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On Legalism, Popular Agency and "Voices of Suffering": The Nigerian National Human Rights Commission in Context¹

Obiora Chinedu Okafor* &
Shedrack C. Agbakwa**

The struggle for human rights will be won or lost at the national level. Unless we [i.e. international human rights scholars] begin to study such struggles, we will neither understand the most important issues nor be able to make the most effective possible contribution to the realization of internationally recognized human rights.

Jack Donnelly²

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1. We owe the expression "voices of suffering" to Upendra Baxi's extraordinarily fecund imagination. See Upendra Baxi, *Voices of Suffering and the Future of Human Rights*, 8 TRANSN'L L. CONTEMP. PROB. 125 (1998).
2. See Jack Donnelly, *Post-Cold War Reflections on the Study of International Human Rights*, in ETHICS AND INTERNATIONAL AFFAIRS: A READER 236, 252 (Joel H. Rosenthal ed., 1995).

The . . . [Commission] is modest in its objectives and flexible in its means.

Obinna Okere³

[For human rights to really connect with human suffering] . . . suffering humanity [must be allowed to] reflect . . . [and] thinking humanity [must] suffer.

Upendra Baxi⁴

I. INTRODUCTION

It is increasingly being recognized in the relevant literature that, important as they obviously are, international institutions cannot in themselves suffice as the primary sites of the struggle(s) for human rights.⁵ Concomitantly, it has become as apparent that these imperative struggles must be won (or lost) largely at the local level.⁶ This realization has in turn exposed the critical necessity for the deployment at the national level of various kinds of resources for the promotion and protection of human rights. One of the resources that could be so deployed is a national institution for the promotion and protection of human rights. While recognizing the inherent difficulties with definitions, the United Nations has defined such a national institution as a body that has been established by a Government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights.⁷ Similarly, Mario Gomez has defined such bodies as state-sponsored and state-funded entities set up under an Act of Parliament or under the Constitution, with the broad objective of protecting and promoting human rights.⁸ These more recent definitions specifically exclude from their purview institutions that possess a more general mandate (such as the regular courts, the legislature and the social welfare institutions of a state).⁹ Yet, as functionally appealing as it now seems, this is a differentiation that was not always applied by the United Nations.¹⁰

3. See B. Obinna Okere, *The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems* 6 HUM. RTS. Q. 141, 158 (1984). This quotation is an adaptation of Okere's now famous characterization of the African Commission on Human and Peoples Rights as being of this same mold.

4. See Baxi, *supra* note 1 at 169.

5. See Donnelly, *supra* note 2.

6. *Id.*

7. See CENTRE FOR HUMAN RIGHTS, NATIONAL HUMAN RIGHTS INSTITUTIONS: A HANDBOOK ON THE ESTABLISHMENT AND STRENGTHENING OF NATIONAL HUMAN RIGHTS INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS, UN Training Series No. 4, U.N. Sales No. E.95.XIV.2 at ¶ 39 (1995) (hereinafter "UN HANDBOOK").

8. See Mario Gomez, *Sri Lanka's New Human Rights Commission*, 20 HUM. RTS. Q. 281 (1998).

9. UN HANDBOOK, *supra* note 7, ¶ 36-37.

10. *Id.*

As defined by the United Nations, national human rights institutions are by no means a novel feature either of the human rights landscape or of the institutional terrain of most countries in the world.¹¹ From ombudspersons to national human rights commissions, the institutional terrain of virtually every country features at least one kind or the other of a national institution for the promotion and protection of human rights.¹² As well, the vastly increased worldwide attention that is now being paid to the development of such national institutions belies the relatively long (if hitherto unremarkable) history of their existence in various parts of the world. Indeed, the question of the necessity for the establishment of such institutions was discussed by the United Nations Economic and Social Council (ECOSOC) as far back as 1946.¹³ This matter was again discussed by ECOSOC in 1960.¹⁴ As importantly, the first set of guidelines for the structure and functioning of national institutions was endorsed by the United Nations in the late 1970s.¹⁵

Long as their history might be, it is correct nevertheless to perceive the 1990s and the period that has followed as the age of national human rights institutions. This age has witnessed the accordance by the United Nations of priority to this aspect of the struggle for human rights.¹⁶ This age has also witnessed the exponential and exuberant proliferation of national institutions the world over.¹⁷ Receiving impetus from the 1991 Paris International Workshop on National Institutions for the Promotion and Protection of Human Rights, and the conclusions of that conference (now known as the Paris Principles),¹⁸ the work of the United Nations in encouraging the establishment by each state of its own national institution(s) has gained momentum. The 1993 Vienna Declaration and Programme of Action's¹⁹ ringing endorsement of this aspect of the United Nations human rights work has further cemented its pride of place within that body's agenda.

Particularly popular among states that have recently established their own national institutions has been the subcategory of national institutions that are referred to as *national human rights commissions* (NHCs).²⁰ This

11. For instance, Sweden has an Ombudsperson since 1809.

12. Hereinafter referred to as "national institutions."

13. See ECOSOC Resolution 2/9 of 21 June 1946.

14. See ECOSOC Resolution 772B (XXX) of 25 July 1960.

15. See UN HANDBOOK, *supra* note 7, ¶¶ 22–23.

16. *Id.* ¶¶ 20–35.

17. *Id.*

18. These principles have been endorsed by U.N.G.A. Res. 48/134, 20 Dec. 1993. The Paris Principles are annexed to this resolution.

19. 32 I.L.M. 1661, Pt. I, ¶ 36 (1993). For an extensive discussion of this document and the World Conference on Human Rights at which it was produced, see Stephen Marks, *Nightmare and Noble Dream: The 1993 World Conference on Human Rights* 53 CAMBRIDGE L. J. 54 (1994).

20. See UN HANDBOOK, *supra* note 7 at 7–9, ¶¶ 46–62.

subcategory is said to differ significantly from another subcategory referred to as *Ombudspersons*.²¹ While the primary function of the latter kind of institution is the oversight of public administration in order to ensure its fairness and legality, that of the former is the promotion and protection of the human rights of individuals and groups.²² While these functions will in many cases overlap, the former institution is thus functionally distinguishable from the latter. It is on one example of that kind of national institution, on a specific body that fits within the subcategory of NHCs, that this paper will focus.

The Nigerian NHC was born about five years ago in a time that was, for the vast majority of Nigerians, one of great adversity.²³ Sired by the Government of General Sani Abacha,²⁴ a regime that had by the relevant time achieved notoriety as perhaps the most rapacious and oppressive in Nigeria's short but checkered national history, the establishment of this body was widely viewed (quite understandably) as a red herring, as a design to deflect attention from that regime's ultra-dismal human rights record, and as an entirely cynical move on the part of that regime.²⁵ As one keen observer of the Nigerian NHC²⁶ noted: "The [Nigerian] National Human Rights Commission came amidst skepticism [sic] and cynicism that the Commission was a mere propaganda tool in the hands of a junta seeking international relevance."²⁷

Not surprisingly, another well-versed observer of the human rights scenes in most of Africa shared this understandable skepticism.²⁸ In his view: "The Nigerian example of the creation of the National Human Rights

21. *Id.* at 8–9, ¶¶ 56–62.

22. *Id.* at 7–9 ¶¶ 46–62.

23. See O.N. OGBU, *HUMAN RIGHTS LAW AND PRACTICE IN NIGERIA: AN INTRODUCTION* 300 (1999). It is interesting that as far back as 1993, a Nigerian scholar (who is currently a high court judge) had, in his LL.M. thesis at the University of Nigeria, recommended the establishment of a similar body. See Interview with "NCC" (not his real name), on 11 Apr. 2000 (the transcripts of this interview are on file with the authors).

24. See The National Human Rights Commission Decree No. 22 of 1995, Supplement to 82 Official Gazette Extraordinary of the Federal Republic of Nigeria, pt. A, 6 Oct. 1995 (hereinafter "Decree").

25. See *THISDAY*, 28 Mar. 2000, at 3 (where the founding Chair of the Nigerian NHC, Justice P.K. Nwokedi, noted that "a majority of Nigerians never had any faith in the Commission as a result of its birth during the regime of General Sani Abacha"). All the same, it is noteworthy that article 26 of the African Charter on Human and Peoples' Rights actually mandates all states parties to establish new, and improve existing, NHCs. See African Charter on Human and Peoples' Rights, art. 26, adopted 27 June 1981, O.A.U. Doc. CAB/LEG/67/3 Rev. 5 (entered into force 21 Oct. 1986), reprinted in 21 I.L.M. 58 (1982).

26. Hereinafter referred to as the "NNHC."

27. See *Vanguard*, 17 June 1999 (on file with authors).

28. See Quashigah, *infra* note 76 at 134.

Commission by the dictatorial Abacha regime was a typical example of this effort by [some] African leaders to hoodwink the international community."²⁹

Thus, just like the regime that established it, NNHC was widely expected to become a dismal failure. Five years later, that body struggles on. Human rights violations are no longer as massive or wanton as they were at the time of its birth, yet they persist with a level of frequency that remains disturbing. In the context of the understandable skepticism that greeted its establishment and the continuance even today of most of the conditions of immiseration that existed at that time, it seems important to assess the NNHC's performance in the short but significant period that it has functioned. Has it failed in its mandate of promoting and protecting human rights in Nigeria?

Any such evaluation must, however, be based on a clear understanding of the nature of the performance standard(s) against which the NNHC is assessed. Such assessments invariably involve explicit or implicit comparisons.³⁰ One should, thus, know and be clear about what one is comparing the NNHC to. As Rhoda Howard has noted, "[o]ne needs to be aware of the comparisons one is making."³¹ Even more important, the adequacy of the very standard(s) against which the extant institution is being compared must be examined very critically. To take for granted that the relevant standard(s) are above reproach is to risk subscription to a fundamentally flawed evaluative process and style. Too often, such standard(s) are either important but insufficient, or altogether flawed.

In this article, we want to achieve two broad objectives. The first is to examine more critically the dominant set of standards against which NHCs have been evaluated in the pre-existing literature. It has been contended that this dominant set of standards has together constituted a deeply ingrained conception of an ideal NHC against which all NHCs must be assessed. The question is therefore the extent to which this conception of an ideal NHC is either adequate or flawed (in the sense of significant incompleteness). It is hoped that a critical review of this dominant conception will point to a more compelling and more holistic conception of NHCs and their work, one that is at once accommodating of the dominant conception as well as less legalistic, more cognitive of popular agency, and more deeply connected to those that Upendra Baxi has quite appositely referred to as the "voices of suffering."³² The second broad objective is to

29. *Id.* at 142. John Gotanda has described the Indonesian NHC during the Suharto regime as in substantially the same terms. See J.Y. Gotanda, *infra* note 76 at 477.

30. See Rhoda Howard, *Evaluating Human Rights in Africa: Some Problems of Implicit Comparisons*, 6 HUM. RTS. Q. 160, at 161 (1984).

31. *Id.*

evaluate the performance of the NNHC in its first five years of operation. We propose to do so against the more holistic conception of and vision for NHCs in general. We will suggest that, allowing for some contextual variations, an NHC that is conceived of in accordance with this more holistic vision has a much better chance of achieving its sacred mission of transforming effectively the human rights situation of victimized individuals and groups within its target society.

To this end, we have organized the rest of the paper into three broad sections. Part II of the paper will develop a set of related ideas. The first is the idea that the United Nations has formulated and applied a set of standards for the evaluation of NHCs, standards that have together constituted the dominant conception of an ideal NHC. The second is the idea that this dominant UN-driven conception of the ideal NHC is shared by virtually every scholar, nongovernmental organization, and governmental body that has commented on the effectiveness of NHCs. And the third is the idea that this dominant conception is significantly limited, and requires fundamental enlargement and revision if the NHCs that are animated by its vision are to have a higher transformative potential. Such an enlarged, revised, and more holistic vision of NHCs is then offered. The purpose of this reevaluation of the dominant conception will be to deepen, extend, and enlarge the UN-driven dominant conception of NHCs, rather than to abandon that conception in its entirety. There is little that is inherently wrong as such with any of the specific detailed requirements that constitute the dominant conception of the ideal NHC. The point is that those requirements are, when read together, either incomplete as a desideratum for the success of NHCs, or insufficiently oriented toward the features and modes of operation that are most crucial to the attainment of the stated objectives of NHCs the world over. In Part III of the paper, we will assess the performance of the NNHC in the first five years of its existence. Our evaluation of this young body will be animated by the more holistic conception of the ideal NHC that we developed in Part II of the paper. Thereafter, we will, in Part IV, conclude the paper by musing on the future of the NNHC, and of NHCs in general.

II. IMAGINING THE "IDEAL" NATIONAL HUMAN RIGHTS COMMISSION

In this section of the paper, we will develop the first set of suggestions that we made in Part I above. These are that the UN's set of standards regarding the establishment of NHCs the world over have together constituted the

32. See Baxi, *supra* note 1.

dominant conception of the ideal type of NHC; that this dominant conception is shared by virtually every scholar, NGO, or governmental body that has been relevant to the development of NHCs; that this dominant conception is inadequate to animate the establishment of the kinds of NHCs that have the best chance of transforming fundamentally the human rights situations of individuals and groups in the societies in which they operate; and that a more holistic conception of the ideal NHC is required if these bodies, animated as they often are by the UN conception, are to maximize their ability to positively affect the material and psychological conditions in which the people of their target societies live. Following this discussion, and remaining conscious of the many pitfalls of over generalization, we will conclude this section of the paper by offering our own understanding of what such a holistic conception of the ideal NHC might look like.

A. The United Nations Conception of the "Ideal" National Human Rights Commission

The task that we want to accomplish in this subsection is to demonstrate our suggestion that the UN has developed a set of standards for the establishment and evaluation of NHCs that, taken and read as a whole, reveals the existence of a certain broad conception of the ideal kind of NHC, one that has now become dominant.

This dominant conception of NHCs is reflected quite clearly in the texts of a number of UN-driven documents concerning the question of the nature and effectiveness of NHCs. The first of these is the 1991 Paris Principles Relating to the Status of National Institutions for the Protection of Human Rights.³³ The second is the *UN Handbook*.³⁴ The third is the *UN Fact Sheet on National Institutions for the Promotion and Protection of Human Rights*.³⁵ And the last is the 1978 *Guidelines on the Structure and Functioning of the National Institutions for the Protection and Promotion of Human Rights*.³⁶

The central message that is conveyed by the Paris Principles is that, with relatively minor adjustments for context, an NHC that possesses a particular minimum content and looks to a great extent like the kind of institution that is imagined and pictured by that document has the best chance of affecting positively and transforming significantly the human rights situation of the

33. Gomez, *Sri Lanka's New Human Rights Commission*, *supra* note 8.

34. UN HANDBOOK, *supra* note 7.

35. Fact Sheet No. 19, available at <<http://www.unhchr.ch/html/menu6/2/fs19.htm>> (visited 6 May 2002) (hereinafter "UN Fact Sheet").

