not considered. To ensure that complaints are considered, they should be submitted at least two months prior to the annual meetings of the Sub-Commission. The steps for using the 1503 procedure are summarized in Box 3.2.

Special procedures: working groups and thematic procedures

In addition to the 1503 procedure, the CHR carries out its enforcement efforts through an ever-expanding array of special procedures. The term "special procedures" refers to the human rights mandate of either an individual, called "special rapporteur," "representative," or "independent expert," or a group of individuals called a "working group."

The CHR appoints country-specific rapporteurs whose task is to report on the full range of human rights, including violations of the right to life, in the specific country for which they are responsible. In

Box 3.2: Using the 1503 procedure³¹

- 1 Draft a cover letter:
 - refer to ECOSOC resolutions 728F and/or 1503;
 - summarize the allegations;
 - include a statement of purpose (e.g. seeking UN action to bring an end to the violations of human rights disclosed in this communication).
- 2 Describe the pattern of gross human rights violations:
 - include dates, names, and places;
 - note the relevant treaty articles violated;
 - show that domestic proceedings have either failed, endured unreasonably long, or failed to address the abuses;
 - sign and date all communications.
- 3 Include annexes with relevant evidence, especially direct testimony.
- 4 Send six copies to:

UN High Commissioner for Human Rights, OHCHR-UNOG
CH-1211 Geneva 10
SWITZERLAND

Hotline fax for urgent cases: (41) 22 917 9003
- 5 If no action is taken in the session, it is useful to update the complaint and resend the following year.

general, such rapporteurs are appointed for countries that have particularly serious human rights situations, including those caused by war or internal conflict. The singling out of a country for such scrutiny is inevitably a politically sensitive matter. There must be sufficient agreement among states at the CHR in order for a country-specific rapporteur to be created.

The procedures are known as "thematic" when they focus on a particular genre of violation rather than a country. Thematic mechanisms are similar to country-based mechanisms in that the rapporteurs are given broad powers to investigate and report back to the Commission. However, the thematic mechanisms may seem less threatening, as they do not necessarily single out a particular country for criticism.

The establishment of a Working Group on Enforced or Involuntary Disappearances (1980), the Special Rapporteur on Summary and Arbitrary Executions (1982) and the Special Rapporteur on Torture (1985) are early examples of this phenomenon. (See Appendix C for complete listing.)

Although the trend is to create more thematic mechanisms, the evidence seems to indicate that the country-specific mechanisms have generally out-performed thematic mechanisms. Not surprisingly, states appear to respond better to a report singling them out for criticism. In addition, country-based mechanisms have proven more useful for resolving individual cases. One explanation is that individual victims of human rights abuses have been better able to utilize country-based mechanisms in claiming their own rights because they have become more readily aware of them than of thematic mechanisms.³² Another is that any mechanism works better when there have been on-site visits and follow-up visits to ensure compliance, and that this occurs most often in the case of single-country investigations. Furthermore, when country-specific mechanisms are employed, it is more obvious when a particular state is being uncooperative.³³

To date, the CHR has created over 22 thematic procedures and over 25 country procedures. Individuals involved in special procedures are independent, unpaid (although expenses and a per diem stipend are provided) and serve in a personal capacity for a maximum of six years. The work of these individuals and working groups is discussed during the annual six-week session of the CHR, which takes place in March–April in Geneva; some also report to the annual session of the General Assembly in New York.

Various activities can be undertaken by special procedure, including conducting studies, providing advice on technical cooperation, responding to individual complaints, and engaging in general promotional activities. In carrying out their mandates, special rapporteurs and other mandate-holders often undertake country missions (sometimes referred to as fact-finding missions) and report back to the Commission on Human Rights. Field missions are undertaken only at the invitation of a government; however, the special rapporteur may work to solicit an invitation from the country in question. Before a fact-finding mission takes place, the government is asked to provide assurances that people interviewed will not be subjected to harassment or punishment and that the special rapporteur's staff will be permitted freedom of movement throughout the country, confidential and unpersuaded contacts, where the special rapporteur's mandate so requires, with witnesses and other private individuals, including persons

