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Establishing an NHRI in a Contested Political Space: A Deliberative Process in Israel

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Establishing an NHRI in a Contested Political Space: A Deliberative Process in Israel

Tomer Broude[*] *and Natan Milikowsky*[**]

Abstract

How can National Human Rights Institutions (NHRIs), as centerpieces of national human rights systems (NHRSs) be established effectively in contested political spaces? Could the effectiveness of the NHRS be enhanced even without a formal NHRI? These questions informed a deliberative process in Israel that brought together representatives from government, human rights organisations and academia. Our research concludes that none of the institutions working in the field of human rights in Israel fully conform to the international standard required for the accreditation as an NHRI, although in conjunction with each other they constitute a fairly effective NHRS. The project raised several dilemmas: should we aim for a first-best option? Would an Israeli NHRI be able to deal with the most severe human rights violations? Would the political atmosphere have adverse effects on the protection of human rights? Considering these dilemmas, we conclude that the Paris Principles, however necessary, do not in themselves ensure effectiveness, and might be too demanding politically in contested spaces, such as Israel at the present time. Nonetheless, cautious progress could be made to enhance the effectiveness of the current Israeli NHRS.

Keywords: Paris Principles, effectiveness, NHRI design, Israel, deliberative process, contested political spaces, National Human Rights Systems.

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1. Introduction

How can National Human Rights Institutions (NHRIs), as centrepieces of national human rights systems (NHRSs) and the 'domestic institutionalization' of human rights, be established effectively in contested political spaces? We engage with this question through a case-study that describes and reflects on a deliberative process regarding the potential establishment of an NHRI in Israel.

Several background issues emerge in this respect. First, arguably all NHRIs operate in contested political spaces, insofar as human rights are contested, not clear-cut 'natural law' or positivist rules.[1] In both substance and institutions, human rights, despite ideals of universality and inalienability, entail numerous, localized normative conflicts. One need not embrace 'cultural relativism' to acknowledge that human rights require deliberations within domestic political frameworks that constitute the NHRS: legislatures, governments (at both political and professional levels), municipalities, judiciaries, human rights organizations (HROs), social movements, media, and society at large.[2]

Second, measuring human rights' effectiveness is particularly difficult,[3] certainly with respect to NHRIs.[4] Moreover, formal models of domestic institutionalization of human rights

[1] Attempting to avoid contestation, see Patrick Macklem, *The Sovereignty of Human Rights* (Oxford University Press 2015).
[2] See Introduction and contribution by Stéphanie Lagoutte, elsewhere in this volume.
[3] Beth A Simmons, *Mobilizing for Human Rights : International Law in Domestic Politics* (Cambridge University Press 2009) 11–12.
[4] Katerina Linos and Tom Pegram, 'What Works in Human Rights Institutions?' (2017) 111 American Journal of International Law 628; Corina Lacatus, 'Explaining Institutional Strength: The Case of National Human Rights Institutions in Europe and Its Neighbourhood' (2018) Journal of European Public Policy 1.

protection and promotion, e.g., the Paris Principles,[5] do not include effectiveness as such,[6] even if their components are regularly deemed necessary, though not sufficient, for achieving effectiveness.

Third, globally there are currently 77 'A' accredited NHRIs,[7] raising several issues of both contestation and effectiveness, both in states with such NHRIs, and states that lack them. What impedes establishment of high-quality NHRIs elsewhere? Could national human rights systems be effective without formally accredited NHRIs? Most current research focuses on existing NHRIs, excluding states with no 'A' accredited NHRI. That leaves out almost two-thirds of all states, and one-half of the world's population.[8] That is a significant research gap seen from a wider domestic institutionalization perspective.

These questions informed a deliberative process in Israel which is the focus of this article. The process brought together representatives from government, human rights organisations and academia under the auspices of the Minerva Center for Human Rights (MCHR) at the Hebrew University of Jerusalem.[9] This 'Minerva Project', sponsored by the European Instrument for Democracy and Human Rights (EIDHR),[10] and led by the authors of

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[5] Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, adopted 20 December 1993, GA Res 48/134, UN GAO R, 48th Sess, UN Doc A/RES/48/141 (1993) ('Paris Principles')

[6] Julie Mertus, 'Evaluating NHRIs Considering Structure, Mandate, and Impact' in Ryan Goodman and Thomas Pegram (eds*), Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press 2012) 76–80.

[7] GANHRI, '*Chart of the Status of National Institutions: Accreditation Status as 26 January 2018*' (2018) <http://nhri.ohchr.org/EN/Documents/Status Accreditation Chart.pdf> accessed 22 January, 2019.

[8] Countries with significant populations such as the United States of America (US), People's Republic of China (PRC), Pakistan, Ethiopia, Brazil, Bangladesh, do not have A accredited NHRIs.

[9] The Minerva Center for Human Rights is an academic center devoted to human rights research and education. For more see https://en.minervacenter.huji.ac.il/.

[10] See European Union Regulation No. 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide, O.J. L 77/85.

this contribution,[11] included research and consultations that culminated in a final report (discussed later in the article) recommending a series of measures and amendments to Israel's NHRS, with a view towards increased domestic institutionalization of human rights.

Discussing an Israeli NHRI raises many challenges, not least because of the political sensitivity of human rights discourse in Israel, in the last decade unconducive to human rights promotion and protection,[12] perhaps in ways that are echoed in recent years in other jurisdictions[13] and thus worthy of more general attention, *mutatis mutandis*.

Among the interconnected problems in the deliberative process the following were identified: (1) Should the aim be for 'first-best' or second-best options ('ideal' vs. 'realist' scenarios)?; (2) What would be the role of an NHRI given reduced chances of addressing the most politically contested human rights concerns, in the Israeli case unequal family status[14] and the situation for Palestinians in East Jerusalem and the West Bank?[15] (3) Might NHRI establishment and consolidation of an NHRS in the current political climate in Israel result in adverse effects for human rights, for example, through co-optation and political capture?; And (4) How best to design an NHRI that satisfies not only formal requirements but also localized effectiveness? The accumulation of these questions points in the direction of cautious progress at this time. We identify institutionally-effective but politically-constrained

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[11] During the Minerva Project, the first co-author was MCHR's Academic Director, and the second co-author coordinated the Project's NHRI component. Prof. Yuval Shany, Adv. Danny Evron (MCHR's Executive Director) and Ms. Moran Avital provided additional advice throughout.

[12] See section 4 below.

[13] See Philip Alston, 'The Populist Challenge to Human Rights' (2017) 9 *Journal of Human Rights Practice* 1, and responses by Ron Dudai and Vijay K. Nagaraj.