36. UN HANDBOOK, *supra* note 7, at 4, ¶ 22 (hereinafter "1978 Guidelines").

individuals and groups that live within its target society. So, the more a particular NHC looks like that imagined and pictured by the Paris Principles, the more likely it is to be effective. Regardless of the accuracy of this specific evaluative message, it is clear from a reading of this document that it imagines, pictures, and presents a particular kind of NHC as the ideal or optimal type that ought to be replicated, as much as context allows, in every society the world over. As the Asia Pacific Forum on National Human Rights Institutions has succinctly noted: "The . . . 'Paris Principles' [document] is important because it sets out to clarify the concept of a 'national institution' by providing minimum standards on the status and advisory role of national human rights commissions."³⁷

A detailed description and analysis of the content of this document will suffice to demonstrate this point. According to the Paris Principles, the kind of NHC that it envisions shall at a minimum be:

- (a) vested with competence to promote and protect universal human rights standards;³⁸
- (b) given "as broad a mandate as possible,"³⁹ including the responsibility of:
 - (i) submitting to any of the arms of government opinions, on an advisory basis, recommendations, proposal and reports on any matters concerning the promotion and protecting of human rights. Such advisory responsibilities shall include offering advice on the conformity or otherwise of existing or proposed legislation with human rights principles; any situation of violation of human rights; the preparation of reports on the human rights situation in the country as a whole, or in one section thereof; and drawing the attention of the government to, and commenting on, the situation in any part of the country involving the violation of human rights;⁴⁰
 - (ii) promoting and ensuring the harmonization of national legislation, regulations and practices with the international human rights instruments to which the state is a party;⁴¹
 - (iii) encouraging the relevant state's ratification of, or accession to, all the relevant international human rights instruments;⁴²
 - (iv) ensuring the effective implementation of all the national legislation and international instruments that impose human rights obligations on the government;⁴³
 - (v) contributing to the human rights reports that states are required to

37. See <http://www.apf.hreoc.gov.au/un_national/paris_principles/> (visited 6 May 2002).

38. Paris Principles, *supra*, note 18 at pt. I, ¶ 1.

39. *Id.* pt. I, ¶ 2.

40. *Id.* pt. I, ¶ 3 (a)(i)–(iv).

41. *Id.* pt. I, ¶ 3(b).

42. *Id.* pt. I, ¶ 3(c).

43. *Id.* pt. I, ¶ 3(b) & (c).

submit to various international bodies and committees, and expressing an independently formed opinion on those reports;⁴⁴

(vi) cooperating with relevant international bodies;⁴⁵

(vii) assisting in the formulation and execution of programs for the teaching of and research into human rights in educational institutions and professional circles;⁴⁶

(viii) publicizing human rights and increasing public awareness, through providing information, education, and making use of all press organs.⁴⁷

(c) established and empowered by a constitutional or legislative text.⁴⁸

(d) guaranteed operational independence by this enabling text. Such independence is to be partly achieved by the grant of a fixed and stable tenure (i.e. a specific, if renewable, duration of their mandate) to the members of the commission.⁴⁹

(e) composed of a plural membership. This is explicitly stated as implying the pluralist representation of the social forces of civilian society involved in the promotion and protection of human rights. These social forces are named as inclusive of representatives of human rights NGOs, trade unions, concerned social and professional organizations such as the bar and medical associations of the country, academics and other experts, members of parliament, and trends in philosophical or religious thought. Representatives of government departments may serve on these bodies in an advisory capacity only.⁵⁰

(f) autonomous of the three arms of the government.⁵¹

(g) given adequate powers of investigation. This shall include the power to delve into any questions falling within its competence (on its own initiative or otherwise); hear any person; obtain any information or document; address public opinion directly; meet on a regular basis; establish working groups from among its members; set up local and regional offices; and liaise with NGOs.⁵²

(h) provided with adequate resources (especially funding, infrastructure and staff). It is also to have independence from the financial control of the government.⁵³

The Paris Principles also provide that an NHC may be vested with jurisdiction to hear and consider complaints and petitions concerning individual situations.⁵⁴ The relevant NHC is to receive such complaints and

44. *Id.* pt. I, ¶ 3(d).

45. *Id.* pt. I, ¶ 3(e).

46. *Id.* pt. I, ¶ 3(f).

47. *Id.* pt. I, ¶ 3(g).

48. *Id.* pt. I, ¶ 2.

49. *Id.* pt. II, ¶ 3.

50. *Id.* pt. II, ¶ 1.

51. *Id.* pt. I, ¶ 3(d) & pt. II, ¶ 1, 2, & 3.

52. *Id.* pt. III, ¶ 1 (a)–(g).

53. *Id.* pt. II, ¶ 2.

petitions from the concerned person(s), her representatives, third parties, NGOs, associations of trade unions, and other representative organizations.⁵⁵ While this document does not require that every NHC shall possess this kind of power, at the very least, its very inclusion in the principles (as an additional power that might be vested in NHCs) suggests that it is a desirable feature of an ideal NHC. It also suggests that it is a power that adds "something" to the capacity of an NHC and enhances its effectiveness; a level of attainment that most NHCs do in fact desire.

An analysis of the specific requirements for the establishment of NHCs that have been detailed above indicates that when read together, these principles do in fact constitute the Paris Principles' conception of the ideal NHC. They are indicative of the kind of institution that was imagined, pictured and presented to the world by the creators of the Paris Principles. This ideal or optimal type is represented by an NHC that is: established and run in a certain way; possesses a certain minimum level of autonomy and independence; resourced in a certain way and up to a certain level; and has certain kinds of powers and features. To be sure, this conception of an NHC does not envisage one that is not established by any law at all; is not mandated to promote and protect universal human rights standards; is not given a broad mandate; does not have an advisory jurisdiction; is not guaranteed independence by its enabling constitutional or legislative text; is not composed of a plural membership; is not given adequate powers of investigation; or is not provided with adequate resources. And while the Paris Principles do envisage that some NHCs may not be vested with the jurisdiction to hear and consider complaints, it still regards an NHC that is vested with such powers as a desirable and optimal kind of NHC. This last point will become much clearer after our discussion on the nature of the dominant conception of NHCs within the scholarly and activist literature. Concomitantly, this particular conception of the ideal or optimal type would not accommodate an NHC that possesses any one of the following features: establishment by executive fiat (e.g. a US President's executive order); a narrow mandate that does not include concern for freedom of expression or the right to health; a mandate that excludes the promotion and protection of the international convention on the elimination of racial discrimination; a membership that is removable at the discretion of the relevant Head of State; a membership that is for instance composed of a substantial number of the representatives of the relevant Ministry of Defense; operational and financial control by the relevant Minister of Justice; a budget that is lower than 30 percent of the amount that has been determined as necessary for it

54. *Id.* pt. IV.

55. *Id.*

to carry out its duties; and a lack of the power to investigate the activities of the armed forces and the police. This, of course, does not mean that were an NHC to fall short of the ideal (in the sense of the presence of any one of these features), it would not be recognized by the Paris Principles as an NHC. The point is that such a body would not be viewed as an *ideal or optimal kind of NHC*. Such a body will definitely not be one of those that the drafters of that document will recommend to other states as an example of a "good" NHC.

For its part, the UN Handbook conveys virtually the same message as the Paris Principles. Largely inspired and animated by the latter,⁵⁶ it holds out a particular kind of NHC, with a particular minimum content, a particular set of powers, functions, and capacities, and a particular approach to its work, as the ideal kind of NHC that with relatively minor adjustments for context ought to be reproduced everywhere in the world. This is so despite the fact that, unlike the Paris Principles, this document contains an explicit denial in this respect. Paragraph four of the UN Handbook declares that the document: "... is not a blueprint for legislation. It is not prescriptive and does not set out to create a prototype or 'ideal' institution against which the effectiveness of all others may be measured. There can be no model institution and there are no set rules."⁵⁷

While the UN Handbook's vision of NHCs is clearly based on a set of guidelines, as opposed to legally imperative demands or a set of rules, these guidelines still provide us with a detailed and rich composite picture of the kind of NHC that it would consider ideal; each guideline forms one part or the other of this picture. At a minimum, it still specifies the content of the minimum core of features that a "good" or optimal NHC must possess. A detailed analysis of these guidelines will suffice to demonstrate this point.

According to the UN Handbook, the kind of NHC that it envisions as ideal for most contexts and as likely to be most effective in most contexts shall, at a minimum, possess:

(a) enough "qualified independence" of action, independence through legal and operational autonomy, independence through financial autonomy, independence through appointment and dismissal procedures, and independence through composition, to be distinguishable from government instrumentalities;⁵⁸

(b) a defined subject-matter jurisdiction that is couched so as to avoid overlap and conflicts with the functions of other judicial and administrative bodies;⁵⁹

56. See UN HANDBOOK, *supra* note 7, at 1, ¶ 4.

57. *Id.* at 1, ¶ 4. See also *id.* at 10, ¶ 64 (declaring that "it is not the purpose of this handbook to ignore essential differences, and to promote a prototype or model institution.").

58. *Id.* at 10-12, ¶¶ 70-85.

(c) adequate powers backed by sanction that are sufficient to discharge its functions effectively;⁶⁰

(d) sufficient accessibility to those individuals and groups that it has been established to serve (including making itself known to them, physical accessibility, and accessibility through a representative composition);⁶¹

(e) the willingness and capacity to cooperate with other institutions and NGOs, nationally, regionally and internationally;⁶²

(f) efficiency and effective work methods;⁶³

(g) sufficient human and financial resources;⁶⁴

(h) sufficient accountability to the government and/or parliament, as well as to the public;⁶⁵

(i) a promotional and educational mandate, including collecting, producing, and disseminating information materials; organizing promotional events; liaising with the media; ensuring the visibility of the institution and its work; educating various groups; and conducting seminars and educational programs;⁶⁶

(j) a broad advisory jurisdiction which should include the review of legislation; provision of general policy and administrative advice to the government on local and international human rights matters; provision of assistance to the government in the drafting of its reports to international bodies; and provision of assistance to the government in the development of national action plans;⁶⁷

(k) an effective investigative mechanism that is characterized by adequate legal capacity, organizational competence, a defined and appropriate set of priorities, and the political will to pursue its work;⁶⁸

(l) the power to make recommendations, refer matters to another responsible agency, and/or make determinations⁶⁹

(m) the power to conduct investigations or public inquiries *suo motu*;⁷⁰

(n) the power to intervene in legal proceedings.⁷¹

A close analysis of the guidelines contained in the UN Handbook exposes their deep connection to the Paris Principles. They are in fact

59. *Id.* at 12–13, ¶¶ 86–94.

60. *Id.* at 13, ¶¶ 95–97.

61. *Id.* at 13–14, ¶¶ 98–105.

62. *Id.* at 14–15, ¶¶ 106–18.

63. *Id.* at 15, ¶ 119.

64. *Id.* at 15–17, ¶¶ 121–35.

65. *Id.* at 17, ¶¶ 136–38.

66. *Id.* at 18–22, ¶¶ 147–80.

67. *Id.* at 23–27, ¶¶ 181–215.

68. *Id.* at 28–33, ¶¶ 216–70.

69. *Id.* at 33–34, ¶¶ 271–77.

70. *Id.* at 34, ¶¶ 283–86.

71. *Id.* at 35, ¶¶ 295–97.

detailed renditions and explications of the latter guidelines. They are scarcely different, either in *content* or *orientation*, from the Paris Principles. Where differences exist, they do not seem to be significant at all, at least from the perspective of their conformity with the vision of NHCs that is presented by the Paris Principles. Indeed, the guidelines in the UN Handbook offer a composite picture of the kind of NHC that would be considered ideal or optimal by the United Nations: one that is virtually identical to that presented by the Paris Principles. Every single one of the Paris Principles' requirements for the establishment of a viable NHC (detailed in sub-section A of this section of the paper) is reproduced in the UN Handbook. For instance, items (a), (b), (d) and (f)–(h) above (culled from the UN Handbook) are detailed renditions of items (d)–(f) and (h) of our summary of the Paris Principles. It is true of course that in the course of providing a more detailed version of the standard UN conception of the ideal NHC, the UN Handbook has introduced a small number of new guidelines that were not explicitly mentioned by the Paris Principles. However, such new guidelines lie implied within, and are clearly animated by the more general formulations contained in the Paris Principles. Thus, the UN Handbook's principal contribution has been to deepen our view of the intricacies of the standard UN conception of the ideal kind of NHC. Clearly, it has not offered an *alternative* conception at all. The UN Handbook has itself admitted this fact by declaring early on (in its general introduction) that: "It should be noted that the . . . 'Paris Principles' have been particularly important in this respect [i.e. regarding the formulation of its content]."⁷²

As importantly, the UN Fact Sheet⁷³ conveys this same message. In addition to several pages of information on the necessity for NHCs and other national institutions for the promotion and protection of human rights, this document contains a summary of the guidelines that are contained in the Paris Principles, guidelines that are also endorsed therein.⁷⁴ For this reason, the propositions we have offered, and the arguments we have made, regarding the conception of the ideal NHC that is presented by the Paris Principles apply to the Fact Sheet as well.

For its own part, despite the fact that it does of course possess and convey a specific vision of the ideal or "good" NHC, the particular conception of a model NHC that is evinced by the 1978 Guidelines is far less detailed than that conceived by the other relevant UN documents. For this reason, and for the reason that this document is now quite dated, our

72. *Id.* at 1, ¶ 4.

73. UN Fact Sheet, *supra* note 35.

74. *Id.* at 9–13 (Internet copy).

analysis of the nature of the kind of NHC that is imagined by the United Nations as the ideal type will concentrate on the first three documents that we have examined—the Paris Principles, the UN Handbook, and the UN Fact Sheet.

This analysis reveals that the guidelines contained in the three documents that we have chosen to focus on do harmonize quite well, and have together constituted a decipherable, if broad, conception of the ideal NHC. In each of these documents, this ideal type is imagined in virtually identical ways. In each of them, the ideal (i.e. optimal) NHC is imagined as one that has been established by a constitution or legislation; is vested with competence to promote and protect universal human rights standards; is independent *de facto* and *de jure* of all the branches of the national and sub-national governments; is given as broad a mandate as possible; is composed of a plural membership that does not include representatives of government departments; is afforded adequate powers of investigation; is provided with adequate resources; controls its own finances and budget; and is vested with jurisdiction to hear and consider complaints. It is of course recognized by us that this dominant conception is flexible to some extent. After all, no guidelines are entirely inflexible. Guidelines such as the ones that constitute the dominant conception of NHCs are inherently accommodating of some level of difference among various NHCs. Does not the UN Handbook note that as long as a particular NHC is both appropriate for, and effective within, the context in which it operates, it is the one that “is best suited to its [the country’s] needs,” and is therefore acceptable?⁷⁵ The point though is that the level of difference that these particular guidelines allow is sufficiently minimal as to produce a relatively clear conception of the kind of NHC that would, from the point of view of these documents, normally be ideal (at least in the sense of being the most optimal in most contexts).

While the foregoing description and analysis has, at least from our perspective, clearly demonstrated the proposition that these UN texts are deeply animated by, and reflective of, one particular vision of the ideal NHC, that discussion has offered little evidence that might substantiate the related proposition that this specific UN-driven vision has now become the dominant conception of NHCs the world over. Evidence for this last proposition abounds nevertheless. This fact will become clear following our examination in the next subsection of the conception of the ideal NHC in the mainstream scholarly and activist literature in this area.

75. UN HANDBOOK, *supra* note 7, ¶¶ 1 & 64–66.

B. The Conception of the "Ideal" National Human Rights Commission in the Mainstream Scholarly and Activist/NGO Literature

Having already demonstrated our suggestion that the United Nations has established a set of standards for the establishment and evaluation of NHCs that together constitute that global institution's particular conception of an ideal NHC (i.e. a composite picture of what a "good" NHC should look like or, at the very least, approximate), we shall now proceed with the task of pushing forward the overall argument that we seek to make in this section of the paper. What we want to do in the present subsection is to develop further the first set of suggestions that we offered in Part I of the paper. We will do so by examining the nature of the particular conception of the ideal NHC that is evident in the relevant mainstream scholarly and activist literature. Here, it will be suggested that this body of literature shares and reproduces, almost without exception, the same picture of the ideal or optimal kind of NHC that is constituted by the guidelines that have been offered in the relevant UN texts. Indeed, virtually every single item in this literature explicitly admits as much. A by-product of this discussion will be the exposure of the extent to which the UN conception has become dominant across the globe, and has deeply influenced and animated the very architecture and operation of virtually every existing or proposed NHC.