Table 3.2 Thematic procedures of the UN Commission on Human Rights

Thematic procedure	Forming the claim
Working Group (WG) on Arbitrary Detention	The detention must be arbitrary. The WG interprets this as meaning detention which (1) does not have a legal basis; (2) is a response to the exercise of fundamental rights, such as freedom of expression (e.g. the arrest of a journalist for the exercise of his profession); or (3) is rendered arbitrary because due process guarantees are not observed (e.g. if someone is not brought promptly before a judge). It is not enough to consider that the detention is "unfair."
WG on Enforced or Involuntary Disappearances	The WG acts only in clearly identified individual cases. If the person or organization submitting the information is not a relative but is acting directly or indirectly upon the family's request, she or he is required to maintain contact with the family at all times as any replies received are for the information of the relatives only.
Special Rapporteur (SR) on Torture	The SR examines allegations of torture and other cruel, inhuman and degrading acts and investigates legislative and administrative measures taken by countries to prevent torture and to remedy its consequences whenever it occurs. Another focus is on the ill-treatment of particular groups, especially children and women. The SR also responds to credible and reliable information of individual cases that comes before her/him.
SR on the Promotion and Protection of the Right to Freedom of Opinion and Expression	The SR's areas of interest include: persons exercising/promoting the exercise of the right, including professionals in the field of information; political opposition parties and trade union activists; the media (print and broadcast); including any threats to their independence; publishers and performers in other media; human rights defenders; obstacles to women's right to be heard; obstacles to access to information.
SR on the Independence of Judges and Lawyers	Information can be received about judges, lawyers and court officials. The SR is essentially concerned with safeguards and the proper functioning of the justice system.

SR on Human Rights Defenders

This is a relatively new mandate which aims to receive, examine and respond to information on the situation and rights of those acting to promote human rights; to establish cooperation and conduct dialog ue with governments; and to recommend strategies to better protect human rights defenders. All reliable information can be brought to the SR's attention and those submitting allegations are encouraged to provide information regarding their own human rights work.

SR on Violence Against Women

The SR examines cases of violence against women on account of their gender. Communications must show targeting because of her gender. A special feature of this mandate is that it looks at violence not only by state officials, but also where it is condoned by the state in the community and within the family.

deprived of their liberty, and full access to all documentary material relevant to the mandate.

A rapporteur's dialogue with a particular government can begin in one of two ways. If the rapporteur believes that the allegations she is investigating are credible, the rapporteur will either transmit an *urgent appeal* or raise the allegation in a *standard communication*. The *urgent appeal* procedure is designed to respond to information that an individual may be at imminent risk of being killed. Such appeals are non-accusatory in nature. The government is requested to ensure effective protection of those under threat or at risk of execution and to undertake full, independent and impartial investigation and adoption of all measures to prevent further violations of the right to life. In such an event, the rapporteur adopts no position as to whether or not the fear of death is justified.

Standard communications are transmitted to governments periodically and contain allegations concerning individual cases (individual allegations) in the form of case summaries. They request progress reports on the investigation of these cases and any prosecutions or reparations that have resulted.

Extensive use of these fact-finding mechanisms has enabled individuals, NGOs, and others to report on situations pertinent to the country or theme in question and meet with individuals or working

groups during on-site visits. Both NGOs and the CHR benefit from this approach. Participation in the fact-finding of the special procedures helps NGOs to organize and develop expertise on issues. The Commission, in turn, benefits from the improved information received as the result of NGO cooperation.

Box 3.3: How to bring information to the attention of the special rapporteurs

(Fact Sheet No. 4; designed for Special Rapporteurs on Torture and on Violence Against Women, but adaptable to other special rapporteurs)³⁵

The following information regarding individual cases should be transmitted (if available):

- (a) Full name of the victim;
- (b) Date (at least the month and year) on which the incident(s) of torture occurred;
- (c) Place where the person was seized (city, province, etc.) and location at which the torture was carried out (if known);
- (d) Description of the alleged perpetrators of the violation (including position held and/or State affiliation);
- (e) Description of the form of torture used and any injury suffered or statement of reasons to believe that the person is at risk of torture;
- (f) Identity of the person or organization submitting the report (name and address, which will be kept confidential).