[14] Yuval Merin, 'The Right to Family Life and Civil Marriage under International Law and Its Implementation in the State of Israel' (2005) 28 *Boston College International and Comparative Law Review 79.*

[15] *Report of the Secretary-General, 'Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*' (2017).

NHRS actors in Israel, each of which plays a significant role in domestic institutionalization of international human rights.

The article, which mainly serves as a reflective field note, will unfold as follows. In Section 2 we will describe human rights protection in Israel, concentrating on existing human rights institutions and their conformity with the international standards regrading NHRIs. Subsequently, Section 3 will elaborate on the challenges and dilemmas raised by considering an NHRI in a contested political space as in Israel. Section 4 will describe the Minerva Project in greater detail, and Section 5 will summarize the main points raised during the deliberative process, before offering some reflective concluding remarks.

2. Human Rights Protection in Israel: An Overview

Background

Israel did not adopt a written constitution upon establishment in 1948, opting instead for incrementally adopted 'Basic Laws' with constitutional status.[16] Nonetheless, Israel's Declaration of Independence, to which the Israeli Supreme Court refers to regularly for interpretation,[17] commits to 'ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex' and to 'guarantee freedom of religion, conscience, language, education and culture'.[18] Moreover, the importance of human rights protection has been recognized as an overarching norm in the Israeli legal system.[19]

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[16] Dalia Dorner, 'Does Israel Have a Constitution?' (1999) 43 *Saint Louis University Law Journal* 1325.
[17] HCJ 73/53 Kol Ha'am Ltd. v. The Minister of Interior, [1953] IsrSC 7 871.
[18] *The Declaration of the Establishment of the State of Israel (14 May 1948)*, <http://www.archives.gov.il/en/chapter/the-declaration-of-independence/> accessed 21 November 2018.
[19] Suzie Navot, *Constitutional Law of Israel* (Kluwer Law International 2007) 557.

With the 1992 enactment of two human rights-related 'Basic Laws' the status of human rights in the Israeli legal system increased significantly. The *Basic Law: Human Dignity and Liberty* and *Basic Law: Freedom of Occupation* elevated the legal status of the rights contained therein [20] and changed the courts' engagement with human rights, enabling the judiciary to annul legislation contradicting them. Israel's 'Constitutional Revolution',[21] is not without controversy, and has raised calls to reduce the Supreme Court of Israel's powers. Also in the early 1990s, Israel ratified most international human rights conventions.[22] The Israeli legal system follows the dualist tradition,[23] whereby international treaties are not enforceable domestically without implementing legislation.[24] The courts will, however, interpret domestic laws in light of international commitments so as to avoid contradicting the latter, unless the extent of the conflict precludes such interpretation.

The protection and promotion of human rights in Israel are pursued through a variety of domestic institutions, constituting an NHRS: the legislature, the judiciary, government ministries such as the Ministry of Justice (MoJ) and Ministry of Foreign Affairs (MFA), the State Comptroller and Ombudsman and specialized rights' commissions, HROs and academia. Civil society plays a significant role in tracking and recording human rights violations by state and non-state actors.[25] In addition, HROs promote human rights through

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[20] Respectively the right to human dignity and liberty and the right to engage in any occupation, profession or trade.
[21] Aharon Barak, 'Human Rights in Israel.' (2006) 39 *Israel Law Review* 12.
[22] For a comprehensive list of the treaties Israel has ratified see OHCHR website: https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN.
See also Barak Medina, 'Domestic Human Rights Adjudication in the Shadow of International Law: The Status of Human Rights Conventions in Israel' (2017) 50 *Israel Law Review* 331.
[23] On the dualist-monist distinction see James Crawford, *Brownlie's Principles of Public International Law* (8th Edition, Oxford University Press 2012) 48–50.
[24] Medina *supra*, 336–37.
[25] See for example ACRI, 'The State of Human Rights in Israel and the OPT 2017' (2017) <https://law.acri.org.il/en/wp-content/uploads/2017/12/State2017.pdf> accessed 4 November 2018.

lobbying, education and public campaigns. Human rights law has developed historically mainly in the courts, as the main arena in which remedies to human rights violations are sought, through individual cases and public petitions before the Supreme Court sitting as the High Court of Justice (HCJ).[26]

International human rights-related work has been carried out over the last 15 years or so at the Ministry of Justice Office of the Deputy Attorney-General (International Law), in particular its human rights department, responsible for addressing issues that stem from international human rights obligations, including treaty body reporting.[27] The Ministry of Foreign Affairs (MFA) also engages with human rights issues, taking the lead in Israel's uncomfortable relationship with the UN Human Rights Council.[28]

Between the governmental dealings with international bodies regarding human rights and the enforcement of human rights by the courts, limited to the rights entrenched in the Israeli legal system (albeit with reference to international obligations),[29] there lies an expansive space for human rights promotion and protection activities. These can range from public campaigns and consulting the *Knesset* on the impact of new legislation on human rights, through investigating human rights violations and hearing individual complaints and

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[26] See Daphna Golan and Zvika Orr, 'Translating Human Rights of the "Enemy": The Case of Israeli NGOs Defending Palestinian Rights' (2012) 46 *Law & Society Review* 781.

[27] For information regarding the work carried out by the Ministry of Justice in this regard see http://www.justice.gov.il/En/Units/HumanRightsAndForeignRelations/Pages/default.aspx. For a detailed account of the Israeli process of reporting to the UN human rights treaty bodies, see Ayelet Levin, 'The Reporting Cycle to the United Nations Human Rights Treaty Bodies: Creating a Dialogue between the State and Civil Society - The Israeli Case Study' (2015) 48 *George Washington International Law Review* 315; Shlomi Balaban and Tomer Broude, 'Between Geneva and Jerusalem: Government-Civil Society Interaction Before UN Treaty Monitoring Bodies as a Means of Incorporating International Human Rights in Israel' (2017) 10 *Hukim* 9 (in Hebrew).

[28] See, for example, 'Israel Says It Won't Cooperate with UN Human Rights Council Probe of Gaza Deaths' *The Times of Israel* (18 May 2018) <https://www.timesofisrael.com/israel-says-it-wont-cooperate-with-un-human-rights-council-probe-of-gaza-deaths/> accessed 30 December 2018;

[29] See Daphna Barak-Erez, 'The International Law of Human Rights and Constitutional Law: A Case Study of an Expanding Dialogue', 2(4) *International Journal of Constitutional Law* (2004) 611-632.

offering non-judicial remedies. In many states this is the space in which an NHRI operates.[30] Although Israel does not formally have an NHRI, it has several government institutions with NHRI-like attributes, including: 1) the State Comptroller and Ombudsman; 2) the Commission for Equal Rights of Persons with Disabilities (CERPD); 3) the Equal Employment Opportunities Commission (EEOC) and; 4) the Authority for the Advancement of the Status of Women (AASW). In the following sections we describe the work of these four key institutions. None of these operate as an NHRI or are recognized as such, whether nationally or internationally, and yet contribute significantly to the NHRS in Israel.