The scholarly literature that is relevant to the topic of NHCs (and related bodies) has multiplied exponentially in the last few years.⁷⁶ The sheer

76. See L.C. Reif, *Building Democratic Institutions in Africa: Functions, Strengths and Weaknesses* 13 HARV. HUM. RTS. J. 1 (2000); Vijayashri Sripati, *India's National Human Rights Commission: A Shackled Commission?* 18 B.U. INT'L L. J. 1 (2000); Edward K. Quashigah, *National Human Rights Institutions in Africa: Functions and Weaknesses*, 11 AFR. SOCIETY OF INT'L & COMPARATIVE L. PROCEEDINGS 134 (1999) (hereinafter "AFICL PROC."); Gomez, *Sri Lanka's New Human Rights Commission*, supra note 8; Mario Gomez, *Social Economic Rights and Human Rights Commissions*, 17 HUM. RTS. Q. 155 (1995); J. Hatchard, *A New Breed of Institutions: The Development of Human Rights Commissions in Commonwealth Africa with Particular Reference to the Uganda Human Rights Commission*, 32 COMP. & INT'L L. J. S. AFR. 28 (1999); F. Korley, *The Role of Human Rights Institutions in the Promotion and Protection of Human Rights in Africa: A Ghanaian Proposal*, 10 ASICL PROC. 199 (1998); E.F. Short, *The Role of the Commission on Human Rights and Administrative Justice in Ghana*, 9 ASICL PROC. 185 (1997); Stephen Livingstone, *The Northern Ireland Human Rights Commission*, 22 FORDHAM INT'L L. J. 1465 (1999); U. Essien, *The African Commission on Human and Peoples' Rights: Eleven Years After*, 6 BUFF. HUM. RTS. L. REV. 93 (2000); B. Dickson, *Human Rights Commissions: A Unique Role to Play, Now and in the Future*, 27 HUM. RTS. Q. 19 (2000); A.M. Quazilbash, *NGOs Efforts Towards the Creation of a Regional Human Rights Arrangement in the Asia-Pacific Region*, ILSA J. INT'L & COMP. L. 603 (1998); J.Y. Gotanda, *Regional Institutions in East Asia and the Pacific: Is the Time Ripe?* ASICL PROC. 471 (1995); Pamela A. Jeffries, *Human Rights, Foreign Policy, and Religious Belief: an Asia/Pacific Perspective*, 2000 BYU L. REV. 885; M. Satterthwaite, *Human Rights Monitoring, Elections Monitoring, and Electoral Assistance as Preventive Mea-*

numerical size of this literature reflects the growth of interest in the subject among scholars. It also reflects the deep influence that the UN's own work in this area has had on the development of this body of scholarly literature. As the United Nations interest in the subject grew and became established, so did the interest of scholars in this area. However, as we shall soon show, the influence that the United Nations work has had on this body of literature has not at all been limited to its numerical expansion. More important, this admittedly diverse body of scholarship has, to a vast extent, been deeply marked by a fundamental fidelity to the same texts that have formed and produced the United Nations conception of the ideal or optimal NHC. As such, as we shall demonstrate very shortly, despite its geo-cultural diversities of origin, this body of literature has been almost completely marked, as well, by a fundamental fidelity to the United Nations conception of the ideal or optimal NHC. A detailed examination of this body of scholarship will suffice to demonstrate this point. This examination is sufficient as well to demonstrate the deeply ingrained dominance of the United Nations conception of the ideal NHC, in the writings of this diverse group of "NHC scholars," as well as in the architecture of the vast majority of existing and proposed NHCs. A detailed examination of a representative sample of the relevant literature suffices to prove this point.

Linda Reif's very important recent article on this subject⁷⁷ exemplifies the extent to which even those scholars that do recognize the fact that the viability of an NHC depends not merely on its legal framework, but on other social, political and economic factors as well,⁷⁸ have still maintained a fundamental fidelity to the United Nations conception of the ideal NHC. Having declared that NHCs and other national institutions can still play a valuable role in human rights protection without having the power to legally

tures, 30 NYU J. INT'L L. & POLITICS 709 (1998); P. Mageean & M. O'Brien, *From the Margins to the Mainstream: Human Rights and the Good Friday Agreement*, 22 FORDHAM INT'L L. J. 1499 (1999); S. Spencer, *A Human Rights Commission for the UK?*, 3 INT'L J. HUM. RTS. 25 (1999); M. Mulgan, *Implementing International Human Rights Norms in the Domestic Context: The Role of a National Institution*, 5 CANTERBURY L. REV. 235 (1995); F. Azzam, *Update: The Palestinian Independent Commission for Citizens' Rights*, 20 HUM. RTS. Q. 338 (1998); R. D'sa, *National Institutions Concerned with the Promotion of Human Rights*, in COMMONWEALTH COUNTRIES IN INTERNATIONAL HUMAN RIGHTS LAW IN THE COMMONWEALTH CARIBBEAN 317 (A.D. Byre & B.Y. Byfield eds., 1991); John Hucker, *Antidiscrimination Laws in Canada: Human Rights and the Search for Equality* 19 HUM. RTS. Q. 547 (1997); S. Beckett & I. Clyde, *A Human Rights Commission for the United Kingdom: The Australian Experience*, EUR. HUM. RTS. REV. 131 (2000); E. Stamatopoulou, *The Importance of the Universal Declaration of Human Rights in the Past and Future of the United Nation's Human Rights Efforts*, 5 ILSA J. INT'L & COMP. L. 281 (1999); Abderrahim Jamaï, *Comments* 11 PACE INT'L L. REV. 169 (1999).

77. See Reif, *supra* note 76.

78. *Id.* at 2.

bind any person,⁷⁹ and having critiqued the Paris Principles on two grounds,⁸⁰ in developing her own conception of an ideal or optimal NHC Reif still relies almost entirely on the indices and guidelines that are stated in the UN Handbook.⁸¹ She acknowledges that seven of the eleven factors that she views as the desiderata for the viability and success of an NHC, and thus as constitutive of her own conception of an ideal or optimal NHC, are culled directly from the UN Handbook. In Reif's own words:

The United Nations High Commission for Human Rights has stated [in the UN Handbook] that there are six [sic] "effectiveness factors" generally applicable to all national human rights institutions: independence, defined jurisdiction, and adequate powers, accessibility, cooperation, operational efficiency, and accountability. I include these six [sic] factors within a larger group of effectiveness factors.⁸²

Yet, even those factors that at first glance Reif seemed to have developed are explicitly or impliedly endorsed in the UN Handbook and/or the Paris Principles. These factors are: (a) the democratic governance structure of the state; (b) the personal character of the person(s) appointed to head the institution; (c) the behavior of the government in not politicizing the institution and in having a receptive attitude toward its activities; and (d) the credibility of the office in the eyes of the populace.⁸³ Each of these factors is either mentioned or implied in the UN Handbook. Item (a) above is implied in virtually all the sections of the UN Handbook. While it is not listed in the UN Handbook as one of the so-called "effectiveness factors," from the discussion in paragraph 164 about training members of the legislature through the discussion in paragraph 187 about the receptiveness of a government to the advice of the relevant NHC as being crucial to its effectiveness to the discussion in paragraphs 68–85, the unstated but underlying assumption of the UN Handbook is the same as Reif's: the more

79. *Id.*

80. These grounds are that: (a) the Paris Principles were drafted with only the classic NHC model in mind and do not as such provide adequate guidelines for the design and operation of other kinds of national institutions for the protection of human rights such as ombudspersons and hybrid ombudspersons that possess a human rights jurisdiction as well; and (b) that the Paris Principles should not have allowed any discretion to states as to whether or not the NHCs they establish should have the power to hear and consider complaints and petitions since, in her view, every NHC should have that power. *See id.* at 24.

81. *Id.* at 23–24.

82. Our own count of the factors that are mentioned in her article reveal seven of them, but this may be a numerical difference that depends on whether one views the phrase "defined jurisdiction, and adequate powers" either as one factor, or as two factors. This is, however, not a point of major importance. *Id.* at 23–24.

83. *Id.* at 24.

democratic a regime really is, the more likely the relevant NHC is to succeed. Item (b) above is implicit as well in the UN Handbook. It is the unstated assumption of that document, especially in paragraphs 68–85, that the members of the NHC shall be persons who are of strong, independent, and pro-human rights character. This is so because the aim of the discussion in those paragraphs is to prevent these persons from being controlled or influenced by the government, an ambition that would be nonsensical were it not already assumed that these persons possessed the right kind of character for the job! Item (c) above is explicitly set out in paragraphs 187–89 of the UN Handbook and is implied elsewhere. Item (d) above is implied throughout the same document, and explicitly referred to in the last sentence of paragraph 138 thereof. Thus, Reif's contribution in the present respect has been to tease out the factors relevant to the success of an NHC and highlight their importance. In so doing, she has performed an important service to the scholarly and activist human rights community. As importantly, the point that we are making is not that Reif is wrong to rely, as she has, on the UN Handbook. Indeed, as we will see later on, the United Nations conception of the ideal NHC and the heavy scholarly reliance on it that we seek to demonstrate, is not wrong as such, *just very limited*. The guidelines that constitute the UN conception can therefore be viewed as important but insufficient (in both their orientation and content). To be clear, the point that we are making is that, like the vast majority of scholars in this area, Reif has been heavily, even if not exclusively, influenced by the UN conception of the ideal NHC. As critical as she has been of the narrow sort of legalism that has informed some conceptions of NHCs, her own conception of the ideal NHC has remained virtually beholden to the United Nations vision of those institutions. This is a point that has to be made in order for us to move to the next stage of our project—which is to point to the ways in which this particularly dominant conception of the ideal NHC can be re-imagined so as to make it more capable of animating the design of NHCs that are more likely to contribute effectively to the positive transformation of the human rights situations in most target societies. However, a few more examples of how the scholarly literature has been marked by the United Nations work in this area are appropriate at this point.

Vijayashri Sripati, an Indian scholar, has adopted and utilized a conception of the ideal NHC that is no different from that preferred by Reif.⁸⁴ Indeed, she has explicitly adopted the UN conception as the standard against which she has assessed India's NHC. In her own words: "The Commission's role is assessed against the backdrop of the Paris Principles

84. See Sripati, *supra* note 76.

and the guidelines laid down in the United Nation's Handbook on National Human Rights Institutions."⁸⁵

Now famous for his scholarship on NHCs, John Hatchard is still a good example of a scholar that believes that "[t]here is no one model for a human rights commission"⁸⁶ but whose work has nevertheless been heavily influenced by the various relevant UN guidelines, and as such shares the United Nations conception of the ideal NHC.⁸⁷ Throughout this article, he relies heavily on the relevant UN texts as constitutive of the standard against which he evaluates the Ugandan NHC.⁸⁸

As critical as he has been regarding the standard ways in which NHCs have been imagined and operated, Gomez's declaration in his otherwise thought-provoking article that the Sri Lankan NHC is a quite standard kind of NHC (when viewed from the perspective of the Paris Principles) reveals the very strong affinity between his own conception of an ideal NHC and that of the United Nations.⁸⁹

This significantly high level of affinity with the UN conception of the ideal NHC is, as we have suggested already, evident as well in the work of virtually every other scholarly commentator on the subject of NHCs.⁹⁰ Interestingly, the synthesis of the main conclusions and recommendations of the 2000 Summer Workshop on International Organization Studies jointly organized by the Academic Council on the United Nations System (ACUNS) and the American Society of International Law (ASIL) further justifies our contention that the UN conception of the ideal NHC has had a somewhat extraordinary amount of influence on the thinking of scholars in this area.⁹¹ There is nothing in this document that suggests otherwise. If anything, that document strongly endorses the UN conception of the ideal NHC. The same point is valid, as well, with respect to the vast majority of the literature that has been produced by activists and NGOs on this subject.⁹²

85. *Id.* at 5.

86. See Hatchard, *supra* note 76, at 52.

87. *Id.* at 32.

88. *Id.*

89. See Gomez, *Sri Lanka's New Human Rights Commission*, *supra* note 8, at 281.

90. See, e.g., Jeffries, *supra* note 76, at 889–90 (commenting on NHCs in the Asia-Pacific Region); Mageean & O'Brien, *supra* note 76, at 1530 (commenting on the new Northern Ireland Human Rights Commission); Korley, *supra* note 76, at 202 (commenting on the Ghana Commission on Human Rights and Administrative Justice); Mulgan, *supra* note 76, at 236–38 (commenting on the New Zealand NHC); Azzam, *supra* note 76, at 340–42 (commenting on the Palestinian NHC); D'sa, *supra* note 76, at 321–23 (commenting on NHCs in the "Commonwealth Caribbean").

91. See ACUNS, INNOVATIONS IN GLOBAL GOVERNANCE: POLICY BRIEF (2000), available at <[http://www.yale.edu/acuns/publications/Policy Brief/index.html](http://www.yale.edu/acuns/publications/Policy%20Brief/index.html)> (visited 23 Apr. 2002).

92. See, e.g., the Asia Pacific Forum's description of its own activities, available at <<http://www.apf.hreoc.gov.au/activities/index.html>> (visited 6 May 2002); see also A. Obe, *What a Human Rights Commission Requires*, 6 CONST. RTS. J. 36 (1996). The Constitu-

From the foregoing extensive discussion, it has become quite clear that, its merits or faults aside, the United Nations particular conception of the ideal NHC has been the driving force behind the conceptualization of NHCs in the scholarly and activist/NGO literature. It has also become clear from this literature that this UN-driven conception has at the same time heavily influenced and shaped the nature and orientation of the vast majority of existing NHCs the world over. It is fair therefore to conclude, as well, that the UN conception of the ideal NHC has now become dominant the world over as a kind of standard to be achieved and as an evaluative model. Again, this is not necessarily bad. Our point is that it is quite limited.

Our broad aims in this paper are to: (i) show that a particular, if dominant, UN-driven conception of the ideal NHC currently exists; (ii) show that conceptual model to be insufficient as it currently stands to animate the establishment and operation of NHCs that are most likely to become successful (in the sense of having the most possible positive transformative impact on the human rights situation within most target states); (iii) argue that a conception of NHCs that is less legalistic, more cognitive of popular agency, and more deeply connected to the "voices of suffering" within the target state, is much more likely to animate the kind of NHCs that would be most valuable in most places and at most times; and thereafter to (iv) assess the performance of the Nigerian National Human Rights Commission (NNHC) against the standards of our preferred conception of the approximately ideal NHC.

We have already demonstrated the first broad point. Points (ii) to (iv) remain untackled as yet. The next subsection of this part of the paper will demonstrate points (ii) and (iii) above. Following this discussion, we will, in Part III of the paper, tackle the objective raised in point (iv) above.