The Special Rapporteur on violence against women needs the following information, if available:

- (a) A summary of the main points of the case identifying the rights that have been or may be violated. If the State concerned has ratified human rights treaties, an indication of the provisions of the treaties believed to have been violated.
- (b) If the submission concerns a law, practice or policy that affects women in general or women in a specific group, an explanation of how other women or a specific group of

women are affected. A consistent pattern in individual cases can be used to demonstrate a general failure to prevent and respond to private abuses.

The submission concerns violations by private individuals or groups (rather than government officials), the Special Rapporteur requires any information that might indicate that the Government failed to exercise due diligence to prevent, investigate, punish and ensure compensation for the violations, such as:

- (a) Whether or not there is a law that addresses the violation;
- (b) Any defects in existing laws such as inadequate remedies or definitions of rights;
- (c) Refusal or failure by the authorities to register or investigate the case and other similar cases;
- (d) Failure by the authorities to prosecute the case and other similar cases;
- (e) Patterns of gender discrimination in the prosecution or sentencing of cases;
- (f) Statistics and other data concerning the prevalence of the type of violation described in the submission.

An illustrative CHR session

This section provides an illustration of how Charter-based mechanisms work by using as an illustration the 60th session of the CHR held in Geneva, Switzerland, from 15 March to 23 April 2004.³⁶ The session was preceded by a number of special working groups covering several specific issues. These working groups then reported to the CHR. The 60th session began with a three-day "high-level segment" featuring speeches from various senior government officials and heads of United Nations agencies. The agenda for the session covered a vast number of topics, ranging from the rights of minorities, women, and children, to religious tolerance, to torture and summary executions. Over 3,000 delegates from Member and Observer States, as well as NGOs, participated.

Who gets in? The accreditation process

Only NGOs accredited with "consultative status" may take part in formal meetings of UN Charter-based bodies. Consultative status is

granted by ECOSOC upon recommendation of the ECOSOC Committee on NGOs, which is composed of 19 Member States. ECOSOC resolution 1996/31 outlines the eligibility requirements for consultative status.³⁷ To be eligible for consultative status, an NGO must have been in existence (officially registered with the appropriate government authorities as an NGO/non-profit organization) for at least two years, and must have an established headquarters, a democratically adopted constitution, authority to speak for its members, a representative structure, appropriate mechanisms of accountability, and democratic and transparent decision-making processes. The basic resources of the organization must be derived in the main part from contributions of the national affiliates or other components or from individual members. Organizations established by governments or intergovernmental agreements are not considered NGOs.

There are currently over 2,000 NGOs registered with the Economic and Social Council to lobby at the United Nations.³⁸ There are three categories of status: General consultative status, Special consultative status and Roster status:

- General consultative status is reserved for fairly large, established international NGOs with a broad geographical reach and interest in a large number of the fields of activity covered by the ECOSOC.
- Special consultative status is granted to NGOs which have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the ECOSOC.
- The Roster category is a "catch all" category. Organizations that apply for consultative status but do not fit in any of the other categories are usually included in the Roster. NGOs that have formal status with other UN bodies or specialized agencies (for example, the ILO, UNESCO, or WHO) can be included on the ECOSOC Roster.

Despite the fact that unaccredited NGOs are excluded from formal meetings, numerous unaccredited NGOs were in attendance, participating in informal ways at the 60th session of the CHR. "The really important meetings are in the hallways and doorways anyway," explained one NGO veteran of Human Rights Commission annual meetings. "The parallel meetings are usually very informative," she added, "but now there are so many that it is difficult to attend all ... three in one day so attendance gets split."³⁹ "There's no question about whether to go or not," said another advocate who was undaunted by his NGO's unaccredited

status. "Everyone shows up, so to maintain credibility you have to, too." For this advocate, "showing up" meant attending the informal meetings ("the informals"), not the formal session. "For the formal stuff, it is just so political that it is hard to be convinced by its credibility," said a woman who had experience at both informal and formal UN sessions. NGO staff described the Human Rights Commission meetings as "a time when ideas get generated and contacts made." Gay McDougall, Executive Director of Global Rights, has observed that the pattern of the UN relating NGOs to the periphery of activity has become well established, "but it is now just as common for NGOs to function with remarkable flexibility from an outer ring of influence."⁴⁰