The State Comptroller and Ombudsman

Israel's audit system is unique as it combines the State Comptroller ('*Mevaker HaMedina'*) and the Ombudsman ('*Netsiv Tlunot Hatisbur'* – literally, the commissioner for public complaints). Thus, the institution has both general *proprio motu* review powers, and individual investigative powers.[31] The Comptroller issues external audits on activities of Government ministries, municipalities and essentially all publicly funded agencies,[32] in order to ensure that they comply with the law, good governance and the principles of integrity and efficiency.[33] In its capacity as Ombudsman it investigates complaints received from persons detrimentally affected by public authorities as defined by law.[34]

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[30] OHCHR, *National Human Rights Institutions - History, Principles, Roles and Responsibilities* (2010) vol 4; Katrien Meuwissen, 'NHRIs and the State: New and Independent Actors in the Multi-Layered Human Rights System?' (2015) 15 *Human Rights Law Review* 441.

[31] The State Comptroller was established in 1949, and in 1971 was vested also with the roles and responsibilities of an Ombudsman. Miriam Ben-Porat, *Basic Law: State Comptroller* (Hebrew University of Jerusalem 2005) 6.

[32] *The State Comptroller Law, 5718-1958 (Comptroller Law),* art 9.

[33] *Basic Law: State Comptroller,* art 2(b) ;See also State Comptroller website, http://www.mevaker.gov.il/En/About/Pages/MevakerTafkid.aspx accessed 20 November, 2018.

[34] *Comptroller Law*, arts 33, 37.

The legislation establishing the Comptroller/Ombudsman's mandate, functions and responsibilities does not mention human rights. Thus, protection of human rights, let alone their promotion, are not officially a role of the institution. Nonetheless, many areas of investigation deal with issues of human rights, and individual complaints to the ombudsman do raise issues of human rights in many cases.[35] This is legally grounded in provisions permitting the Comptroller to examine any matter 'as he may deem necessary',[36] and as Ombudsman, to examine complaints about acts that are contrary to law or flagrantly unjust.[37] Thus, although there is no explicit human rights mandate, *de facto* human rights issues may be addressed.

To illustrate, for the past several years a significant part of the Ombudsman's annual report is dedicated to recounting complaints that are related to human rights, such as freedom of expression[38] and detainee rights, and social and economic rights, such as the rights to healthcare, housing and education.[39] Concomitantly, the Comptroller conducts thorough inquiries into issues that are heavily human rights-oriented. For example, the Comptroller published reports on education for a shared society and prevention of racism,[40] on women's representation in public offices,[41] and on the treatment of non-deportable aliens.[42] In many cases the Comptroller follows-up on the reports and re-examines issues and deficiencies. For

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[35] See, e.g., Office of the State Comptroller and Ombudsman of Israel, *State Audit and Human Rights* (2014); Office of the State Comptroller and Ombudsman of Israel, *Education for a Shared Society and Prevention of Racism* (2016) (in Hebrew).
[36] Basic Law, art 2(b); Comptroller Law, art. 10(a)(2)-(3).
[37] ibid, art 37.
[38] With regard to freedom of expression the Comptroller published guidelines for the conduct of public representatives in Facebook, in order to ensure the protection of freedom of expression in social networks.
[39] The State Comptroller and Ombudsman of Israel, *Ombudsman Annual Report 44 - 2017* (2018).
[40] The State Comptroller and Ombudsman of Israel, *Education for a Shared Society and Prevention of Racism* (2016);
[41] The State Comptroller and Ombudsman of Israel, *Representation of Women in Senior Position in the Public Service* (2014)
[42] The State Comptroller and Ombudsman of Israel, *annual report 64C* (2014);

instance, the treatment of non-deportable aliens was examined in 2014 and a follow-up was conducted in 2018.[43]

The combined function of Comptroller and Ombudsman offers a potentially strong human rights protection mechanism.[44] The Comptroller can initiate investigations that affect human rights, and the Ombudsman's individual complaint mechanism allows human rights' engagement. The current State Comptroller, former District Court judge, Joseph Haim Shapira, has taken the role of a 'Defender of Human Rights in Israel',[45] supported by his staff, to the best of our knowledge. This is an important addition to the Israeli NHRS, but cannot substitute a statutory mandate for an NHRI, and is dependent on the agenda-setting preferences of the incumbent Comptroller/Ombudsman. Effectiveness is also unclear, given, for example, that the institution does not have a protocol addressing human rights issues in its work, or a dedicated human rights staff.

Moreover, the Comptroller/Ombudsman do not have official powers regarding promotion activities, although the publication of reports plays a role, and some educational activity has been undertaken. Importantly, the Comptroller does not have the authority to partake in legislative processes regarding proposed bills. Additionally, formal powers regarding international human rights treaties and organizations are entirely absent. Lastly, the institution is not in any official or otherwise structured contact with HROs and other civil society organizations, as would be expected of an NHRI.

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[43] The State Comptroller and Ombudsman of Israel, *annual report 68C* (2018);
[44] Orly Levinson-Sela, 'The Contribution of the Dual Function of the State Comptroller and Ombudsman of Israel to the Defense of Human Rights', The 11th IOI World Conference (2016).
[45] State Comptroller website, http://www.mevaker.gov.il/En/Ombudsman/NTZAbout/Who-are-we/Pages/Human-Rights.aspx?AspxAutoDetectCookieSupport=1 accessed 21 November 2018. For an articulation of the position the holds that the State Comptroller is a NHRI see Elie P Mersel and others, 'From State Comptroller to National Human Rights Institution - A Short but Necessary Path' in *Israel Yearbook on Human Rights*, Volume 48 (Brill 2018).

Thus, although the Comptroller/Ombudsman benefits from a very high degree of independence and can play an important role in Israel's NHRS, there are several obstacles to both its formal recognition as an NHRI and its effectiveness as such.

The Equal Employment Opportunities Commission

The Equal Employment Opportunities Commission (EEOC) was established in 2008. The EEOC is clearly not an NHRI in itself, despite its roots in earlier initiatives for a general human rights institution.[46] The EEOC is a welcome component in the overall NHRS in Israel, but it does not have a broad mandate to deal with the promotion and protection of human rights. Indeed, its mandate with respect to equality is limited to labor issues; and its independence and resources are restricted in ways that may curtail its effectiveness.