C. Toward A More Holistic Conception of the "Ideal" National Human Rights Commission

As we have already shown, the dominant conception of the ideal NHC is of an institution that has been established by a constitution or legislation; is vested with competence to promote and protect universal human rights standards; is independent *de facto* and *de jure* of all the branches of the national and sub-national governments; is given as broad a mandate as

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possible; is composed of a plural membership that does not include representatives of government departments; is afforded adequate powers of investigation; is provided with adequate resources; controls its own finances and budget; and is vested with jurisdiction to hear and consider complaints. And as we have argued before, clearly, this dominant conception of the ideal NHC does not envisage one that is not established by any law at all; or is not mandated to promote and protect universal human rights standards; or is not given a broad mandate; or does not have an advisory jurisdiction; or is not guaranteed independence by its enabling constitutional or legislative text; or is not composed of a plural membership; or is not given adequate powers of investigation; or is not provided with adequate resources. It is also clear that while the relevant UN texts do envisage that some NHCs may not be vested with the jurisdiction to hear and consider complaints, those documents still regard the NHCs that are vested with such powers as desirable and optimal kinds of NHCs. It is this dominant conception of the ideal NHC that we want to assess critically in the paragraphs that follow. We will do so as a prelude to a discussion of the distinctive properties of the conceptual model that we prefer, i.e. the more holistic conception of the ideal NHC. We will begin with our attempt to problematize the dominant conception of the ideal NHC.

Our tasks in this subsection are thus to: assess critically the merits or otherwise of the UN-driven dominant conception of the ideal NHC; highlight the shortcomings of its content and orientation, i.e. *its incompleteness*; and develop a more holistic conception of NHCs—one that pictures more completely the kind of NHC that is most likely to affect, in the most positive way, the lives and circumstances of those who need such institutions the most. In particular, we are interested in assessing critically its level of completeness as a standard conceptual model for the design, establishment, operation, and critical evaluation of NHCs. It is this conceptual critique that will inform our attempt to develop thereafter a more holistic conception of NHCs.

The principal points that we want to make are: (a) that the now dominant UN-driven conception of the ideal or optimal NHC is so significantly limited and incomplete as to require extension and enlargement, in order that the NHCs that are animated by its vision might, in most contexts, have a higher transformative potential; and (b) that a more holistic conception of NHCs, one that (i) shuns excessive legalism; (ii) accords much more cognitive and operational priority to popular agency; and (iii) connects much more deeply with the relevant society's most urgent "voices of suffering," is much more likely to animate the kind of NHC that can contribute most effectively to the positive transformation of the human rights situation of the society in which it functions.

Again, just to be clear, our argument is not that this dominant

conception is wrong *per se*. It is far from that—at least in the sense that any one of the requirements that have been mentioned above ought not form part of the guidelines for the establishment, operation, or evaluation of an NHC (part of our mental picture of a “good” NHC). The point that we want to make in this subsection is simply that this set of requirements is as a whole incomplete, and is thus insufficient as a set of guidelines for the establishment, operation, and evaluation of NHCs (for forming a mental image of an ideal NHC). Our consequential argument is therefore that the particular dominant conception of the ideal NHC that is entailed by the content and orientation of these UN guidelines is similarly incomplete and insufficient. We will now discuss, *seriatim*, the three broad shortcomings of the dominant conception of an ideal NHC.

1. *Excessive Legalism*

Here our argument is that, for the most part, the dominant (UN-driven) conception of an ideal NHC envisions an institution that is as “court-like” as is possible, a body that as much as possible reproduces the basic features of the traditional court-system, even as it takes on other kinds of “non-court-like” functions like education and the provision of policy advice. In this vision of the “good” NHC, too central and crucial a role is allowed to the court-like features of NHCs, and too marginal a role is allowed to the non-court-like features. This is not to argue, of course, that the UN texts and the literature do not assign a sizeable role to the non-court-like features, or do not view them as valuable. The argument is merely that these texts and scholarly interventions have nevertheless continued to view the court-like features as the more important of the two. At times, this view is implied. On other occasions, it has been explicitly stated. Interestingly, even those scholars that recognize the limitations of this form of legalism are never quite able to escape its stranglehold.

Vijayashri Sripathi’s extraordinarily important contribution to our understanding of the concept and operations of NHCs is allegorical of the dominant pattern in the rest of the relevant literature.⁹³ It is allegorical of a pattern of succumbing to the lure of “excessive legalism” even while critiquing it; this is a paradox that is extensively palpable within this body of scholarship. At first, Sripathi strongly and convincingly argues that, of necessity, the effective protection of human rights requires flexible mechanisms of a type that the traditional complaint-oriented court system cannot provide (suggesting a measured departure from a court-centric vision of

93. See Sripathi, *supra* note 76.

NHCs).⁹⁴ Yet she goes on to complain at length that the work of the Indian NHC has been greatly impeded because it has no effective *enforcement mechanisms of its own* (succumbing to a rather court-centric vision of NHCs).⁹⁵ She also argues later on in this same paper that the Indian NHC needs to focus much more on reviewing legislation for human rights compliance⁹⁶ (as if the courts do not already perform this function, and as if the deployment of a large percentage of the resources and energies of NHCs in the direction of legislative reform has a high likelihood of transforming the human rights situation of Indian society). While these two suggestions are neither unviable nor undesirable *per se* (indeed both judicial enforcement and law reform are themselves very important elements in the overall human rights struggle), the weight assigned to them does betray a subtle, but still evident, form of thinking that is overly legalistic in the circumstances. That Sripati's reasoning remains captive to the excessive legalism that permeates the literature is confirmed by her subsequent conclusions that one of the most important ways to improve the Indian NHC and make it a more ideal or optimal institution is to expand its powers to include the authority to prosecute civil servants and enforce its own decisions. Clearly, like most other legal scholars, Sripati's vision for NHCs has remained heavily influenced by the features of the traditional court system and the presumed merits of such features (mostly the legally binding nature and enforceability of a court's decisions, and its ability to impose sanctions). While she has made other kinds of prescriptions for reform, the vast majority of these prescriptions for the improvement of the performance of the Indian NHC have been legalistic in nature. Implied in this trend of thought is a conception of the ideal NHC that assigns a somewhat excessive role to "formal legal powers" and "enforcement." It is almost as if it is settled wisdom that the success of the Indian or any other NHC mostly depends on the nature and extent of its formal legal powers. As we will soon suggest this is probably not the case.⁹⁷

This overly legalistic, yet dominant, conception of the ideal NHC is present as well in the writings of most "NHC scholars." A few examples will suffice to make this point. For instance, while arguing that there "is no one model for a Human Rights Commission,"⁹⁸ John Hatchard has celebrated the fact that the Ugandan NHC can enforce its own decisions.⁹⁹ This is one

94. *Id.* at 3.

95. *Id.* at 5.

96. *Id.* at 27-29.

97. See George H. Gadbois, *The Supreme Court of India as a Political Institution*, in JUDGES AND THE JUDICIAL POWER 250, 258-59 (Rajeev Dhavan, R. Sudarshan & Salman Khurshid eds., 1985).

98. See Hatchard, *supra* note 76, at 52.

99. *Id.* at 42-43.

of the obvious factors that led this keen scholar of NHCs to describe that NHC as "arguably one of the most powerful human rights commissions in the [British] Commonwealth."¹⁰⁰ Brice Dickson is of the view that the litigating role is perhaps the most crucial of the many functions of NHCs.¹⁰¹ And for his own part, John Hucker does not seem worried at all that the Canadian NHC's major activity is the adjudication of complaints by persons who believe that they have been discriminated against by another entity.¹⁰² This is so despite the fact that the Canadian Human Rights Act (which established the Canadian NHC) confers wide advisory, educational, promotional, and research powers on that institution.¹⁰³ Again, the point is not that the concentration of the Canadian or any other NHC on its court-like functions is wrong in itself. The point is to question the *priority* that has been accorded to that function over the non-court-like functions of that body.

Again, the relevant UN texts are as reflective of this tendency to "excessive legalism" as the scholarly literature. Five of the seven "effectiveness factors" suggested by the *UN Handbook* concern or are oriented toward the formal legal structures and powers of NHCs.¹⁰⁴ These are independence, defined jurisdiction, adequate powers, accountability, and accessibility. The measure of effectiveness is in this way heavily weighted in favor of the formal legal structures and powers of an NHC. Thus, even though the relevant UN texts view the effectiveness of an NHC as a function of the ability of an NHC to positively affect the human rights situation of the target society, these texts still regard the extent and nature of its formal legal structures and powers as highly indicative of the likelihood that any NHC will achieve that objective.

For one, this conception of an ideal NHC would not be as problematic were NHCs not required to function in environments where courts exist already. What, it must be asked, is the distinctive feature or comparative advantage of an NHC if its critical or most important role in the human rights struggle is to replicate the traditional court system or to substantially function in the very same way as the traditional courts? It may, of course, be offered in reply that NHCs do possess other features that the traditional courts do not have (such as the power of investigation *suo motu* and the authority to provide policy advice to the government). It may also be offered in reply that, even if it is conceded that an ideal NHC is imagined in the dominant conception as a court-like body, such an overly legalistic approach is still appropriate since such NHCs might then become specialized human rights courts *de facto*.

100. *Id.* at 31.

101. See Dickson, *supra* note 76, at 19.

102. See Hucker, *supra* note 76, at 552.

103. See Canadian Human Rights Act, R.S., 1985, c. H-6 July, 1996, § 27.

104. See UN HANDBOOK, *supra* note 7, at 10, ¶ 66.

The answer to the first point is that, granted that NHCs have certain additional features, and granted that courts already serve the function of hearing complaints and ordering enforcement, the additional features that NHCs possess ought to receive much more attention and emphasis in the conception and operation of NHCs. These additional features (such as promotion, education, policy advice, and *suo motu* investigations) ought to receive priority, and achieve centrality, both in the design and operation of these bodies. They ought to have the most prominent role as well in the dominant conception of the ideal NHC. This should be so precisely because, almost invariably, no other institution serves the non-court-like functions of NHCs. Yet, the regular courts are there to fulfill the enforcement and adjudication functions. Where these regular courts are ineffective, the solution would be to work toward their effectiveness. It would not solve the problem to merely create another *de facto* court in the name of establishing an NHC. Such an NHC might still be ineffective nevertheless! The answer to the second point is that if NHCs were *de facto* to become specialized human rights courts, they would lose their distinctiveness as well. They would abandon or seriously compromise their promotional, educational, advisory, and *suo motu* investigative roles. Yet the performance of these non-court-like roles are, in most places, arguably more critical to the long-term success of the human rights struggle than schemes for *ex post facto* enforcement that are based on complaints-oriented mechanisms. The point is not that the ideal NHC, however conceived, ought not possess adjudicative and enforcement (i.e. court-like) powers at all. Our beef is with the extent of the role assigned to these court-like features in the design and operation of NHCs. Our contention is that being too extensive, that role is too excessive as well. Concomitantly, we are of the view that the role that is normally assigned to the non-court-like features of NHCs is all-too-often too limited; and that this role ought to become more central, and much more extensive. Accordingly, the dominant conception of the ideal NHC ought to regard such promotional, educational and advisory roles as more central and important. This is not the case presently. Virtually all segments of the literature, including the UN texts and the scholarly contributions have assigned too extensive a role to the court-like features of NHCs in their imagination of what an ideal NHC might look like. This is decipherable both from their prescriptions as to the design of viable NHCs, and from the tenor and orientation of their evaluations of the effectiveness of existing NHCs. This is a surprising feature of the literature given the recognition in much of it of the critical relevance of the non-court-like features of NHCs, and given the prevalence within it of the argument that an NHC should not be viewed as just another court, albeit a specialized one.

This is not to suggest, of course, that the literature does not at all acknowledge the value of these non-court-like functions that NHCs per-

form. Reif has for example endorsed the United Nations High Commissioner for Human Rights' conviction regarding the urgency of making *preventive strategies* the centerpiece of the human rights struggle.¹⁰⁵ And these non-court-like functions are basically preventive in nature. Reif has also emphasized the importance of nonlegal factors to the effectiveness of NHCs,¹⁰⁶ and has recognized the fact that an NHC can still play a valuable role without possessing adjudicative and enforcement powers.¹⁰⁷ Again, of the eleven "effectiveness factors" that she suggests as contributory to the successful performance of most NHCs in most places, five have more to do with the play of domestic politics than with the formal legal structures and powers of the NHC.¹⁰⁸

The point we want to put across, however, is that even a scholar such as Reif who is well aware of the limits of an overly legalistic conception of NHCs still retains a picture of an optimal or ideal NHC that assigns relatively too much importance to the court-like functions that NHCs sometimes perform. For instance, one of her two criticisms of the vision of NHCs that is presented by the Paris Principles is that it does not make it compulsory for all NHCs to possess the formal powers of investigation and adjudication. In her view, all NHCs should possess that power. A necessary implication of this view is that an NHC that does not possess that power is somehow undesirable. She has in this way marked such court-like functions as central to her vision of the ideal NHC. But is it not possible that an NHC that has a purely policy advisory and educational role can make a valuable contribution to the human rights struggle? Given the presence of the traditional courts, is such an NHC necessarily of lesser value than one that possesses the powers of investigation and adjudication? This is not to suggest that NHCs should not possess investigative or adjudicative functions, but to argue that an NHC that does not possess such functions is not necessarily doomed to fail or unviable, either. The policy, advisory and educational roles of NHCs should not be undervalued at all. They may in fact be the most crucial roles that such institutions can play, given the acute need for the prevention *a priori* of human rights abuses. Formal legal structures and powers aside, an NHC that is widely viewed as credible and legitimate is far likely to perform more effectively than one that is widely viewed as discredited or illegitimate. Important as they are, formal legal structures and powers are, in themselves, quite insufficient to determine the eventual success or failure of an NHC. They may not even be the most

105. See Reif, *supra* note 76, at 4–5.

106. *Id.* at 24.

107. *Id.* at 2.

108. *Id.* at 24.

important factors in that regard. An analogy from Gadbois' study of the Indian Supreme Court may be helpful in understanding this point. As Gadbois has noted with respect to that court:

The Court is not strong and powerful because the constitution makes [formal] provision for a strong court. . . . More important than the Supreme Court's independence from the executive and formal power and authority, and without which the Court could not be an important judicial institution, is the *legitimacy* it enjoys, [otherwise] the Court's role in the political system would be minimal. . . . The quantum of the court's power and authority is directly related to the amount of *legitimacy* it possesses.¹⁰⁹

This important point (that it would be mistaken to view the most important feature of NHCs as their formal legal structures and powers) is complemented by a related argument. This is that it would be mistaken as well to regard litigation and other court-like functions of NHCs as their most important function. This point has been so well made by a British Parliamentarian that it will suffice to reproduce her argument *in extenso*. According to her:

I believe that the training and education of public bodies is just as important as the establishment of case law. . . . I fear that, for the failure to train them in what the [British Human Rights] Bill means, we shall see a great deal of litigation that is unnecessary, expensive, slow, tedious and repetitive.¹¹⁰

In sum, as Quashigah has noted, a very convincing case can be made that, whatever its capacity to impose legally binding decisions, an NHC "has to feed on its public confidence for its growth."¹¹¹

2. *Insufficient Cognition of Popular Agency*

Here, our argument is that the dominant conception of an ideal NHC envisions an institution that can make a marked difference (almost entirely) because of "what it does," "what it can do in itself" or how it conducts its business; and that this prevalent vision of NHCs hampers the full and complete (i.e., holistic) assessment of the potential and actual value of these institutions. Our contention will be that in addition to envisioning an ideal NHC as making a difference because of "what it does," observers of these institutions should also envision such an ideal NHC as one that might be

109. See Gadbois, *supra* note 97, at 258–59. We are most grateful to Solomon Ukhuegbe for making this material available to us.

110. This comment was made (in the British House of Lords) by Baroness Williams, on 24 Nov. 1997. See Spencer, *supra* note 76, at 31; see also Mulgan, *supra* note 76, at 241.