What is covered? Agenda for the 60th session, 15 March to 23 April 2004⁴¹

The agenda of the meeting was typical; it included the following:

- 1 Election of officers.
- 2 Adoption of the agenda.
- 3 Organization of the work of the session.
- 4 Report of the United Nations High Commissioner for Human Rights and follow-up to the World Conference on Human Rights.
- 5 The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation.
- 6 Racism, racial discrimination, xenophobia and all forms of discrimination.
- 7 The right to development.
- 8 Question of the violation of human rights in the occupied Arab territories, including Palestine.
- 9 Question of the violation of human rights and fundamental freedoms in any part of the world, including:
 - a question of human rights in Cyprus;
 - b procedure established in accordance with Economic and Social Council resolutions 1503 (XLVIII) and 2000/3.
- 10 Economic, social and cultural rights.
- 11 Civil and political rights, including the questions of:
 - a torture and detention;
 - b disappearances and summary executions;
 - c freedom of expression;
 - d independence of the judiciary, administration of justice, impunity;
 - e religious intolerance;

- f states of emergency;
- g conscientious objection to military service.
- 12 Integration of the human rights of women and the gender perspective:
 - a violence against women.
- 13 Rights of the child.

What do NGOs do? Examples of NGO statements

NGOs from around the world played a central role in the 60th session of the CHR, and many sent members to attend and represent their point of view. Additionally, NGOs were allowed to present reports to the CHR prior to the session. Limitations on speaking time and on the length of written contributions led to greater coordination among the NGOs, especially of their oral interventions. While many of the reports contain documentation about human rights situations in specific countries, many others speak to particular issues. Box 3.4, below, is a sampling of NGO reports.

Box 3.4: Sample of NGO reports

From the International Rehabilitation Council for Torture Victims

Victims:

International Rehabilitation Council for Torture Victims (IRCT) is an independent, international health professional organisation, which promotes and supports the rehabilitation of torture victims and works for the prevention of torture worldwide ... The IRCT would like to draw the attention of the CHR to a number of relevant issues related to the continued failure of effective implementation of the prohibition against torture and other cruel, inhuman or degrading treatment and punishment even in a number of state parties to the Convention against Torture ...

From the World Federation of Trade Unions:

Nevertheless, and even though the fact that the international treaty on the protection of the rights of migratory workers and its relatives took effect the past July 1st, and in spite of its economic importance and of the enormous amount of people

concerned, migratory workers frequently are not protected by that legislation and are considered a cheap, docile and flexible labour force.

... In the International Labour Organization the criterion of an international consensus is spreading around the idea that the regulation of international labour migration cannot be left in the hands only of national interests and mechanisms of market. Also it is judged that it is necessary to act through bilateral and multilateral agreements and by means of attachment to the international norms. The workers who migrate in regular form are especially vulnerable to exploitation and abuse because the threat of arrest and deportation prevents any type of union association and exposes them to dangerous labour conditions.

From the Latin American Human Rights Association:

The Human Rights Latin American Association – Aldhu – within its Project of Promotion and Protection of the Human Rights of the Indigenous People, sponsored by the European Union, carried out the Forum “The Jaguar’s Agony”, in which a report of the implications of the Colombian armed conflict on the Indigenous People of the Amazon was presented ... The following were some of the most significant results: Due to the armed conflict the indigenous people constantly face violations to the human rights ... such as: harassment and exile of the communities; armed confrontations within their territory; loss of autonomy and internal social control; lack of access to areas of food supply, hunting, fishing and gathering zones and sacred places; threats; murder of traditional authorities and community leaders ...; slaughters, forced recruitment, loss of territories, new conflicts among ethnic groups and other non-indigenous populations; planting of anti-personnel mines or abandonment of explosive devices in their territories; invasion of properties and of indigenous territories; expansion of illicit crops economy, illicit use of drugs and drug trafficking and weakening of the economy of subsistence.