The EEOC is essentially an administrative unit within the Ministry of Labor and Social Affairs (MLSA). It is comprised of one national Commissioner and three regional Commissioners, and a modest staff. The goal of the EEOC is to promote the right to equality and eliminate discrimination in the workplace.[47] It is vested with the authority to enforce the laws that uphold the right to equality in the workplace.[48] This includes receiving individual complaints, investigating them and determining appropriate responses, which could be a legal injunction or filing a law suit on behalf of the complainant, or *sua sponte*, when possible. These powers allow it to protect the right to equality in the workplace, but in the labor sphere

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[46] Assaf Meydani, *The Anatomy of Human Rights in Israel* (Cambridge University Press 2014). 190–92. See text to n 86.

[47] *Equal Employment Opportunities Law, 5748-1988* (EEO law), art. 18.8. Art. 2 specifies the prohibited grounds for discrimination: gender, age, race, nationality, religion, ethnic origin, sexual orientation, personal and family status, pregnancy, parenthood, fertility treatment, belief, political affiliation or reserve duty in the armed forces.

[48] EEO Law, art 18.8.

only. The EEOC is not authorized to operate in other domains where discrimination occurs. Furthermore, there is no reference to international conventions and human rights law in any of the legal documents that ground the EEOC's powers, or in its work in practice.

In addition to the EEOC's role in the protection of the right to equality in the workplace, it is authorized to undertake some promotion activities, such as raising public awareness by means of education and public campaigns, cooperation with other bodies including employers and employees and collecting data and conducting research about equality in the workplace.[49] This is limited in practice due to its modest budget.[50] Although the EEOC is not formally authorized with advising and consulting legislation and policy processes, it does act in this sphere and its representatives participate in *Knesset* (parliamentary) committees that deal with issues of equality in the workplace regularly.[51]

The national Commissioner is appointed for a four-year term by the Government upon a recommendation from the Minister of Labor and Social Affairs. A Commissioner can serve for up to two terms. The EEOC's budget is included in a separate provision within the general budget law.

The EEOC's degree of formal independence is limited, even if it asserts *de facto* independence. On one hand, it has the authority to file law suits and stand independently in

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[49] ibid, art 18.8(1)-(4).
[50] This was reported to us by an EEOC representative that appeared before the consulting committee, see section 4 below.
[51] Equality in the workplace in this respect should be interpreted broadly. For instance, in 2017 the EEOC participated in discussions regarding women's retirement age, sexual harassment in the police force, and gender perspectives on the Ministry of Health's budget. EEOC, '2017 - Annual Report' (2018) <https://employment.molsa.gov.il/publications/publications/doclib/workequlityreport_2017.pdf> accessed 28 December 2018.

court, and has a broad scope of operational autonomy.[52] On the other hand, as a governmental body, the EEOC is subject to the Attorney-General's decisions, and in cases where inter-agency disagreements arise, it may be precluded from presenting its legal position in court. This complex position is manifest in cases in which the employer is the State. The EEOC can file law suits against the State if it acts on behalf of an employee. However, according to current procedures the EEOC must determine at the outset of legal procedures whether it will file a law-suit and act as the employee's attorney, or try to conduct an inter-governmental inquiry that cannot result in a law suit. In practice, the former is not pursued.

The Commission for Equal Rights of Persons with Disabilities

The Commission for Equal Rights of Persons with Disabilities (CERPD) was established in 2000, under the *Equal Rights for Persons with Disabilities Law, 5748-1988* (ERPD Law). The ERPD Law's object is to 'protect the dignity and liberty of a person with a disability' and to enshrine the right "to equal and active participation in society in all major spheres of life".[53] The CERPD is the governmental body vested with the authority and powers to promote the objectives of the law and to enforce many of its provisions.[54]

In addition to its statutory authority, a government decision has vested the CERPD with the authority to implement and monitor Israel's obligations under the Convention on the Rights of Persons with Disabilities (CRPD), as ratified by Israel in 2012.[55] According to the

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[52] Tziona Koenig-Yair, Hannah Kupper and Janet Shalom, 'Equal Employment Opportunities Commission - The First Decade: an Insider Look' (2018) 15 *Labor, Society and Law* 177 (in Hebrew).
[53] ERPD Law, art 2. The masculine gender is of course in the original; according to Art. 6 of Israel's *Interpretation Law* 5781-1981, masculine terms refer equally to females and vice versa.
[54] ERPD Law, arts 12(3), 19.43-19.47, 19.49-19.50, 21.
[55] Government Decision 5100, 10 September 2012, https://www.gov.il/he/Departments/policies/2012_des5100 accessed 21 November 2018.

decision, the CERPD operates both as the intra-governmental mechanism required by the Convention's Art. 33(1) and the Independent Mechanism required by Art. 33(2). The dual function of the CERPD as both the intra-governmental and the independent mechanism is at odds with the accepted interpretation of the relationship between Arts. 33(1) and 33(2) of the Convention, whereby the two mechanisms should be separate, and Art. 33(2) requires the establishment of a mechanism independent from the government, adherent to the Paris Principles.[56]

The CERPD is an independent unit within the Ministry of Justice.[57] It acts to confront discrimination against persons with disabilities in all areas, especially employment, housing, education, public transportation and services. The Commission has powers of enforcement, inspection and investigation and may in principle even file law suits, prosecute offenders or issue accessibility orders when needed in order to combat discrimination and ensure compliance with regulations.[58] The CERPD sets its priorities independently and pursues its goals accordingly. In addition, it is vested with the role of promoting the equality of persons with disabilities and the principles of the ERPD law. Based on this, although the law does not include concrete promotion powers, the CERPD undertake many such endeavors, such as operating a website with relevant information for persons with disabilities and the public at large regarding their status and rights.[59] In these areas it also conducts research and publishes

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[56] See for example UNCRPD 'comments on Italy' CRPD/C/ITA/CO/1 para. 81-82; UNCRPD 'Rules of procedure' (10 October 2016) UN doc CRPD/C/1/Rev.1, para. 9.

[57] The CERPD website, http://www.justice.gov.il/En/Units/CommissionEqualRightsPersonsDisabilities/Pages/About-the-Commission-for-Equal-Rights-of-Persons-With-Disablities.aspx, accessed 19 November, 2018

[58] ibid, arts 12(3), 19.43-19.47, 19.49-19.50, 21

[59] https://www.justice.gov.il/Units/NetzivutShivyon/Pages/default.aspx, The CERPD website is, naturally, in Hebrew.

annual reports, information guides and pamphlets.[60] However, the CERPD's mandate is restricted to a specific domain of human rights, namely, the rights of persons with disabilities.

As in the case of the Equal Employment Opportunities Commission, the CERPD's formal independence is sub-optimal, mainly due to its legal status vis-à-vis State bodies, and to being subject to the Attorney-General's decisions and guidelines.[61] While this limits the CERPD's independence it notably relates to a small part of the CERPD's work. The CERPD has significant tools at its disposal and has a reputation for working effectively to promote and protect the rights of persons with disabilities.