111. See Quashigah, *supra* note 76, at 136.

valuable because of “what other agents are able to do with it” (as a resource that is valuable in the hands of popular agents such as civil society groups). The point is not that what an NHC can itself do is not important. Indeed, it is very important. The point is that the value of an NHC to the human rights struggle and to society far extends beyond its own active contributions. We will make this point by showing how local NGOs in Nigeria have been able to achieve some successes that would not otherwise be achievable by using the Nigerian NHC (NNHC) as a resource—by doing things *with* that institution. But first, we must demonstrate our contention that the literature, the theory, and the practice in this area have (relatively speaking) been insufficiently cognizant of the immense value that popular agency (e.g. NGO work) often brings to the work of NHCs (and have thus inadequately accommodated this phenomenon in their conception of the ideal NHC). This literature has failed to map in any substantial manner the ways in which popular agents (especially civil society groups) have deployed NHCs in order to reach news heights in the human rights struggle. It has thus failed, in turn, to appreciate fully the value of the existence and work of NHCs to the success of many projects initiated by human rights NGOs.

First of all, it is important to keep in mind the now well-known basic fact that civil society groups and other extremely active popular agents abound the world over in our time. In the case of the African continent, Claude Welch has noted the fact that average Africans are well aware of human rights issues, and have continued to work very hard to eliminate abuses.¹¹² Indeed, as Welch has also noted, organized human rights groups exist in most, if not all, African states.¹¹³ Thus, in Africa (as the world over), there is not a dearth of popular agents concerned to see a transformation in the human rights situation of specific societies.

As we shall soon notice, however, the relevant body of literature has not appreciated fully the implications of the existence (and workings) of such popular agents for the ways in which the ideal NHC is conceived. This is not to say, though, that the literature has totally neglected to comment on the necessity for a close relationship between NGOs and NHCs. For instance, nearly every scholarly commentary in this area has argued in favor of close cooperation between NHCs and civil society groups (such as human rights NGOs).¹¹⁴ The *UN Handbook* has also recommended such a high level of cooperation between NHCs and NGOs.¹¹⁵ It considers that an

112. See CLAUDE WELCH, *PROTECTING HUMAN RIGHTS IN AFRICA: ROLES AND STRATEGIES OF NON-GOVERNMENTAL ORGANIZATIONS* 3 (1995).

113. *Id.*

114. See, e.g., Hatchard, *supra* note 76, at 52.

115. See UN HANDBOOK, *supra* note 7, at 14, ¶¶ 108–11.

ideal NHC would necessarily have close cooperative linkages with NGOs.¹¹⁶ In the words of the Handbook: "A national institution [such as an NHC] should establish and maintain close contact with nongovernmental organizations (NGOs) and community groups which are directly or indirectly involved in the promotion and protection of human rights."¹¹⁷

Other scholars have noted and endorsed various other important ways in which NGOs can make, and have made, valuable contributions to the work of NHCs. Mageean and O'Brien have documented the extent to which NGOs were consulted as to the content of the legislation that established the Northern Ireland Human Rights Commission.¹¹⁸ John Hatchard has celebrated the process that allows NGOs in Malawi to nominate (and in effect appoint), a large proportion of the members of that country's NHC.¹¹⁹ Sarah Spencer has noted that the South African NHC utilizes experts drawn from both NGOs and the academe in its human rights policy development work.¹²⁰ And Gomez has advised the Sri Lankan NHC to begin to use NGOs to investigate allegations of human rights violations (in line with the practice of the Indian Supreme Court on the matter).¹²¹

The problem though is that most calls for closer NHC-NGO cooperation are premised on an evaluative paradigm that assesses NHCs and similar institutions almost exclusively by reference to the active contributions of such NHCs to the human rights struggle (i.e. "what has the relevant NHC itself done"). In this system of evaluating NHCs, of assessing them for compliance with the model of the "good" NHC, agency is ascribed almost exclusively to the NHC. And even in those cases where agency is not so exclusively ascribed to the NHC, the NHC is still imagined as the more active of the two in their relationship one with the other. In most cases, the NGO is viewed as the resource that the NHC deploys or utilizes. In such a conceptual model, the NHC is the agent while the NGO is the resource. Rarely, if ever, is this relationship imagined in the reverse. Rarely is the NGO the agent and the NHC the resource.

The relevant literature is thus mainly in tune with the conceptual model that almost invariably views the NHC as the agent, and regards the relevant NGOs as resources. This conceptual model of NGO-NHC relations is not wrong *per se*. It is just significantly limited. It is so limited chiefly because it does not account for at least one important and valuable kind of relationship between an NGO and an NHC: one in which the NGO is the agent, and the

116. *Id.*

117. *Id.* at 14, ¶ 108.

118. See Mageean & O'Brien, *supra* note 77, at 1528.

119. See Hatchard, *supra* note 76, at 33.

120. See Spencer, *supra* note 76, at 34.

121. See Gomez, *Sri Lanka's New Human Rights Commission*, *supra* note 8, at 288–89.

NHC the resource.¹²² In this enlarged imagination of the value of NHCs, these institutions are in addition conceived of as resources that might be deployed in various creative ways by popular agents such as human rights NGOs and community organizations, and agency is retained among the populace.

A preliminary insight into the findings of our field study of the Nigerian NHC and of the local NGOs that relate with it is illustrative of this point.¹²³ We utilize the views and activities of local Nigerian NGOs as our test of the value of the Nigerian NHC (NNHC) as an NGO resource. We do so because we agree with Pat Walsh that such local NGOs "are the best placed to pass judgement on the [national human rights] institution in their country."¹²⁴

A few examples will suffice to demonstrate our point that an NHC might be a valuable resource that popular agents such as NGOs can deploy creatively. In particular, the first three examples illustrate how the NNHC has been put to use by Nigerian NGOs enabling the relevant NGOs to thereby achieve objectives that would have been much more difficult, if not impossible, to achieve. The other examples illustrate the fact that local NGOs in Nigeria have collaborated closely with the NNHC, an institution that was established by a regime that earned a reputation as perhaps the most brutal of all of Nigeria's military regimes! The first example concerns the work done by one of the local NGOs known as "Community Action for Popular Participation" (CAPP). This is an NGO that devotes the vast majority of its resources to human rights education rather than litigation. For nearly three years, try as they could, they failed to get the Nigerian Police Force (NPF) to cooperate with them in permitting their officers to attend the training workshops that they wanted to organize.¹²⁵ However, when once they enlisted the help of the NNHC, they got the necessary cooperation from the NPF.¹²⁶ Indeed, more police officers than anticipated attended this

122. Here we do not mean to suggest that NGOs should be viewed as agents principally because they are either infallible or beyond reproach. After all, are NGOs not *human* organizations? On the question of the fallibility of human rights NGOs, see Makau Mutua, *The Politics of Human Rights: Beyond the Abolitionist Paradigm in Africa*, 17 MICH. J. INT'L L. 591 (1996); Chidi Odinkalu, *Why Africans Don't Use Human Rights Language*, HUM. RTS. DIALOGUE 3 (2000); E.K. Quashigah & O.C. Okafor, *Toward the Enhancement of the Relevance and Effectiveness of the Movement for the Securement of Legitimate Governance in Africa*, in LEGITIMATE GOVERNANCE IN AFRICA: INTERNATIONAL AND DOMESTIC LEGAL PERSPECTIVES 539 (E.K. Quashigah & O.C. Okafor eds., 1999).

123. We will discuss this field research in more detail in Part III of the article (assessing the performance of the Nigerian NHC–NNHC).

124. See P. Walsh, National Human Rights Institutions: NGOs Should Take a Second Look, available at <<http://www.hr-alliance.org/aphr-ft/hripw.htm>>.

125. Interview with MIA (not real name) of CAPP, 28 Mar. 2000, at Abuja, Nigeria (the transcripts of this interview are on file with the authors).

126. *Id.*

workshop and received training in the area of human rights.¹²⁷ CAPP's view is that these officers participated very actively and with an open mind.¹²⁸ The second example concerns the work of Nigeria's most established human rights NGO, "the Civil Liberties Organization" (CLO). The view of this NGO is that, despite their initial skepticism about its viability, and despite the fact that the NNHC has operated much more cautiously than the NGOs would like, Nigerian NGOs have found the NNHC to be a very useful ally and resource.¹²⁹ The CLO has cooperated with the NNHC with regard to the execution of several successful projects, and have found such collaboration quite useful for the prosecution of CLO's own objectives.¹³⁰ A similar view has been expressed by "Human Rights Africa" (HRA), another Nigerian NGO.¹³¹ The HRA is of the view that it has found it very useful, if not necessary, to work with the NNHC in the execution of that NGO's own projects.¹³² The next two examples relate to two human rights education workshops organized by the "Center for Law Enforcement Education" (CLEEN), and the "Shelter Rights Initiative" (SRI), respectively. The event that was organized by CLEEN was a national seminar for police officers that was attended by many of the most top-ranking Nigerian police officers. Needless to say, the attendance of these top officers at this NGO workshop was largely due to the fact that the workshop was jointly mounted by the NNHC and CLEEN.¹³³ The event that was organized by the SRI was a workshop for High Court Judges on the judicial implementation of economic and social rights. Again, this conference was reasonably well attended and successful, owing at least in part to the collaboration of the NNHC with the SRI.¹³⁴

It is possible, of course, that a civil society group may not always act in the interest of human rights (at least as that concept is conceived of by most citizens in the context of the relevant country). For instance, Quashigah has documented the South African NHC's complaints that the bulk of the media in South Africa, having as they too often do a different ideological agenda, have often hindered (rather than helped) the commission's work.¹³⁵ While this is possible, as the South African example suggests, it has not to date

127. *Id.*

128. *Id.*

129. Interview with OKU (not real name) of CLO, 23 Apr. 2000, at Lagos, Nigeria (the transcripts of this interview are on file with the authors).

130. *Id.*

131. Interview with OD (not real name) of HRA, 25 Apr. 2000, at Lagos, Nigeria (the transcripts of this interview are on file with the authors).

132. *Id.*

133. See R.K. RAGHAVAN, *POLICING A DEMOCRACY: A COMPARATIVE STUDY OF INDIA AND THE US* (1999).

134. See Interview with OR (not real name) of SRI, 22 May 1999, at Lagos, Nigeria (the transcripts of this interview are on file with the authors).

135. See Quashigah, *supra* note 76, at 140.

been a major source of worry for most NHCs in most places. Most local civil society groups have been helpful. Very few of them have, like the bulk of the media in South Africa, gone out of their way to promote an agenda that is antithetical to the mandate of the relevant NHC.

In each of the above examples, the local NGO was the agent and the NNHC the resource that was deployed creatively to achieve a pro-human rights objective. In most of these cases, NGOs (as popular agents) were able to harness the NNHC's comparative advantages of having a statutory right of access to various governmental fora and departments, and having the necessary perceived authority within the government.¹³⁶ In most of these cases, had the relevant NGO not so deployed the NNHC, its objectives would either not have been met, or would not have been met adequately. In this way has the NNHC become a crucial resource for the success of the work done by local NGOs in Nigeria. This is, at the very least, a preliminary pointer in the direction of enlarging our conception of NHCs beyond what has so far obtained in order to accommodate their usefulness as an NGO resource. This is one major way in which the relevant literature can become more cognizant of the value of the linkages between NHCs and NGOs; of the imperative of taking popular agency seriously. Designers of NHCs would do well to take this insight into consideration. By being more available to be deployed as an NGO resource, an otherwise weak NHC might be able to strengthen its popular legitimacy, and therefore its influence on the government.

3. Inadequate Connection to "Voices of Suffering"

Here, our argument is that, for the most part, the dominant conception of an ideal NHC envisions an institution that is not as adequately connected as it should be to the yearnings and experiences of those among us that Upendra Baxi has most accurately described as the "voices of suffering."¹³⁷ The argument is not that the dominant conception of NHCs is totally unaware of the yearnings and experience of such persons. It does reflect these yearnings and experiences to some extent. However, the dominant conception's connection to these most vulnerable elements of society could be deepened a lot more, in a way that would ensure that NHCs are in a much better position to achieve their stated objectives. Much more attention needs to be paid by the UN texts and the relevant literature to the logical and necessary implications (for their conception of the ideal or optimal NHC) of the

136. This phenomenon conforms with Mulgan's view regarding the comparative advantages that NHCs sometimes enjoy over NGOs. See Mulgan, *supra* note 76, at 239.

137. See Baxi, *supra* note 1.

experiences and yearnings of these voices of suffering.¹³⁸ Existing NHCs and the architects of proposed NHCs also need to pay much more attention to these voices. In both cases, the emphasis is on the phrase "much more." For already some attention has been paid to these voices by the relevant bodies and persons. The point is that the level of concern and the extent to which these voices (and their concerns or experiences) have been reflected in the conception, design and operation of NHCs has not been as adequate as possible.

Put more concretely, a deeper and closer connection to these voices should lead a "good" conception of an ideal or optimal NHC to pay closer attention to the implications of certain issues, concerns, and matters that deeply shape the immiseration of these voices of suffering (such as those relating to children, ethnic and sexual minorities, gender, poverty, rural dwellers, economic and social rights, prisoners, *suo motu* jurisdiction, the activities of transnational corporations, the behavior of foreign governments, the activities of the international financial institutions, rapid reaction capabilities, prevention, and structural and other root causes of violations).

By "voices of suffering" we mean those persons or groups whose need for protection is greatest, who are society's most vulnerable, and who survive at the bottom end of the scale of human freedom from want and deprivation. The category refers therefore to those segments of humanity who are the most vulnerable of all in most human societies. This is a meaning that is substantially in conformity with the way in which that term has been used in Baxi's own work.¹³⁹ We will illustrate our overarching point here with reference to some of the categories/issues mentioned in the preceding sentence, and through our examination of the UN texts and other relevant literature.

The UN texts reveal a conception of the ideal NHC that is not as adequately connected as it should be to the yearnings and experiences of the voices of suffering. It needs an increased level of connection to these voices in order to increase the likelihood of it animating NHCs that would be successful in most contexts. To be sure, these texts (which form and present the dominant picture of an ideal NHC) have *inter alia* noted that: (a) an NHC that is "composed solely of men, for example, or of one particular ethnic group, is unlikely to reflect the diversity of society and cannot, therefore be regarded as truly representative"¹⁴⁰; (b) the complaints procedures of an NHC are useful to those concerned to advance economic and

138. For instance, as Fateh Azzam has noted, the context of the Palestinian experience must be kept in mind while evaluating the Palestinian NHC. See Azzam, *supra* note 76, at 338–39.

139. *Id.*

140. See UN HANDBOOK, *supra* note 7, at 12, ¶ 84.

social rights (ESC rights)¹⁴¹; (c) an NHC must strive to overcome the fact that those persons who are the most vulnerable in a society will most often be the ones who are the most difficult for the NHC to reach and serve¹⁴²; (d) an NHC must strive to decentralize and may open regional and local offices¹⁴³; and (e) an NHC should have the power to conduct investigations *suo motu* as a way of offering indirect access to those who are the most vulnerable to human rights abuses (the voices of suffering) such as children, women, prisoners, the poor, the homeless, the mentally or physically challenged, and minority populations. Item (a) above addresses gender issues. Item (b) concerns the often neglected category of ESC rights that are most useful to the poor and other vulnerable groups. And items (c), (d) and (e) are addressed to the vast majority of the most vulnerable of societal groups. Similar requirements for the design and operation of a viable NHC are contained in the Paris Principles.¹⁴⁴ Thus to some extent, the UN texts (and the conception of an ideal NHC that they present) have been informed by the imperative need to take suffering humanity seriously. Yet these same texts have not placed the voices of suffering as centrally as they should in their formulation of the dominant conception of NHCs. Certain concerns and issues do not appear central to their understandings of what an ideal NHC should look like. Even more of these issues do not appear to have influenced this conception at all. The relevant literature shares this failure of the dominant UN-driven conception of the ideal NHC to fully connect with, and emphasize, the yearnings and experiences of the most vulnerable among us. We will explain these points by discussing some, not all, of these issues/concerns.