What role do the special rapporteurs play?

The Commission heard reports from a number of special rapporteurs, who are considered some of the foremost experts in the world on their specific topics. As the reports in Box 3.5 below illustrate, the special rapporteur has the distinctive authority to measure human rights protection, promotion, and respect independent of governmental influence. Importantly, the reports include concrete recommendations as to how the governments can implement the rights which they have agreed to uphold. The following text exemplifies the reports which the special rapporteurs submit to the CHR on an annual basis.

Box 3.5: Examples of special rapporteur reports to the CHR

Special Rapporteur on the Right to Education, Ms. Katarina Tomasevska⁴²

This is the sixth – and the last – annual report of the Special Rapporteur on the right to education. When her mandate was established in 1998, its key purposes were enhancing the visibility of the right to education and eliminating obstacles and difficulties in its realization. This has proved to be an impossible task because obstacles and difficulties in the carrying out of her mandate have considerably increased each year. Her formal complaint against the Office of the High Commissioner for Human Rights on 15 October 2003, not yet resolved, dealt with her efforts to enhance the visibility of the right to education. Her recommendation to the CHR is, therefore, not to renew the mandate on the right to education. The report deals with three substantive areas: financial obstacles to the realization of the right to education, elimination of gender discrimination both in and through education, and the content of education. The limited length of this report required these issues to be only touched upon here, and the Special Rapporteur will present results of her work during the sixtieth session of the CHR.

Reports on China⁴³

[The following is from the Executive Summary.]

This report highlights key issues which have emerged from examining

education in China through the human rights lens. Using the international legal framework as the yardstick, the Special Rapporteur's mission and this report have focused on the role of the central Government as it is responsible for ensuring that China's international human rights obligations are complied with. China's law does not yet conform to the international legal framework defining the right to education. Its Constitution defines education as an individual duty, adding a "right to receive education." Freedom to impart education is not recognized, nor is teachers' freedom of association, and religious education remains prohibited. Therefore, the Special Rapporteur recommends that China's law be reviewed using the yardstick of its international human rights obligations so that human and minority rights can be integrated into education policy, law and practice. She also recommends extensive public education, as has been done for the implementation of China's obligations stemming from its membership in the World Trade Organization. Moreover, an analysis should be made of the human rights impact of the coexistence of private and public education, and of the private and public law that regulate them.

The Special Rapporteur recommends that the Government affirm, formally and explicitly, that all children have the right to free education, and invite all school-age children to enroll. This will reveal the exact number of schoolchildren, as nobody knows how many children there may be, especially migrant or out-of-plan children. She recommends that the budgetary allocation for education be increased to the internationally recommended minimum of 6 per cent of gross domestic product (GDP), that is, doubled from 3 to 6 per cent. The Special Rapporteur recommends that specific Government institutions be made responsible and accountable for the implementation and enforcement of laws dealing with women and people with disabilities. Sustained public education is necessary for the elimination of gender discrimination and discrimination against people with disabilities. She also recommends a clarification of the rights of young unmarried people to sex education and family-planning services relating to their right to found a family and to self-protection against sexually transmitted diseases and HIV/AIDS.

Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Juan Miguel Pettit⁴

[The following is from the Executive Summary.]

This report is submitted in accordance with Commission on Human Rights resolution 2003/86. The Special Rapporteur visited Brazil and finalized his report on his visit to France. In section II of the report, the Special Rapporteur welcomes the entry into force of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime and the issuing of the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) ...

This report focuses on the prevention of child sexual exploitation and is based on the information received from Governments, international organizations and non-governmental organizations in reply to a questionnaire sent by the Special Rapporteur. The report illustrates a variety of programmes and projects that can be utilized in the prevention of commercial sexual exploitation of children (CSEC). The strategic area on prevention of the Stockholm Agenda for Action Against Commercial Sexual Exploitation of Children was used as a basis for categorizing the initiatives outlined in the report. Some common features can be identified in successful prevention policies and programmes ... National policy frameworks, legislation and international instruments are indispensable tools in the prevention of CSEC. Prevention policies cannot be implemented in isolation from those on protection, recovery and participation. Successful interventions are a combination of activities ranging from research and analysis, to capacity-building, strengthening of institutions, raising of awareness, educational programmes, etc. The strategy is to attack the problem on different fronts in a holistic manner.