The Authority for the Advancement of the Status of Women

The Authority for the Advancement of the Status of Women (AASW) was established in 1998 as part of the Prime Minister's Office.[62] It is currently a unit of the Ministry of Social Equality (MSE). The purpose of the AASW is to promote gender equality in Israel, by means of education, legislation and enforcement, to coordinate between governmental and non-governmental bodies acting to promote the status of women, and to ensure the government has the tools to achieve these goals.[63]

The AASW is granted with a wide range of capacities for fulfilling its goals, including the encouragement, coordination and promotion of activities in the field of

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[60] For example, the CERPD issued in 2018 a pamphlet regarding the rights and services for people with disabilities in the domain of employment (https://www.justice.gov.il/Units/NetzivutShivyon/sitedocs/employment_flyer_2018.pdf); an annual report for the years 2017-2018 (https://www.justice.gov.il/Units/NetzivutShivyon/sitedocs/2017-8_yearly_summary.pdf; and more.

[61] See discussion regarding the CERPD's independence in Israel's Initial Report Concerning the Implementation of the CRPD, para. 346, http://www.justice.gov.il/Units/NetzivutShivyon/SiteDocs/CRPD%20-%20GOI%20Initial%20Report.docx accessed 20 November 2018.

[62] *The Authority for the Advancement of the Status of Women Law*, 5758-1998 (AASW law).

[63] ibid, art 1.

advancing the status of women in government offices, municipal authorities and non-governmental entities; the establishment, oversight and follow-up of governmental activities in this respect; the promotion of legislation and advice for government offices regarding the enforcement of laws under the purview of the AASW; actions to increase public awareness regarding the AASW's field of work; and the gathering of information and data and promotion of research initiatives regarding the advancement of the status of women.[64]

In addition, the AASW is responsible for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), for the preparation of periodical reports required thereunder and for initiating and maintaining relations with international organizations and counterpart bodies in the AASW's field of work.[65] The AASW does not have independent investigatory powers and the AASW Law allows it to delegate complaints it received to the office of the Ombudsman, if the complainant has consented.[66]

The AASW is not an independent agency but rather, a unit within the Ministry of Social Equality. It has potentially considerable capacities, but is not very prominent in the public sphere with regard to the promotion and protection of human rights, even in its specific area of competence.[67]

The institutions described thus far, were examined in light of the Paris Principles and the documents published by the Global Alliance of NHRIs' (GANHRI) Sub-Committee for

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[64] ibid. art 4-5.
[65] ibid, art 5.
[66] ibid, art 6.
[67] Israel's report to CEDAW from 2017 states that the AASW budget has more than quadrupled since 2011 from approximately 3.9 million NIS (equivalent to 1.05 million USD) to 17 million NIS (4.6 million USD), see UNCEDAW, Sixth periodic report of States parties fue in 2017 (14 July 2017) UN Doc CEDAW/C/ISR/6, para. 43. In addition, government officials have told us that the AASW is being reformed with a view to greater prominence in the public sphere.

Accreditation (SCA). The Paris Principles are the formal benchmark for the evaluation of NHRIs.[68] The Principles have a harmonizing effect, among other things, because they are employed by the Global Alliance of National Human Rights Institutions (GANHRI) to evaluate and accredit the different NHRIs.[69] GANHRI's SCA, which is responsible for the accreditation and re-accreditation processes, has published a document of general observations that interprets the Paris Principles and distinguishes between the essential requirements derived from the principles and practices recommended for compliance with the Principles.

In light of the Paris Principles and the general observations published by the SCA,[70] we examined the existing institutions and concluded that although each institution complies with some of the requirements, none of them comply in a manner that rises completely to the bar set by the Paris Principles or to the practice of GANHRI's SCA. Thus, for example, while the State Comptroller and Ombudsman is an independent and autonomous institution, the absence of an explicit statutory human rights mandate, human rights promotion authority, competence to comment on legislative processes and so on, and an insufficient human rights engaged internal institutional structure, would not enable A status. And while the EEOC,

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[68] The Paris Principles (n 5), which were drafted in 1991 by representatives of the existing NHRIs at the time, do not set strict rules for the design of NHRIs, but leave much room for each state to adopt the institutional arrangements it deems most appropriate.

[69] A fully accredited NHRI (A status) has full participatory rights in GANHRI and in regional networks of NHRIs, as well as the right to participate in the Human Rights Council's sessions, and other UN bodies. See GANHRI website, https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx accessed 16 January 2019. It should be noted, however, that accreditation does not rest on effectiveness, but rather on the *de facto* fulfilment of the requirements of the Paris Principles. The connection between the Paris Principles and effectiveness is under study, worthy of expansion, also to non-accredited NHRIs, as already noted in the introduction to this article. See Linos and Pegram (n 4); Katerina Linos and Tom Pegram, *Interrogating Form and Function: Designing Effective National Human Rights Institutions* (The Danish Institute for Human Rights 2015).

[70] GANHRI, 'General Observations of the Sub-Committee on Accreditation' (21 February 2018) <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf> accessed 16 January 2019

CERPD and AASW address human rights each in their domain, with varying degrees of capacity and independence, none of them have a broad human rights mandate, or sufficient independence required for an NHRI according to the Paris Principles – even as their aggregation contributes greatly to the Israeli NHRS.

3. The Human Rights Environment in Israel as a Contested Space

Beyond describing the institutional infrastructure closest to NHRI attributes in Israel, it is important to note also, albeit generally, the environment of human rights discourse in Israel, as a contested space. Over the last decade at least, the human rights discourse in Israel has figured prominently in political controversies, often – though not exclusively – on the background of the Israeli-Arab/Palestinian conflict.[71] The protection of human rights is depicted, often derogatorily, as a 'leftist'[72] and 'traitorous'[73] political endeavour that harms the State. Thus, the public legitimacy of human rights in general and of their protection and advocacy is undermined.[74] This negative environment has in some respects presaged the human rights 'backlash'[75] and the 'populist challenge' to human rights[76] that has occurred in

[71] see Neve Gordon, 'Human Rights as a Security Threat: Lawfare and the Campaign against Human Rights NGOs' (2014) 48 *Law & Society Review* 311, 328–339; Guy Harpaz, 'The EU Funding of Israeli Non-Governmental Human Rights Organizations: When EU External Governance Meets a Domestic Counter-Strategy' (2015) 20 *European Foreign Affairs Review* 207.
[72] For example, see Karni Eldad, 'Let's Stop Lying: ACRI Is an Extreme Left-Wing Organization' *Maariv* (17 December 2017) <https://www.maariv.co.il/journalists/Article-614196> accessed 30 December 2018.
[73] For example, see Bar Peleg, 'Netanyahu's Son Calls Left-Wing NGOs and Politicians "Traitors" in Facebook Post' *Haaretz* (11 December 2018) <https://www.haaretz.com/israel-news/netanyahu-s-son-calls-left-wing-ngos-and-politicians-traitors-in-facebook-post-1.6729307> accessed 30 December 2018.
[74] Harpaz (n 71).
[75] See Andrew Gilmour, 'The Backlash Against Human Rights' (24 November 2017) <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22514&LangID=E> accessed 30 December 2018.
[76] See Philip Alston, 'The Populist Challenge to Human Rights' (2017) 9 *Journal of Human Rights Practice* 1, and responses by Ron Dudai and Vijay K. Nagaraj.

several states that were otherwise considered to be liberal democracies in which human rights were deeply entrenched. In this article we cannot engage in these difficulties in substance but will briefly address one issue – namely, restrictions on the activities of human rights organisations in Israel – that demonstrates the contested space of human rights discourse, and informs the effectiveness of the Israeli NHRS and the possibility of an NHRI.