In the first instance, the UN texts do not make it compulsory for an NHC to address ESC rights. The *UN Handbook* states that: "Human rights commissions are concerned primarily with the protection of persons against all forms of discrimination and with the protection of *civil and political rights*."¹⁴⁵

The *UN Handbook* did not seem to find this hierarchical marginalization of ESC rights disturbing at all! As such, it is only fair to conclude that in that document's view, it is not a central requirement for an ideal NHC to have a mandate to promote and/or secure ESC rights. Yet, these are the category of rights that are least likely to be justiciable in the regular courts,¹⁴⁶ and which

141. *Id.* at 13, ¶ 93.

142. *Id.* at 13, ¶ 100.

143. *Id.* at 13, ¶ 102. In practice, many NHCs now have regional and local offices. Ghana's NHC is one of those. See Hatchard, *supra* note 76, at 39–40.

144. For instance, UN HANDBOOK, *supra* note 7, pt. II ¶ 1 & pt. III, ¶ (e).

145. See UN HANDBOOK, *supra* note 7, at 7, ¶ 48.

146. See Reif, *supra* note 76, at 2–3.

therefore most require protection by alternative bodies such as NHCs! Again, these are the rights that are often more relevant to the poor than the rich, and which may most require clarification through the non-judicial fora of NHCs.¹⁴⁷ Were the UN texts to have been as influenced as they should have been by the experiences of the voices of suffering, these documents would have made it compulsory for an ideal NHC to have the jurisdiction to promote and secure ESC rights. This is not to argue, of course, that this imperative is ignored entirely in the UN texts, the literature, or in practice. We have already noted the extent to which the UN texts are cognizant of the issue, and we have already noted the concern expressed by Gomez and Sripathi with regard to the same matter. The activities of Ghana's NHC, which treats as central, and deals with, a panoply of those ESC rights that have been recognized under the Ghanaian constitution, is a good example of the devotion of some attention to this matter by some of the existing NHCs.¹⁴⁸ Other NHCs, like those in India and South Africa, have also begun to pay much more attention to this crucial matter.¹⁴⁹

Again, the fact that the *UN Handbook* seems to make it optional for an NHC to establish regional or local offices is disturbing from the point of view of most vulnerable groups in most places. As Ayo Obe, the President of the (Nigerian) Civil Liberties Organization has noted, most NHCs in most places do their work: ". . . among the poor and oppressed [especially rural dwellers], for whom a journey to a state capital might mean being in possession of riches beyond their own dreams of avarice."¹⁵⁰

With regard to this fact of widespread local poverty, and to the vast numbers of the majority rural populations of most states in the world, it is disturbing that the UN texts have not made the establishment of local offices and outposts more central to their conception of the desiderata for an ideal NHC. However, it must be said in favor of existing NHCs that most of them have in fact realized the imperative necessity of establishing such grassroots offices. The Ghana NHC has been a leader in this respect.¹⁵¹ Whether most NHCs will in practice set up these grassroots offices remains to be seen.

Another area in which the dominant conception of an ideal NHC remains unconnected to the voices of suffering is in the area of minority rights and issues concerning "state fragmentation."¹⁵² Even though the UN

147. See Gomez, *Social Economic Rights and Human Rights Commissions*, *supra* note 76, at 162–66; see also Sripathi, *supra* note 76, at 38.

148. See Short, *supra* note 76, at 191.

149. See Sripathi, *supra* note 76, at 38; see also *Grootboom v. South Africa*, Case CCT/11/00, South African Const. Ct. (where the South African NHC intervened in a shelter rights claim by over 800 homeless persons).

150. See A. Obe, *What a Human Rights Commission Requires*, 6 CONST. RTS. J. 36 (1996).

151. See Short, *supra* note 76, at 186.

152. For an extended consideration of this matter, see OBIORA CHINEDU OKAFOR, *RE-DEFINING LEGITIMATE STATEHOOD: INTERNATIONAL LAW AND STATE FRAGMENTATION IN AFRICA* (2000).

texts emphasize the necessity for an NHC to be composed of an “ethnically” diverse membership, it fails to treat the matter of attention to the issue of inter-“ethnic” relations, a fundamental problem in most states of the world, as one that ought to be central to the mandate of an ideal NHC in most contexts. The result is that perhaps the greatest root source of human rights violations in most countries in the world is not highlighted and imagined as a central concern of NHCs. Would a conception of NHCs that is much more deeply connected with the voices of suffering the world over treat this issue as marginal? We think not. It must, however, be said in favor of some segments of the literature that they do realize the need to make this issue a central concern of NHCs. For instance, Beckett and Clyde have argued that given the nature of contemporary British society, in which most human rights complaints are made by Africans, Indians and Pakistanis—and not by the Scottish or Welsh regions—the proposed British NHC ought to concentrate on such issue-sections as opposed to regional sections.¹⁵³

Another matter that would have become central within the dominant conception of an ideal NHC if it had been as adequately connected to the voices of suffering is the necessity for the devotion of a large percentage of an NHC’s resources and efforts toward preventive rather than reactive *ex post facto* measures. It is a moot point that most vulnerable groups do not want to remain vulnerable. They also do not want to experience violations regardless of whether they would eventually obtain redress or not. If this is so, a sensibility to their yearnings and experiences would dictate the devotion of a large proportion of an ideal NHC’s resources to preventive rather than reactive activities. Regrettably, this has not been the case. The UN texts and the dominant conception have not, as well, made this central to their picture of an ideal NHC. This has led John Hatchard to argue, convincingly in our view, that NHCs should act as preventive agents.¹⁵⁴

Yet another matter that is excluded (not just marginalized) from the dominant conception of the mandate of an NHC is the issue of the human rights violations within states that are attributable to the activities of foreign states and the international financial institutions (IFIs) such as the International Monetary Fund (IMF) and the World Bank (WB). For instance, Fateh Azzam has mapped the various ways in which pressure from Israel and the USA to put Israeli security concerns well above every other concern is a part of the problem of human rights violations by the Palestinian Authority.¹⁵⁵ With respect to the activities of IFIs, the Nigerian Nobel laureate Wole Soyinka has noted how certain policies of these institutions, advertently or inadvertently, contribute to the immiseration of the mass poor populations

153. See Beckett & Clyde, *supra* note 76, at 136.

154. See Hatchard, *supra* note 76, at 52.

155. See Azzam, *supra* note 76, at 344.

of African countries.¹⁵⁶ Indeed, in the context of the massive resistance of the populations of almost every African country to the structural adjustment programs (SAPs) that were introduced by the IFIs into these countries in the 1980s, it is fair to ask whether these IFIs did not realize that the adoption of such SAPs in the face of such intense popular resistance to the SAPs would (in most cases) require the deployment of dictatorial regimes or policies? Given the continuance of similar policies and the continuing activities of many foreign countries within many states, it is surprising, if not disturbing, that the dominant conception of an ideal NHC seems to exclude these issues from the purview of NHCs. It does not see such a body as one that possesses a mandate to tackle such issues. Yet without tackling these issues, many of the violations that contribute to the oppression of the most vulnerable in society may never be addressed or redressed effectively.

These are just a few of the issues that illustrate what we view as the inadequate connection of the dominant conception of the ideal NHC to voices of suffering. All in all, our suggestion in this subsection has been that more must be done so as to allow "suffering humanity to reflect"¹⁵⁷ their experiences and yearnings onto the dominant conception of the ideal NHC. Their experiences and yearnings must be taken more seriously—seriously enough to become more central to the conception, design and operations of most NHCs in most places. But for "suffering humanity's experience" to be taken as seriously as it should by decision-makers, "thinking humanity" (i.e. those charged with the conceptualization, design and operations of NHCs) must suffer. They must roll up their sleeves much higher and intensify their work at the grassroots, among the most vulnerable, among the most urgent voices of suffering. A conception of an ideal NHC that is as influenced as it should be by these voices of suffering will have a better chance of animating the kind of NHCs that would be most viable in most contexts.

Subsection II(C), as a whole, has been devoted to the development of our argument that the dominant conception of an ideal NHC is incomplete, and is thus inadequate in a sense that is likely to hamper its ability to inform the conceptualization, design, and operation of NHCs that would be most viable in most contexts. The implicit suggestion all through was that even an NHC that looks like the one that has been conceived in the UN texts and in

156. See Pan African News Agency, 8 Feb. 2001; see also Gomez, *Social Economic Rights and Human Rights Commissions*, *supra* note 76, at 162; J. Oloka-Onyango, *Beyond the Rhetoric: Reinvigorating the Struggle for Economic, Social and Cultural Rights in Africa* 26 CAL. W. INT'L. L. J. 1, at 26–28; Shedrack C. Agbakwa, *Retrieving the Rejected Stone: Rethinking the Marginalization of Economic, Social and Cultural Rights Under the African Charter on Human and Peoples' Rights*, 270–73, LL.M. Thesis: Dalhousie Law School (2000).

157. This phrase is an adaptation of a sentence from one of Upendra Baxi's more recent articles. See Baxi, *supra* note 1.

the mainstream literature is not likely to succeed in affecting positively the human rights situation of the mass population of most states if it does not in addition pay closer attention to its excessive legalism, insufficient cognition of popular agency, and inadequate connection to voices of suffering. Such an extended and enlarged vision of the ideal NHC does provide, at least in our view, a more holistic conception of such institutions; one that is likely to be more useful to those who need the services of NHCs the most. The nature of this holistic conception of an ideal NHC is implicit in the critique that we have just offered.

In Part III of this paper, we will attempt to assess the mandate and performance of the Nigerian NHC (NNHC). We will apply the more holistic conception to this evaluative exercise, and examine the evidence that we have gathered about the NNHC's mandate and performance against that conception. Since the holistic conception includes (but extends beyond) the dominant conception, we will be indirectly assessing the NNHC against that conception of the ideal type, as well.

III. ASSESSING NIGERIA'S NATIONAL HUMAN RIGHTS COMMISSION

In this section of the paper, we will examine directly or indirectly: the nature of the NNHC; its structural framework; the extent of its formal legal authority; its functions; and its performance in practice. Our overall aim, here, is to attempt to demonstrate the various ways and senses in which the NNHC either falls short of our conception of an "ideal" NHC, or does indeed measure up to that standard. In this last connection, the two broad questions that we will attempt to provide answers to are: (a) does the NNHC have features, and has it in practice operated or behaved in ways, that substantially satisfy the dominant UN-driven conception of an ideal NHC (especially as enunciated by Reif), and (b) do the structure, powers, and operations of the NNHC satisfy the more holistic conception of an ideal NHC? Regrettably, we have come to the conclusion that, on the balance, and taking into consideration the nature of the local context in which it must operate, the NNHC does not fare as well as it possibly could when evaluated against the conceptual "ideal" (as imagined by either model of the ideal type). It has not performed as creditably as it could on both scores. However, as we shall soon see, *this does not mean that the NNHC has not been a valuable institution at all*. On the contrary, we will make it clear that the young institution has now become an invaluable addition to the human rights landscape of Nigeria. This point will be demonstrated shortly.

As we have noted already, the NNHC was established in 1996 by the military regime led by General Sani Abacha, a government that was perhaps

Nigeria's most brutal and rapacious (at least since the end of the colonial era).¹⁵⁸ Thus, neither the prenatal or immediately post-natal history of this institution was particularly brilliant. Quite understandably, the birth of the NNHC was greeted with widespread cynicism among human rights activists and scholars, and among almost every other section of the Nigerian population (with the possible exception of government operatives).¹⁵⁹ This skepticism about the credibility and potential of this body did not abate with the collapse of the Abacha regime and the subsequent enthronement in 1999 of a democratically elected regime in Nigeria. On 1 July 1999, nearly three years after the NNHC set up shop and opened to the public, Ita Enang, a federal parliamentarian was applauded in the Nigerian House of Representatives for asking the following question: "What was the National Human Rights Commission doing when human rights abuses were going on [during the General Sani Abacha led military regime]?"¹⁶⁰ This is indicative of the extraordinarily high level of skepticism that has dogged the NNHC and its work from its very beginnings.

This negative impression of the NNHC's capacities and performance continues to loom large in the minds of observers of that institution such as Hon. Enang despite the fact that even under the Abacha dictatorship, the NNHC had on many occasions loudly criticized both government officials and the security agencies for violations of human rights. On one occasion in 1997, Judge P.K. Nwokedi, the founding Chair of the NNHC (who was appointed by Abacha to that post) publicly described the conduct of the security agencies as "unjust and atrocious."¹⁶¹ In another respect, he similarly felt able to condemn these same agencies and the government that appointed him to that office in the following words: "[I]f the truth be told, a lot of the action[s] of the law enforcement agents portray the government of this country as condoning human rights violations."¹⁶²

Thus, the NNHC has never really been the lapdog of the government or the security agencies. Indeed, Nigerian civil society groups seem to have caught onto this very early on. For instance, the *Constitutional Rights Journal*, the mouthpiece of one of the country's largest human rights NGO described the above comments of the Chair of the NNHC in the following terms:

158. See Part I of this paper (especially the fifth paragraph thereof). See also OGBU, *supra* note 23.

159. It is interesting that this sort of skepticism also greeted the establishment of an NHC in India under a democratic regime. See Sripati, *supra* note 76, at 19.

160. See National Assembly Debates, Fourth Assembly-First Session, 0403 House of Representatives, Official Report, Vol. 1 (1 July 1999).

161. See 7 CONST. RTS. J. 33 (1997).

162. *Id.* at 31.

It came as a surprise, when recently the chairman of the National Human Rights Commission (a government owned organization) Justice Patrick Nwokedi, just like other human rights organizations in the country, added another *incredibly hard knock on the nation's security operatives*, accusing them of flagrant and gross abuse of human rights.¹⁶³

Again, while the continuance of this skepticism to this day is quite understandable (from the perspective of the circumstances of the NNHC's birth), what is most interesting about it is that it has persisted even under the new more democratic political dispensation. Is its persistence based more on casual or anecdotal perception than on a systematic evaluation of the performance of the NNHC?

Whatever the real roots of this now endemic cynicism about the NNHC, what we will now attempt is to offer an evaluation of the capacity and performance of the NNHC that is much more systematic than has been the case thus far. We will do so in two ways. First, we will assess the NNHC against the "effectiveness criteria" that ground the dominant vision of the ideal NHC (as enunciated by Reif). These criteria are: independence; defined jurisdiction; adequate powers; accessibility to the public, level of cooperation with other bodies, operational efficiency, accountability of the NHC; the nature of the governance structure of the state; the attitude and receptivity of the government to the institution; personal character of the leadership of the NHC; and the NHC's credibility in the eyes of the public. Secondly, we will extend the evaluative exercise beyond the dominant model to include the three fundamental concerns that differentiate it from the more holistic conception. (These are: the absence of excessive legalism, adequate attention to popular agency, and a deeper connection to "voices of suffering.")