What role does the Secretary-General play?

The Secretary-General can use the meeting to respond to human rights concerns on the agenda, to report on progress on existing studies and to add new issues to the agenda. At the 60th session of the CHR, the

Secretary-General submitted several reports to the meeting. An excerpt from his report on children and armed conflict appears in Box 3.6.

What is the output?

The impact of the CHR session on raising awareness of issues, providing networking opportunities, and improving the technical skills of participants is by all accounts substantial, but difficult to quantify. The more tangible output of the CHR includes the well over 100 resolutions, decisions and Chairperson's statements adopted over the course of the session. Resolutions may concern a very specific issue, such as

Box 3.6: Sample report of the Secretary-General

Report to the Security Council on the impact of children in armed conflict⁴⁵

II. Advances made towards the protection of children affected by armed conflict

3. In the course of the past few years, important advances have been made in the efforts to ensure more effective protection of children exposed to armed conflict.
4. Since 1998, when the issue of war-affected children was formally placed on the agenda of the Security Council, the progressive engagement of the Council has yielded significant gains for children. These include four resolutions devoted to the issue (resolutions 1261 (1999), 1314 (2000), 1379 (2001) and 1460 (2003)) an annual debate and review, an annual report submitted by the Secretary-General, the incorporation of child-specific concerns into the briefs of Security Council fact-finding missions, an important contribution to monitoring and accountability through the listing of parties to conflict that violate the rights of children and the stipulation for the systematic inclusion of sections devoted to children in country-specific reports.
5. Child protection has been integrated into the mandates and reports of peacekeeping missions and the training of personnel. A significant innovation has been the creation of the role and deployment of child protection advisers in peacekeeping missions.

the sale of girls in Africa, or a more general topical category of human rights concerns, such as the rights of the child. The latter type of resolution is known as an "omnibus resolution." Each year the CHR adopts an omnibus resolution on the rights of the child. The NGO Group on the Rights of the Child sets up various sub-groups to coordinate NGO input. Over the years, NGO coordination has improved, although not all NGOs cooperate and a great diversity of opinion exists among those who do.

While there have been some attempts to streamline the omnibus resolution on the rights of the child, the resolution has continued to grow through the inclusion of new issues. This growth has often occurred on an *ad hoc* basis rather than in response to a clear, coherent overarching structure and purpose. The resolution adopted by consensus at the 58th session was co-sponsored by 104 countries and, although very long, contains strong language for human rights protection. The resolution includes many of the issues that NGOs pushed for, such as the appointment of an independent expert to carry out the study on violence against children, the fact that the "Convention on the Rights of the Child ... and other relevant human rights instruments must constitute the standard in the promotion and protection of the rights of the child," and a call to "abolish by law as soon as possible the death penalty for those under 18 at the time of the commission of the offence." An excerpt from the resolution appears in Box 3.7.

Box 3.7: Excerpt from resolution on rights of the child

Res. 2004/48. Rights of the child

1. IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD AND OTHER INSTRUMENTS

1. [The Commission on Human Rights] Urges once again the States that have not yet done so to consider signing and ratifying or acceding to the Convention on the Rights of the Child as a matter of priority and, concerned at the great number of reservations to the Convention, urges States parties to withdraw reservations incompatible with the object and purpose of the Convention and to consider reviewing other reservations with a view to withdrawing them;

[...]

3. *Calls upon States parties to implement the Convention fully and to ensure that the rights set forth in the Convention are respected without discrimination of any kind and that the best interests of the child are a primary consideration in all actions concerning children, to recognize the child's inherent right to life and that the child's survival and development are ensured to the maximum extent possible, and that the child is able to express his/her views freely in all opinions on matters affecting him/her and that these views are listened to and given due weight in accordance with his/her age and maturity;*

[...]