In the past decade there have been many attempts to pass bills that would restrict or even ban the external funding of Israeli human rights organisations.[77] The official rationale for such a ban is not to prevent the funding of these organisations as such but to restrict foreign entities from funding Israeli human rights organisations, and thus interfere with Israel's domestic affairs.[78] In 2011, a law was enacted requiring all NGOs receiving more than half of their funding from a foreign entity to declare that to the Israeli Association Registrar.[79] A 2016 amendment requires such NGOs to note their foreign funding on each of their publications, advertisements and campaign materials.[80] These restrictions are not unique to Israel, of course, and have sprung up in several countries, including OECD members.[81]

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[77] Harpaz (n 71) 216–217.

[78] See, for example, the explanatory memorandum to a bill aimed to prohibit funding of more than 20,000 NIS to 'political NGOs' from 'foreign state entities', *Amutot Law bill (amendment – prohibition on political NGOs from receiving funding from foreign state entities)*, 5771-2011, 18th Knesset, P-3346.

[79] *Duty of Disclosure for Recipients of Support from a Foreign Political Entity Law, 5771-2011*. An unofficial translation may be found in the following link <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/65-Law-on-Disclosure-for-Recipients-of-Support-from-a-Foreign-Political-Entity-Law-NGO-Foreign-Government-Funding-Law-2011.pdf> accessed 30 December 2018.https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/65-Law-on-Disclosure-for-Recipients-of-Support-from-a-Foreign-Political-Entity-Law-NGO-Foreign-Government-Funding-Law-2011.pdf

[80] *Duty of Disclosure for Recipients of Support from a Foreign Political Entity Law (amendment), 5776-2016*.

[81] Darin Christensen and Jeremy M Weinstein, 'Defunding Dissent: Restrictions on Aid to NGOs' (2013) 24 *Journal of Democracy* 18 <https://doi.org/10.1353/jod.2013.0026> accessed 30 December 2018; Thomas Carothers, 'Closing Space for International Democracy and Human Rights Support' (2016) 8 Journal of Human Rights Practice 358; Antoine Buyse, 'Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights' (2018) 22 *The International Journal of Human Rights* 966 <https://www.tandfonline.com/doi/full/10.1080/13642987.2018.1492916> accessed 2 January 2019.

Be it as it may, human rights organisations in Israel feel 'under siege', with a sense that the democratic space in Israel is shrinking.[82] Even academic bodies, such as the Minerva Center for Human Rights and legal clinics, have been confronted as 'anti-Israeli', indeed from governmental sources,[83] and of course the Israeli Supreme Court has also been under attack in similar contexts.

With respect to an NHRI, if established, there is an ongoing concern that it would suffer the same treatment, that is, considered to be an insidious organization, even if acting under state authority and on behalf of its citizens. As will be set out in more detail below, this environment of contestation is a significant factor in considering an effective design for an Israeli NHRS in general, and an NHRI in particular.

[82] See ACRI (n 25).
[83] See TOI Staff, 'Deputy FM pulls support for Hebrew University human rights center over NGO ties', *The Times of Israel, (18 October 2016)* https://www.timesofisrael.com/deputy-fm-pulls-support-of-hebrew-u-human-rights-center/ accessed 20 January 2019.

4. The Minerva Project: A Deliberative Process in Israel

The Minerva Project at the heart of this article is part of a larger project funded by the EIDHR, oriented at increasing the domestic impact and internalization in Israel of international human rights obligations, through further developing effective and sustainable mechanisms for broad and meaningful participation of Israeli human rights organisations in international and domestic monitoring and implementation processes. On this background, the authors of this article initiated a deliberative process aimed at examining the possibility of establishing an effective NHRI in Israel.

Overall, this has been advanced by bringing together government and civil society representatives to discuss human rights issues using the UN treaty monitoring reporting process as a platform for deliberation (subject to enhanced 'Chatham House' rules of confidentiality, that also preclude more detailed description here)[84] and by making international human rights law more accessible to legal professionals and the public at large.[85] The NHRI component of the project aimed at facilitating public discourse on the need for an NHRI in Israel and promotion of appropriate legislation. In order to do so, the MCHR consulted with government officials, civil society organizations and academics during 2016-2018. Concurrent with these discussions and deliberations, research was conducted on the existing human rights related institutions in Israel and their relation to the Paris Principles, as well as research regarding the actual requirements for accreditation as reflected in GANHRI's SCA decisions.

[84] Levin (n 27); Balaban and Broude (n 27).
[85] [New wiki website/database soon to be launched]

Notably, this project has a history at the MCHR. A research project conducted almost two decades ago by Adv. Rachel Benziman and Prof. David Kretzmer, yielded a detailed report including a proposal for the establishment of a 'Human Rights Commission' in Israel.[86] The project started with the support of the Ministry of Justice but did not come to fruition. The idea never advanced to the legislation process through governmental bills,[87] although several general proposals have been submitted by parliamentarians.[88]

Many years have passed since that proposal, in which as mentioned earlier the political atmosphere has changed specifically with regard to human rights, with greater scepticism and even hostility. From 2014, however, the MCHR has hosted consultations between representatives from government, human rights organisations and academia regarding the status of human rights in Israel and specifically around the preparation of state and parallel reports to the treaty monitoring bodies. These meeting have been successful in cultivating a sense of trust between the participating human rights organisations and government officials, although deep substantive controversies naturally remain.[89]

In this respect, the HUJ MCHR constitutes part of what may be deemed Israel's NHRS, and contributes to domestic institutionalization, although the natural location for this type of consultation would have been a fully-functional NHRI. Thus the logical extension of the project was to re-raise the question of establishing an NHRI. Building on the trust garnered during the extensive meetings between government officials and representatives from human rights organisations and academia, discussions on the viability of an NHRI in

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[86] Rachel Benziman, *Human Rights Commission in Israel - Comparative Study and Proposed Model* (HU MCHR 2001).
[87] For a detailed account of the process see Meydani (n 46).
[88] See for example, Human Rights Commission Bill, 5764-2004, 16th Knesset, P-1962; Human Rights Commission Bill, 5769-2009, 18th Knesset, P-27.
[89] Levin (n 27); Balaban and Broude (n 27).