1. Independence from the Government

Under the law that established it, the members of the NNHC do not enjoy security of tenure.¹⁶⁴ The members of the NNHC's Governing Council, including its Chair and Executive Secretary, can be removed by the Head of State, "if [s]he is satisfied that it is not in the interest of the public that the member should remain in office."¹⁶⁵ They are appointed as well by the Head of State on the recommendation of the Attorney General and Minister of Justice of the Federation. Moreover, its admittedly diverse 16-person

163. *Id.* [Emphasis supplied]. Interestingly, the Indonesian NHC, which was established by the Suharto regime, has been viewed by at least one commentator as "much less of a puppet than many feared." See Gotanda, *supra* note 76, at 476–77.

164. See OGBU, *supra* note 23, at 300.

165. See Decree, *supra* note 24, § 4(2).

membership includes three representatives of the executive branch of government (namely the representatives of the Ministries of Foreign affairs, Justice and Internal Affairs).¹⁶⁶ Again, the NNHC possesses neither "legal and operational autonomy" nor "financial autonomy." Section 17 of its enabling law, the *National Human Rights Commission Decree of 1995* (hereinafter "the Decree"), authorizes the Attorney General (AG) to give the NNHC "such directives of a general nature with regard to the exercise by the Council of its functions under this Decree." Section 16 requires the NNHC to submit annual reports to the executive branch of government (the Federal Executive Council or FEC), through the AG. Just as problematically, section 15 mandates that the NNHC submit its budget through the AG to the FEC for approval.¹⁶⁷ In Uganda, the practice is quite different. There, the NHC's administrative expenses are, as they ought to be, charged directly to the consolidated revenue fund.¹⁶⁸ It is clear from the foregoing review of the Decree that it envisages an NNHC that is little more than a "parastatal" or subordinate agency of the Federal Ministry of Justice! This conception of the NNHC hardly conduces to a large measure of independence for that body. In contrast, the Ghana NHC enjoys a very high measure of independence from any Ministry or Government department.¹⁶⁹ Its members also enjoy security of tenure.¹⁷⁰ In practice though, the NNHC has tried as much as possible to function independently of the Ministry of Justice. It has not regarded itself as a branch of the Ministry of Justice at all, and has felt free to carry out its day-to-day activities as it sees fit. But try as it may, it could not resist successfully the summary removal without stated cause (in the year 2000) of its well-regarded first Executive Secretary, Dr. M. Tabi'u, by the new civilian administration.

On the more positive side, the NNHC is composed of a very diverse membership. Even though no mention is made of these issues in the Decree, in practice the NNHC is fairly diverse as to *gender* and *ethnicity*. Of the eight issue-area rapporteurs that were recently appointed from among its members, a majority (five) are women. Again, both the Northern and the Southern geopolitical regions of the country are well represented on the

166. This is not the case with the Palestinian NHC. See Azzam, *supra* note 76, at 341.

167. Quite unlike the NNHC, the Indian NHC receives grants directly from the executive, as opposed to going through any particular minister or ministry. See Sripati, *supra* note 76, at 12. For its part, the Palestinian NHC is not funded at all by the Government. It is self-sufficient in the sense that all its operating budget is donated. Given the often very intense controversies about foreign funding of third world human rights bodies, this may not be the most sensible or politic course for all NHCs to chart. See also Azzam, *supra* note 76, at 343.

168. See Hatchard, *supra* note 76, at 35.

169. See Short, *supra* note 76, at 186.

170. *Id.*

Governing Council of this commission. The NNHC is also diverse as to its reflection of the social forces at work in Nigerian society. Section 2 of the Decree has ensured that it is composed of at least "three representatives of the registered human rights organizations in Nigeria," three representatives of the mass media (two of whom must be appointed from the private sector), two senior legal practitioners, three other persons to represent a variety of interests, a Chair who shall be a retired judge, and an Executive Secretary. In this sense, it is even more reflective of the various social forces at play in society than the Indian NHC. Three of the five non-ex officio members of the Indian NHC must be judges.¹⁷¹ And so far neither a female nor a human rights activist has been appointed to that body.¹⁷²

2. *Defined Jurisdiction*

The Commission has a reasonably well-defined jurisdiction. The preamble of the Decree makes it clear that the NNHC is to have a broad jurisdiction aimed at the promotion and protection of human rights. This jurisdiction is also explicitly stated in the preamble to include the facilitation of Nigeria's various treaty obligations, and the provision of a forum for public enlightenment and dialogue in the area of human rights. More specifically, section 5 of the Decree clearly sets out the reasonably well-defined, albeit broad, subject-matter jurisdiction of the NNHC. This includes the jurisdiction to deal with all matters relating to the protection of human rights as guaranteed by the Constitution of Nigeria, the African Charter on Human and Peoples' Rights, and other international treaties on human rights to which Nigeria is a "signatory."¹⁷³ Section 5 also mandates the NNHC to monitor and investigate cases of human rights violations, assist victims of violations, seek redress for such victims, undertake studies on all matters pertaining to human rights, render policy advice to the government, make recommendations to the government, publish reports on the state of human rights in Nigeria, organize local and international seminars or other events, participate in all relevant international activity, maintain a library, collect data, disseminate relevant information and materials, and carry out all such other activities as are necessary or expedient for the performance of its functions under the Decree. This is a broad and detailed statement of jurisdiction indeed. Even a strong critic of the Decree such as Osita Ogbu has recognized that the content of that document is commendable in this

171. See Sripati, *supra* note 76, at 10.

172. *Id.* at n.46.

173. The phrase "is a signatory" is used in the Decree, instead of the more restrictive "has ratified."

particular respect.¹⁷⁴ The Decree allows a "broad and generalized" mandate to the commission,¹⁷⁵ one that is sufficient for it to tackle its admittedly difficult task of improving, to the extent that it can, the human rights situation in Nigeria. Moreover, this mandate has been interpreted and applied in an extremely liberal manner by the NNHC itself. As "AC," one of the NNHC's senior legal officials, has noted: "The commission has on the average done a lot of work on all aspects of the mandate vested on it by the Decree. . . . No complaint that is sent here is not treated. Even borderline cases are declared admissible and treated. We take an expansive view of our mandate."¹⁷⁶ Thus, this is not one of the areas in which either the Decree or the NNHC itself has fallen short of the "ideal" (whether as imagined by the dominant conception or by the more holistic kind).

3. Adequate Powers

According to the *UN Handbook*, "[p]ower must relate to purpose," and an NHC "must be granted adequate powers to permit the effective discharge of its responsibilities."¹⁷⁷ Thus, as long as the nature and extent of an NHC's powers are such as enable it to do all that is necessary to realize its mandate, such an NHC would be considered to have "adequate" powers. As we saw above, the powers conferred by law on and exercised in practice by the NNHC are fairly ample and extensive. It has the power to promote and protect human rights, receive and investigate complaints, monitor the human rights situation in the country, provide policy and other advice to the government, conduct research and studies, mount seminars and other events, and assist victims of violations, etc. However, the NNHC does lack a range of powers that the *UN Handbook* and most scholars in this area consider as important. These absent powers include the *explicitly stated* powers to compel the attendance of a reluctant person at a hearing, compel the production of any relevant information or document, sue in the regular courts to enforce its decisions,¹⁷⁸ render binding decisions, and visit the prisons at any time.

It seems, however, that in practice the NNHC exercises the power to visit prisons, and that it should be able to compel the attendance of

174. See OGBU, *supra* note 23, at 301.

175. *Id.*

176. Interview with AC, at the National Human Rights Commission, Gidan Aisha, Abuja, Nigeria, (the transcripts of this interview are on file with the authors). [This interview is hereinafter referred to as "interview with AC"].

177. See *id.* ¶¶ 95–97.

178. As Reif has noted, "[o]nly a minority of [such] institution[s] have . . . [the power of] launching court actions to determine the constitutionality of laws and prosecuting for corruption or breach of law." See Reif, *supra* note 76, at 28.

witnesses and production of documents. It should be able to do the latter based on the omnibus, albeit vague, clause in Section 6(a). This provision permits it "to do such other things as are necessary or expedient for the performance of its functions under this Decree." In this sense, we do not quite agree with Osita Ogbu that this specific defect in the adequacy of the NNHC's powers cannot be cured by reliance on section 6(a) of the Decree.¹⁷⁹ We think that the NNHC should, as it is wont to do, interpret that provision as generously as is necessary. But having said that, we still agree with Ogbu and AC¹⁸⁰ that the Decree ought to be amended to explicitly confer the power to compel action or cooperation from any person or agency, public or private. Section 6(a) may also provide legal authority for the NNHC to sue in the regular courts to enforce its decisions, especially since section 5 allows it to "seek appropriate redress and remedies" on behalf of the victims of human rights violation! Moreover, does not section 1(2) of the Decree permit the NNHC to "sue and be sued in its corporate name"? Again, we are not averse to the idea of amending the Decree so as to explicitly state therein that the NNHC is empowered to exercise this power. In fact, as Quashigah has noted, the failure to itemize all the details of the powers available to an NHC may in fact be a source of friction between it, on the one hand, and the security agencies, on the other hand.¹⁸¹ Our point is that it can already do so if the Decree is interpreted in a reasonably liberal way. However, one defect that cannot be cured by section 6(a) is the NNHC's total lack of the power to render legally binding decisions. This "defect" can be cured, if necessary, by legislative amendment.

4. The Accessibility of the NHC

As used here, and by the *UN Handbook*, "accessibility" refers to awareness of the institution, its physical accessibility, location(s), and accessibility through its representative composition. As the *UN Handbook* has put it, an NHC cannot be accessible to a constituency that is ignorant of or ill informed about its existence and functions; the absence of NHC offices at the grassroots often obstruct accessibility for those living in remote areas, or who are otherwise unable to travel; and the diversity of the composition of an NHC may often enhance its accessibility to the public.¹⁸²

On the question of "awareness of the institution," there are preliminary indications that the NNHC seems to have, somewhat surprisingly, performed quite well among the *urban elite*. This is borne out by the

179. See OGBU, *supra* note 23, at 300–01.

180. See Interview with AC, *supra* note 176.

181. See Quashigah, *supra* note 76, at 138–39.

182. See UN HANDBOOK, *supra* note 7, ¶¶ 100, 102, & 105.

reasonably high scores it obtained when we analyzed the information that we gathered from two relatively small field surveys. The first was a field survey of a small randomly selected sample of lawyers who live in Abuja (Nigeria's capital city) and Enugu (a provincial capital city). 95.65 percent of those (lawyers) questioned reported knowledge of the existence and functions of the NNHC. The second was a field survey of a small randomly selected sample of members of the general public who live in Enugu. 77.5 percent of those surveyed reported knowledge about the existence and functions of the NNHC. These high numbers are not surprising given the nature of the day-to-day activities of a lawyer and their high levels of training and awareness, and given the nature of the other sample as composed of well-educated urban elite who were selected randomly from the city's phone book. What is somewhat more remarkable is that virtually every one of these persons reported that they had learnt about the NNHC and its functions from the *mass media*.

While we cannot overgeneralize from the findings of this particular small random sample conducted in only two urban centers, and given Nigeria's large population and vast terrain, these findings are a preliminary indication that the NNHC has (at least in these areas of the country) worked very hard to publicize its existence and activities in the mass media. To this extent, the findings do corroborate the NNHC's own assessments of the extent to which they have afforded a high level of publicity to their work. As AC has put it, the NNHC has held publicly reported training sessions for the police and security agencies, and judges; helped form human rights clubs in various secondary schools¹⁸³; mounted several radio and television¹⁸⁴ campaigns (some in collaboration with the Constitutional Rights Project (CRP), a local NGO); mounted several billboards concerning human rights awareness; published several magazines, newsletters and reports; held several seminars,¹⁸⁵ workshops and conferences.¹⁸⁶ Again, as Bukhari Bello, the current Executive Secretary of the NNHC has noted in a recent newspaper interview:

What we do to make people understand what we do is to rotate these [NNHC] meetings from one state and zone to another. When we get to these [NNHC]

183. An example is the human rights club at Government Secondary School, Tudun Wada, Abuja, Nigeria.

184. It sponsors a phone-in human rights "talk show" on NTA Abuja where various related issues are discussed. Following the first appearance of AC on this program, two citizens came to his office on the next working day and lodged complaints with the commission. See Interview with AC, *supra* note 176.

185. So far a number of such seminars and public lectures have been held including those that have been led by Obinna Okere, Victor Dankwah, and Ibrahim Gambari.

186. Interview with AC, *supra* note 176.

meetings, we take the whole of the first day to do a lot of publicity campaigns. We have established what is called [a] human rights forum. . . . [During such a forum] we look at a particular problem that is very current in that state and then we take it as a topic for discussion. Then we invite all stakeholders, the government, market women, the private sector, everybody with different views so that we can sit down and discuss . . . [people do come] from their villages . . . and those issues are discussed and thrashed.¹⁸⁷

As is evident from this passage, the NNHC has attempted as well to reach the mass rural majority population of Nigeria. However, as AC has noted, it has not been as successful as it would like in this regard. In AC's words, "people at the grassroots may not have benefitted from our activities but we do have them in mind."¹⁸⁸

With regard to its physical accessibility to the public, the NNHC has not so far performed as commendably. Aside from its headquarters office in Abuja, Nigeria, the commission has (as at the date of writing) established just four zonal offices. This failure to establish more offices and become more accessible to the public may be due in part to the resource problems that it has faced from the beginning. Yet, when compared to the record of Ghana's NHC, the five year-record of the NNHC seems quite disturbing. By 1999, the Ghanaian commission had established or was about to establish a total of 120 offices outside its headquarters office! Most of these were at the local level. Even though Ghana's NHC was set up over twenty years ago, the record indicates that it has established an average of five offices a year as against an average of less than one office a year for the NNHC. Thus, the evidence is quite clearly suggestive of the fact that the Ghana NHC has been much more successful at getting itself closer to the grassroots, and at a rate that was over five times (or 500 percent) more than that of the NNHC!

On the matter of accessibility through a representative composition, as we have seen already, the Decree has mandated the creation of an NNHC that is somewhat diverse. The only blot here seems to be that women constitute only about 37 percent of the membership of the NNHC.¹⁸⁹ However, when compared to the gender equity statistics among other top agencies in the country, this number does not seem to fare as badly. It must be pointed out though that there are no direct representatives of the poorest Nigerian or of rural dwellers on this commission. It is both by law and in practice composed entirely of the urban elite. Having said that, it is noteworthy that the level of diversity required by the Decree concerning the

187. See GUARDIAN, 22 Dec. 2000, available at <<http://www.ngrguardiannews.com/politics/pp807102.html>> (at 2, of printed copy on file with authors).

188. Interview with AC, *supra* note 176.

189. This number is gleaned from and based on a list of the members of the NNHC (as of 15 Mar. 2001) supplied to us by AC. See *id.*

NNHC's membership is still significant.¹⁹⁰ This level of diversity has been reflected as well in the appointments that have so far been made to the NNHC. On this score, therefore, it is fair to say that in this specific regard, the NNHC does not fall short of the dominant conception of an ideal NHC.

5. Level of Cooperation with Other Relevant Entities

The NNHC has cooperated very extensively with local human rights NGOs in Nigeria. It has cooperated with the CRP to establish a thirty-minute program aired by a local private radio station, entitled "Rights and Duties."¹⁹¹ As we have already seen, it has been much valued by many of these groups as an invaluable resource for their own work. It has also cooperated with the Presidency, and with the Ministry of Internal Affairs, which is in fact represented on its Governing Council and which supervises the Nigerian prison system, in securing the liberty of over twelve thousand detainees who had not been convicted of any offense, or who had overstayed the terms of their sentences, or for similar reasons.¹⁹² Additionally, the NNHC has begun to cooperate more closely with international bodies such as the African Commission on Human and Peoples' Rights (ACHPR). It has attended all the sessions of the ACHPR that were held after it began to function.¹⁹³ Indeed, the NNHC has contributed in what Udemé Essien has described as an "upsurge" in the number of NHCs that have participated in the ACHPR's activities.¹⁹⁴ Indeed, the ACHPR's agenda during all of its 1998 and 1999 sessions has reflected this increasing interest.¹⁹⁵ As importantly, the NNHC has requested and received technical assistance from some foreign/international bodies.¹⁹⁶ Its work has also been commended by the United Nations.¹⁹⁷

6. Operational Efficiency

According to the *UN Handbook*, the operational efficiency of an NHC entails that it must have adequate resources, efficient and effective working

190. For instance, of the five original members of Sri Lanka's NHC, not one was a woman. See Gomez, *Sri Lanka's New Human Rights Commission*, *supra* note 8, at 281-82.