5. *Urges States parties to take all appropriate measures for the implementation of the rights recognized in the Convention, bearing in mind article 4 of the Convention, by:*

(a) *Strengthening relevant governmental structures for children, including, where appropriate, ministers in charge of child issues and independent commissioners for the rights of the child;*

(b) *Ensuring adequate and systematic training in the rights of the child for professional groups working with and for children, including specialized judges, law enforcement officials, lawyers, social and community workers, medical doctors, health professionals and teachers, and coordination among various government bodies involved in children's rights, and encourages States and relevant bodies and organizations of the United Nations system to continue to promote education and training in this regard;*

[...]

8. *Calls upon States parties:*

[...]

(b) *To strengthen their cooperation with the Committee and to comply in a timely manner with their reporting obligations under the Convention and the Optional Protocols thereto ...*

[...]

10. *Requests the Office of the United Nations High Commissioner for Human Rights, United Nations mechanisms, all relevant organs of the United Nations system, in particular special representatives, special rapporteurs and working groups, regularly and systematically to incorporate a strong child rights perspective throughout all activities in the fulfilment of their mandates, as well as to ensure that their staff is trained in child protection matters, and calls upon States to cooperate closely with them;*

[...]

II. PROTECTION AND PROMOTION OF THE RIGHTS OF THE CHILD

[This section contains specific provisions on four topic areas: identity, family relations and birth registration; poverty; education; and freedom from violence.]

III. NON-DISCRIMINATION

24. *Calls upon all States to ensure that children are entitled to their civil, political, economic, social and cultural rights without discrimination of any kind;*

[This section contains specific provisions on the girl child, children with disabilities and migrant children.]

IV. PROTECTION AND PROMOTION OF THE RIGHTS OF CHILDREN IN PARTICULARLY DIFFICULT SITUATIONS

[This section contains specific provisions on: children working and/or living on the street; refugee and internally displaced children; child labor; and children alleged to have or recognized as having infringed penal law.]

V. PREVENTION AND ERADICATION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

37. *Calls upon all States:*

- (a) To take all appropriate national, bilateral and multilateral measures, inter alia to develop national laws and allocate resources for the development of long-term policies, programmes and practices and to collect comprehensive and disaggregated gender-specific data, to facilitate the participation of child victims of sexual abuse and exploitation in the development of strategies and to ensure the effective implementation of relevant international instruments concerning the prevention and the combat of trafficking and sale of children for any purpose or in any form ...;

[...]

VI. *PROTECTION OF CHILDREN AFFECTED BY ARMED CONFLICT*

[...]

42. *Calls upon States:*

- (a) To end the recruitment of children and their use in armed conflicts contrary to international law, including obligations assumed under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182) of the International Labour Organization;
- (b) When ratifying the Optional Protocol, to raise the minimum age for voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention, bearing in mind that under the Convention persons under 18 years of age are entitled to special protection, and to adopt safeguards to ensure that such recruitment is not forced or coerced;

[...]

VII. *RECOVERY AND SOCIAL REINTEGRATION*

46. *Encourages* States to cooperate, including through bilateral and multilateral technical cooperation and financial assistance, in the implementation of their obligations under the Convention on the Rights of the Child, including in the prevention of any activity contrary to the rights of the child and in the rehabilitation and social integration of the victims; such assistance and cooperation to be undertaken in consultation among concerned States and relevant international organizations as well as other relevant actors;

[...]

[Adopted by a recorded vote of 52 to 1.]

Critique and reforms

The work of the Commission has come under increasing scrutiny as its focus has moved away from standard-setting to enforcement. The willingness of the Commission, often through its special procedures, to concern itself with violations of human rights in particular countries while ignoring rights violations in others, has opened it to political manipulation. One recent assessment of the Commission notes that "the interests of governments started to play a more important role in the Commission," adding that:

In addition the high priority which human rights have acquired on the international political agenda over the years and particularly today has had a major influence on the character and composition of the Commission. The Commission is therefore a purely political body whose course and, above all, decisions are controlled by politicians and diplomats, and in which regional group interests and differences tend to predominate.⁴⁶

The ousting of the United States from the CHR in 2001, and the chairing of the CHR by Libya in 2003 provide good illustrations of the politicization of the CHR.