Israel were launched. From the outset the project was not focused on one particular model (such as a human rights commission), but open to genuine deliberation. The discussions were held in the form of an advisory committee comprised of several government officials, HRO representatives and academics, subject to the same enhanced 'Chatham House' rules as previously held substantive consultations. At the outset, it became evident that the goals of the process should not be overly ambitious, beginning from the existing institutions and taking into account the political environment. These pragmatic positions where voiced by both government officials and HRO representatives. Accordingly, representatives from the existing institutions (i.e. the State Comptroller/Ombudsman, EEOC and CERPD) were invited to add their input to the process.

These discussions and the positions expressed in them have shaped the trajectory of the project to a certain degree, and although the final report of the Minerva Project, discussed below, is produced on the sole responsibility of its authors, it has been shaped by the deliberative process.

The final stage of the deliberation process involved a public event in which a representative from GANHRI (Prof. Alan Miller) – the first ever to visit Israel in this context - and leading academic experts on NHRIs, were invited to share their views on designing an effective NHRI. An open roundtable discussion regarding the Israeli situation was conducted, in which government officials, human rights organisations and academics participated.[90] Although, all of the participants agreed on the importance of the establishment of an NHRI in Israel, the roundtable brought to the fore a significant question that echoed initial scepticism: when is the right time to establish an NHRI in a contested political space? Government

[90] [Video link soon available]

officials and human rights activists agreed that in the current time it will be hard to find the political will to promote such an institution, yet their recommendations varied from refraining to act at this stage from the risk of creating a counter-productive institution through enhancing the existing institutions to despite everything advancing the establishment of an NHRI in order to, at the least, promote the awareness to human rights.

This question epitomizes the dilemmas and challenges that were raised during the project's deliberative process. We will now turn to reflect upon these dilemmas.

5. Designing an Effective NHRI in Contested Political Spaces: Challenges and Dilemmas

Ideal vs. Realist NHRI/NHRS

Institutional design is at the heart of this discussion. How to design an effective NHRI? The question is neither technical nor theoretical, regarding the best ways to create an effective institution, but also a question of feasibility and viability that relates to legitimacy in contested political spaces. What blueprint for an NHRI could be publicly accepted and politically established, in ways that would also be effective?

As described above, research conducted at the Minerva Center for Human Rights has in the past – almost 20 years ago, before significant international experience with NHRIs was collected[91] – resulted in a proposal for the establishment of an NHRI, advocating, at the time, for a comprehensive human rights commission.[92] The model suggested in that proposal was perhaps ideal, but from the outset of the current Minerva Project seemed unviable, due to the

[91] Steven L.B. Jensen, *Lessons from Research on National Human Rights Institutions: A Desk Review on Findings Related to NHRI Effectiveness*, The Danish Institute for Human Rights, March, 2018.
[92] Benziman (n 86).

political atmosphere and the proposal's subsequent history.[93] However, limiting the project only to what seemed feasible and realistic in advance, could lead to the establishment of an ineffective institution that might even circumvent future efforts to enhance the protection of human rights.

The first major input from the deliberative process undertaken by MCHR was the need to map existing human rights infrastructures – the Israeli NHRS described in section 2 above. Participants were of the view that perhaps even without an established and accredited NHRI, an examination of the legal and institutional realities would reveal that the promotion and protection of human rights is at an appropriate level, in terms of effectiveness. In any case, such an examination would identify which areas need more acute reforms and which are at an acceptable level.

Mapping existing NHRI-like components influenced the Project's final recommendations, which offer several possible alternatives, remaining in the realm of the possible, without abandoning those elements that are both Paris Principles-compliant and effective in a localized sense.

The Most Pressing Human Rights Issues

An NHRI might not deal with the most pressing human rights issues. This second dilemma stems from the special Israeli political and social contexts, which raise serious issues of human rights. Following the previous dilemma, if an 'ideal' NHRI cannot

[93] The aforementioned Human rights commission bills were all based largely on the proposal advocated by the MCHR. However, these bills were private bills proposed by opposition *Knesset* members and never gained the support of the Government. Accordingly, the legislation process of these bills never advanced beyond their initial stages.

materialize at this time, the question remains whether a realistic model would in fact advance the promotion and protection of human rights. During the deliberative process, some participants were of the view that an NHRI, if established, would in practice not be able to tackle human rights violations in the occupied territories, or in areas of family law, arguably some of the most pressing human rights issues in Israel.

These sentiments could be frustrating for a project aimed at advancing human rights in Israel. One may ask what is there to gain from establishing a human rights institution that would not attend to Israel's most significant human rights issues. However, stating the things so clearly made room for the more modest question – what would be gained from the establishment of an NHRI even if the 'big' questions could not be addressed, let alone resolved? This turns the gaze to a multitude of human rights concerns that are in fact of considerable importance – discrimination against women, discrimination against Palestinian-Arab citizens, people with disabilities, equality in welfare and social and economic rights, the protection of freedom of speech, etc.. Focusing on human rights violations at large illuminates that an NHRI may be valuable even if it is restricted either formally (e.g., by territorially delimiting its mandate to the State's boundaries, or substantively excluding certain issues from its mandate), or politically, from addressing the most acute violations. At the same time, however, establishing an NHRI while violations in certain areas occur repeatedly raises the concern that an NHRI would be captured to 'whitewash' or otherwise legitimize those violations.[94]

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[94] This dilemma resembles the concern human rights legal practitioners have whether gaining minor legal success is worth the price of legitimizing a structurally oppressive system. In Israel this dilemma is mostly relevant for NGOs that deal with discrimination and the status of Israeli-Palestinian citizens, see Michael Sfard, 'The Price of Internal Legal Opposition to Human Rights Abuses' (2009) 1 *Journal of Human Rights Practice*

The Political Environment

Relatedly, the aforementioned human rights atmosphere and political environment in Israel in the past decade, raises much concern. One issue relates to the first dilemma we described – in the current political environment it may not be feasible to advance the establishment of an NHRI in Israel. More problematically, the concern is that in this environment, feasibility issues may lead to deep concessions in the institutional design of an NHRI, that would hinder the operation of the institution or worse leave it exposed to manipulation by political actors.

This second concern relates to the 'whitewashing' already mentioned. Advancing the establishment of an NHRI may be used by political actors as evidence for their commitment to human rights, which will be employed, in turn, to reduce domestic and international pressure on Israel, mainly regarding the Israeli-Palestinian conflict. This can work both ways. On the one hand, political actors not genuinely concerned with human rights may agree to establish an NHRI in order to reduce international (or domestic) pressure. In such a case an ineffective NHRI might be established, even Paris Principles-compliant, that would not lead to improvement in the status of human rights in the country. The question of the origins of the institution is influential in dictating its effectiveness.[95]

On the other hand, those concerned with human rights and that are genuinely proponents of the establishment of an NHRI may use these political and diplomatic pressures

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37; Elian Weizman, 'Cause Lawyering and Resistance in Israel: The Legal Strategies of Adalah' (2016) 25 *Social & Legal Studies* 43.

[95] Peter Rosenblum, 'Tainted Origins and Uncertain Outcomes Evaluating NHRIs' in Goodman and Pegram (n 6) 297-323.

in order to convince other actors to get on board and support establishing an NHRI. The logic here may be that institutions have a 'life of their own' and even if initially the NHRI would not be designed in order to promote and protect human rights in the most effective way, in the long run the institution would emerge and evolve in positive ways.[96]

The third concern relates to the uncertainty inherent in the political field. Legislation processes are not pre-determined and an initiative to establish an NHRI may, under political pressures, yield at the end of the day an ineffective institution that would not be able to perform its roles properly, even if Paris Principles-compliant, or worse, curtail existing capacities. This does not, however, undermine the possibility of advancing incremental changes that do not require sweeping reforms or even amendments of legislation, but only changes in priorities and modes of operation. Raising awareness to the broad notion of an NHRI may allow practitioners to accommodate human rights protection and promotion even without enacting new laws.

Effective vs. Non-Effective Institutions and the Paris Principles

The final dilemma we address is based on our discussion thus far, the point of view of the advancement of promotion and protection of human rights and of the domestic institutionalization of human rights, it seems that only the establishment of an effective NHRI that would be able to fulfil its goals and operate properly would have value. As discussed, establishing an ineffective institution may have adverse effects, such as allowing certain political actors to represent the status of human rights as better than it is in light of the

[96] Sonia Cardenas, *Chains of Justice* (University of Pennsylvania Press 2014) 55-73.

institution's incompetence, and could also come at the wrong time. Thus, the establishment of a new institution might eventually be a step in the wrong direction.[97]

In order to advance the establishment of an effective NHRI, the Paris Principles are an initial, necessary, but insufficient benchmark in this respect. First, although the Paris Principles do not ensure effectiveness themselves, as Richard Carver claims when an NHRI is found to be effective without meeting the Paris Principles' (relatively) precise criteria, it is despite of that fact and not because of it.[98] However, this does not mean that Paris Principles-compliant NHRIs are necessarily effective. Second, the Paris Principles have the force of being an internationally accepted reference point that is utilized regularly in order to evaluate NHRIs by the relevant accreditation body – the GANHRI SCA. Third, complying with the Paris Principles can lead to international accreditation that has diplomatic benefits that might help political actors support establishing a better Paris Principles-compliant institution.

Nonetheless, the Paris Principles, however necessary, do not in themselves ensure effectiveness, and might be too demanding politically in contested spaces. In these cases, many of our interlocutors were of the view that effectiveness should take precedence over compliance with the principles, at least. Adopting measures that advance the promotion and protection of human rights even without an institution becoming a full-fledged NHRI should be more valuable than struggling to establish an ineffective institution – a case in point being the Paris Principles requirement of statutory mandating, which was considered by all involved to be a significant obstacle.

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[97] Thus, for example, Meyer asks 'is the creation of NHRIs a step toward protecting and promoting human rights or a way of containing and insulating the pressure to provide such protection?' David S Meyer, 'National Human Rights Institutions, Opportunities, and Activism' in Goodman and Pegram (n 6) 324-334 327.
[98] Richard Carver, Assessing the Effectiveness of National Human Rights Institutions (2005) 8–9.

In any case, the actions taken in order to advance the promotion and protection of human rights in the institutional setting should be viewed within the larger human rights context, that is, in relation to the acts and operations of other significant actors engaged in domestic institutionalization – human rights organisations, the government and the courts – namely, the Israeli NHRS.

Concluding Reflections

In light of the deliberative Minerva Project discussed above and the dilemmas it has encountered, this article shows that although Israel has a number of national institutions working, directly or indirectly, in the field of human rights, none of these bodies fully conforms to the international standard required for the accreditation as an NHRI, even if in conjunction with each other they constitute an effective NHRS. We therefore argue that it is necessary to envisage both complementary and alternative avenues. Despite the dilemmas discussed above, there is a clear first-best option, which entails that Israel establishes a new national institution dedicated to the promotion and protection of human rights. The institution should comply with the Paris Principles in one of the many models available to that end, and aim for effectiveness. However, given the difficulties anticipated in establishing a new human rights institution, legislative and other measures should be undertaken in order to entrench and strengthen the State Comptroller and Ombudsman as an effective human rights institution, setting aside the question of accreditation. The fact that the current State Comptroller has acknowledged that the promotion of human rights is under his responsibility, coupled with the institutional and financial independence the body already enjoys, form a very good starting point. In addition, a few statutory amendments, coupled with some

administrative actions that are within the competence of the State Comptroller, may fill some of the gaps in the protection afforded.[99] Further, the reinforcement of the mandate and role of all institutions working on specific areas of human rights would strengthen Israel's NHRS, where other public actors might also play an important role. For instance, the Minerva Project discussed the possibility to appoint a parliamentary human rights committee which would assist and support the work of the human rights actors, including a future NHRI.[100]

Only time will tell whether the Minerva Project on the establishment of an Israeli NHRI has been worthwhile and indeed effective. Notwithstanding the specificities of the Israeli context, these findings are also relevant to the reinforcement of human rights systems and the possible creation or strengthening of NHRIs in other contested political spaces. Enhancing the effectiveness of existing public actors of the NHRS, while not giving up on the future establishment of an NHRI, may be a relevant option to many other contested political spaces devoid of an A status NHRI.

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[99] The Minerva Project recommends *inter alia* setting rules for the application of international human rights law in the work of the State Comptroller and Ombudsman; appointing international human rights law experts to the relevant divisions; establishing avenues for communication with international human rights bodies – UN monitoring bodies, OHCHR and GANHRI; founding a public pluralistic committee for consultation regarding human rights issues; and engaging in promotion of human rights directly and indirectly [final report pending].

[100] The Minerva project recommends that the head of the committee should be a Knesset member from the opposition and that all relevant institutions would report to it routinely. (REF to a document?) On the role of parliaments as human rights actors see Kirsten Roberts Lyer's contribution to this volume.