One central criticism directed against the CHR and Sub-Commission is that they have sacrificed efficiency in human rights enforcement for politically motivated proliferation of special procedures. According to this line of criticism, the scope of human rights norms has ballooned

far beyond the ability of the UN system to enforce them. To the extent that enforcement does occur, it is selective and inefficient. Critics have begun to look at the resolutions of the CHR and reports issued by its thematic mechanisms with a cynical eye, holding that they are couched in the same language each year without any results. The work of the Sub-Commission also is criticized for overlapping with the work of the CHR. Measures undertaken by the CHR to clarify its own role are said to be inadequate by some critics, from both inside and outside the organization.⁴⁷

From within the UN system, the main response to this criticism has not been to scale back UN human rights activity, but rather to undertake steps to improve existing mechanisms. The special procedures have received particular attention under UN Secretary-General Kofi Annan's purview. Annan, in 2002, in a major address outlining steps for improving the work of the UN, suggested that the work of the special procedures be made more effective in two respects. First, he urged that the quality of reports and analyses produced by the special procedures be strengthened through the setting of clear criteria for the involvement of special procedures and the selection of appointees, and by establishing better guidelines for their operations and reporting functions. Second, he stressed the need to strengthen the capacity of UN bodies to support the special procedures. Measures to address this problem, he suggested, could include the appointment of more senior professionals and better administrative support. For their part, NGOs urged that the resources of the CHR and Sub-Commission be improved, that coordination be improved, that follow-up guidelines be developed, and that the Human Rights Commission pay greater attention to social and economic rights.

In response to the reform suggestions of the Secretary-General and other parties, a number of steps were taken. They included the drafting and adoption of a manual for special rapporteurs; the drafting and endorsement by the OHCHR of internal guiding principles regarding the working relations between special procedures mandate-holders and OHCHR staff; and the development of a roster of experts who could be called upon to serve under special procedures. The ability of the UN to respond to human rights in emergency situations received particular attention in reform efforts.

As far as the work of the CHR is concerned, the CHR has adopted several specific measures to improve the efficiency of its meetings. The introduction of the CHR Bureau elections in January, as explained above, is credited as a major innovation. Also viewed positively are new time limits for speaking, and the introduction of a "high-level

segment" to dedicate a discrete time period for high-level officials whose presence would otherwise disrupt regular proceedings.⁴⁸ Although difficulties remain, all of the measures have generally been credited with improving the effectiveness of the human rights work of the UN.

Nonetheless, the ability of the CHR to fulfill its mandate fairly and effectively remains in question. In April 2005, Secretary General Kofi Annan told the CHR that it had "undermined the credibility" of the entire United Nations through its politicized appointments aimed at undermining human rights. The Secretary General urged that the CHR be replaced by a smaller Human Rights Council, a body of experts chosen for their commitment to human rights.⁴⁹ The new Council, a permanent body, possibly on par with the Security Council, would be capable of meeting whenever necessary throughout the year.

Concluding thoughts

The drafters of the UN Charter never imagined that they were creating the springboard for an elaborate international human rights system. Nor did ECOSOC contemplate fully what it was creating when it fashioned a Commission on Human Rights. The Commission's function, composition and place in the UN system have changed considerably over the past 50 years or so. While in the first stage of its existence it concentrated its efforts on international standard-setting, resulting in the Universal Declaration of Human Rights and the two core international covenants, in its second stage it has evolved into what it is today: the main political and diplomatic policy body of the UN in the field of human rights.⁵⁰

The most important and effective feature of the CHR is its integrative and participatory process. States, Observer States, NGOs and national human rights institutions (NHRIs) meet annually in Geneva to lobby for resolutions and work in close contact on areas of concern throughout the year. NGOs coordinate to find states that will sponsor CHR resolutions. Sponsoring states then begin their own lobbying to find a co-sponsor and signatories for the resolution, relying on other actors all the time for support (NGOs, NHRIs). The give and take of negotiations not only leads to concrete human rights measures but, equally significant, it raises consciousness among all participants and generates impetus for further organizing. Whether before the CHR or before another body that replaces the CHR, human rights advocates are likely to develop and expand in the future as their demands for meaningful participation grow.