191. Interview with AC, *supra* note 176.

192. See THISDAY, 28 Mar. 2000, at 3.

193. Interview with AC, *supra* note 176.

194. See Essien, *supra* note 76, at 94.

195. At its twenty-fourth Ordinary Session in Banjul, the Gambia, the ACHPR adopted a resolution granting affiliated status to NHCs. See UN HANDBOOK, *supra* note 7.

196. For instance, senior librarians of the NNHC have attended training sessions at the Danish Centre for Human Rights. See HUM. RTS. NEWSLETTER (a publication of the NNHC), Dec. 1998, at 17.

197. *Id.* at 13.

methods and rules, a competent and diverse staff, an ability to review and evaluate its own work. The NNHC has to date conducted one major review and reorganization of its operations. It has put a particular set of its members in charge of each of the six geopolitical zones of Nigeria, appointed eight issue-area special rapporteurs (five of whom are women) to take special charge of the work of the NNHC with regard to certain specific themes (such as the environment and the Niger Delta, the independence of the judiciary, communal conflicts, detention centers, gender, corruption, extra-judicial killings, and children).¹⁹⁸ Both of these reorganization efforts were designed to make the work of the commission much more efficient and effective. The NNHC has also established its own rules of procedure and admissibility in order to enhance the efficiency of its complaints mechanism.¹⁹⁹ We were also impressed by the quality and preparedness, and diversity, of the staff that we had contact with, especially with the vast amount, and depth, of knowledge displayed by AC, one of the NNHC's senior legal staff. The commission has about 50 senior staff and about 48 junior staff (organized into four departments: administration and finance, public affairs and information, research, planning and statistics, and legal/investigation).²⁰⁰ However, the NNHC does not fare as well as it could in the area of possession of adequate financial resources. Even though it has a Human Rights Trust Fund of over one hundred million naira (roughly one million US dollars), that money is strictly devoted to the compensation and assistance of victims of violations. Thus, it has constantly complained of a paucity of financial resources.²⁰¹ However, the commission does have its own premises, both at its headquarters office and at the zonal offices.

7. *The Accountability of the NHC*

The *UN Handbook* views the question of the accountability of an NHC as involving both its accountability to the executive and/or the Parliament, as well as its accountability to its clients (the general public). The Decree has provided for an NNHC that is accountable to the executive and not to Parliament. As we have seen, under section 16, the NNHC must submit annual reports to the FEC via the AG. Now, even though the *UN Handbook* does permit it, the accountability of the NNHC to the executive (and not to the legislature) is unhealthy in the specific context of Nigeria. This is so because a widely acknowledged problem with Nigeria's political history

198. See NEWSWATCH, 25 Dec. 2000, at 7.

199. A copy of the rules of procedure is on file with the authors.

200. Interview with AC, *supra* note 176.

201. See GUARDIAN, 13 Dec. 1999 (on file with authors).

has been the over concentration of power in the hands of the executive. Thus, to add in any way to the already extensive powers of the executive is to further tip the balance of power in favor of the executive. The NNHC ought to report to Parliament only.

Quite unfortunately, the Decree does not provide at all for the direct accountability of the NNHC to the general public in Nigeria. In practice though, the NNHC has tended to be quite concerned with explaining itself to the public. It has issued a lot of publications, constantly used the media to explain and promote its mandate, and held various meetings at the grassroots. It has not, however, conducted any public evaluations of its activities as the *UN Handbook* suggests at paragraph 138.

8. The Nature of the Governance Structure of the State and the Receptivity of the Government to the NHC

For most of the five-year existence of the NNHC, it has had to contend with a militaristic and generally dictatorial governance structure. These rather unfortunate "external" circumstances have greatly impeded its work. As Bukhari Bello, its current Executive Secretary has noted:

During Abacha[']s time, people did complain . . . and the commission made recommendations, because that is what the law says, that they should make recommendations to government on what to do. But the government did not do anything about it. The commission cannot go ahead and enforce its decisions . . . even courts and their orders were violated by the [Abacha] government, talk less [sic] of a commission which does . . . [not have power to enforce its own decisions].²⁰²

It remains to be seen whether the onset of a civilian regime in Nigeria will transform entirely the difficult circumstances in which the NNHC has had to operate. So far, the signals are mixed. While, in the area of prison reform, the NNHC has had the utmost cooperation of the two regimes (military and civilian) that have ruled Nigeria from 1999 to the present,²⁰³ the commission continues to complain of noncompliance with its recommendations by the security agencies, especially the police force.²⁰⁴

202. See *GUARDIAN*, 22 Dec. 2000, (on file with authors) at 3. It is interesting that Fateh Azzam has also noted that relatively very few of the recommendations of the Palestinian NHC have been implemented by the government. See also Azzam, *supra* note 76, at 344.

203. *Id.*

204. Interview with AC, *supra* note 176.

9. *The Personal Character of the NHC's Leadership and its Credibility in the Eyes of the Public*

As we have already seen at the beginning of Part III of this paper, the founding Chair of the NNHC has been acknowledged, even by an initially skeptical NGO audience, as courageous, dedicated and outspoken. He often criticized the Abacha dictatorship that appointed him and worked closely with the country's human rights NGOs. The founding executive secretary of the NNHC, Dr. Mohammed Tabi'u, was also similarly regarded in the NGO community.²⁰⁵ Virtually all the members and staff of the NNHC seem to have been well regarded by most members of the usually very critical Nigerian human rights movement. This is an important indicator of the high quality and commitment of the membership and staff of the NNHC. The current Chair of the NNHC, retired Supreme Court Justice Uche Omo, and its current executive secretary, Bukhari Bello, have only just recently assumed their offices. While it is too early to assess their performance and credibility in the eyes of the public, there are preliminary indications already of their strength of character, personal commitment, and credibility in the eyes of the public. They have already reorganized the NNHC, appointed issue-area special rapporteurs (to enhance the effectiveness of the commission's work), and opened a number of new zonal offices (to better serve the public). They have also interpreted their mandate expansively, in order to better serve the public,²⁰⁶ and even called the executive to order on a regular basis, reminding it of its obligations under the 1999 Nigerian Constitution to ensure that the police force does not continue to abuse, and violate the rights of, Nigerians.²⁰⁷ Again, as we have shown in Part I, Part II(C)(2), and at the beginning of Part III of the paper, while the NNHC's birth was initially met with a great amount of (understandable) skepticism, the performance of the commission even in the darkest days of military dictatorship (especially its work as an "inside" ally of the embattled local NGOs) has led to the steady, even if slow, waning of this skepticism. However, the commission is still not as well regarded as it should be in many quarters, and even those who have praised its work, do retain a

205. Tabi'u's work has been highly commended by the CLO and CAPP (two Nigerian human rights NGOs) for consulting them regularly and being of great assistance to them in getting the cooperation of the security agencies or the executive branch of government. See interviews with OKU of the CLO, and MIA of CAPP, *supra* notes 125 & 129 respectively.

206. For instance, they recently led a delegation to the President urging him to intervene with the Libyan authorities, a foreign state, in order to protect the properties of over 2000 Nigerians deported from Libya. See WEEKEND VANGUARD, 8 Dec. 2000 (on file with authors).

207. *Id.*

significant amount of doubt as to its ability to do its job effectively (even under the new civilian dispensation). We will examine the basis of some of these doubts shortly, as part of our consideration of its connection to the "voices of suffering," or the lack thereof.

10. *The Absence of Excessive Legalism*

The [NNHC's enabling] Decree attempts to avoid the pitfall of indulging in the excessive legalism that has deeply marked (and marred) so much of the thinking on the subject of NHCs. It tries to do so in a number of ways. For one, as we have already noted, it provides for a membership that should not normally consist of a majority of lawyers. Of the sixteen members of the NNHC, only the chair, the representative of the Ministry of Justice, and the two members that must be senior lawyers, are required to have a legal background of any kind.²⁰⁸ This is an important feature given the inherently multidisciplinary nature of human rights, and the need for social pluralism in its membership. In practice though, the NNHC is presently composed of a vast majority of lawyers. Ten of its sixteen members have a legal background of some sort.²⁰⁹ However, it is still significant that nearly half of its membership *do not* have a legal background.

Again, while the Decree still confers, as it should, court-like (especially adjudicative) functions on the NNHC, it has not *over-emphasized* them at the expense of the non-court-like functions. Indeed these functions occupy just one of ten of the clauses that itemize the specific functions of the commission. While it is possible that the Decree was crafted in this way because the Abacha regime that established the NNHC was wary of setting up the NHC as a *de facto* human rights court, it seems highly unlikely that this was the chief motivation. That regime was famous for its impunity and routine disobedience of the orders of the regular courts. As such, it could not have had more fear of a *de facto* human rights court than it had of the regular courts.

As importantly, the NNHC does not seem to *overestimate* the value of its court-like functions. Indeed, it seems (in general) to have shunned the pitfall of excessive legalism. As Bukhari Bello has noted "the most important aspect of the work [done by the NNHC] is to educate the public"²¹⁰ and the fact that the Decree does not permit the NNHC to enforce its own decisions "should not be the only yardstick for assessing us . . . the other yardstick

208. See Decree, *supra* note 24, §§ 2 & 7.

209. The lawyers on the commission include: Justice Uche Omo (Chair), Bukhari Bello (Executive Secretary), Miriam Uwais, Anthony Igi, Fatima Kwaku, I.N. Sada, Tom Orage, Valerie Azinge, U.O. Umzurike, and K.F. Ajoni.

210. See GUARDIAN, 22 Dec. 2000, *supra* note 187.

should be sensitization of [the] people.”²¹¹ Thus, both the Decree and the NNHC’s own self-conception seems to shun the pitfall of excessive legalism as discussed at length in Part II(C)(1) of this paper. This does not mean that it does not regard its investigatory, adjudicative, and proposed enforcement roles as important. It clearly does. On the balance though, it must be commended for realizing the value of paying as much attention as possible to its non-court-like roles.

11. The Adequacy of an NHC’s Attention to Popular Agency

As we have demonstrated in detail in Part II(C)(2) of this paper, not only has the NNHC sought the advice, cooperation, and assistance of Nigerian human rights NGOs, it has greatly assisted them in a variety of significant ways. It has organized workshops in association with them, co-hosted a West African Human Rights Forum (WAHRF) with a consortium of these NGOs, and issued several reports and publications with them.²¹² As importantly, the NNHC has recognized as well, the fact that these NGOs are popular organizations that exercise agency. For instance, AC has noted that the NNHC cooperates with NGOs “who use us [i.e. the NNHC] to get the ear of various Governments.”²¹³ In this way does this principal legal official of the NNHC recognize the way in which the commission is available to civil society and other popular agents as a resource (rather than as a panacea).

However, it is significant that in AC’s estimation, only about 5 percent of the over 800 complaints that have so far been lodged with the NNHC have originated from NGOs. The vast majority of these petitions have been lodged by individual members of the population. Why are these NGOs not choosing to use the complaints mechanism of the NNHC? The answer may lie in the results of our survey of NGOs and legal practitioners. This survey showed that the vast majority preferred to use the regular courts rather than the complaints mechanism of the NNHC. The reason that was given the most by respondents was the inability of the NNHC to compel the enforcement of its own decisions. While this reflects the excessively legalistic views of most lawyers regarding the matter of the proper role of an NHC, it is indicative also of the comparative advantage of the regular courts over NHCs in the adjudication and enforcement of human rights complaints. However, it is also indicative of the fact that unless an NHC is designed as a virtual human rights court (as is the case with the Canadian

211. *Id.* at 3.

212. See 1 WHARF NEWSLETTER, 1 Mar. 1999 (published by the NNHC) (on file with authors).

213. Interview with AC, *supra* note 176.

NHC), it is unlikely to have much appeal vis-à-vis the regular courts, as a venue for the *adjudication* of human rights disputes, at least in Nigeria. This begs the question whether the NHC should not concentrate on or emphasize those functions that the regular courts either do not perform, or do not usually perform well (such as *suo motu* investigations and human rights education).

All in all, one of the most important contributions of the NNHC has been its work as an ally of, and resource for, human rights NGOs in Nigeria, especially at the time that they were embattled and groaning under a siege laid by the dastardly Abacha regime in Nigeria. Few expected it to be anything more than a lackey of the Abacha regime. The NNHC disappointed them quite remarkably. For this measures of courage and cooperation in the face of a terrible dictatorship, the NNHC must be highly commended.

12. *The Level of an NHC 's Connection to the "Voices of Suffering"*

To what extent does the Decree, and has the actual work of the NNHC, reflected as deeply as it should a connection to the "voices of suffering" (as already defined in Part II(C)(3) of this paper? Have the yearnings and experiences of these voices been reflected as adequately as possible in the conception, design, and operation of NHCs?

While no provision is made by the Decree for adequate gender equity in the composition of the NNHC, in practice women have constituted about 40 percent of its membership.²¹⁴ This is hardly an adequate proportion, but it is significant nevertheless. However, one problem with the representation of women on the NNHC has been the fact that those women who have been appointed have not usually been the nominees of women's groups. The representation of the voices of suffering on the NNHC is also deepened by the statutory presence of three representatives of the human rights NGOs that are registered in Nigeria, as well as at least two members of the independent mass media (one of the possible three may be appointed from the official media). Quite importantly, in establishing a mandate for the NNHC, the Decree does not create any kind of hierarchy between civil/political rights and economic/social rights (ESC rights). The commission is mandated in section 5 to deal with all "categories" of rights. In practice, the NNHC has, *inter alia*, dealt with such ESC rights as the rights to food, shelter, and adequate clothing of prisoners and detainees, the right to work of civil servants, and the impact of environmental degradation in the

214. The women members of the NNHC are Miriam Uwais, Fatima Kwaku, Uju Ajomo, Christie Mbonu, Valerie Azinge, and K.F. Ajoni.

Nigerian Niger Delta.²¹⁵ This is in keeping with the emergent practice within India's NHC of taking ESC rights much more seriously.²¹⁶ Another way in which the NHC has attempted to connect more deeply with human suffering in Nigeria is by its attention to communal conflicts in various parts of the country. Two examples are its missions regarding the treatment of both victims and perpetrators after the Umuleri-Aguleri and Kaduna communal disturbances.²¹⁷ The NNHC is also preparing a report on these two communal clashes that will focus on the prevention of such calamities in the future. As we have already shown in Part II(C)(3) of the paper, this is a fundamental human rights matter in Nigeria, as in most parts of the world. With regard to India, for instance, Sripati has noted that human rights violations there ". . . are rooted in deep schisms based not only on acute economic inequalities, but also caste, creed, religion, gender, social status, and other characteristics."²¹⁸

The fact that the NNHC has often acted *suo motu*²¹⁹ in investigating violations of human rights that come to its attention through the mass media is highly commendable as well.²²⁰ Other ways in which the NNHC has attempted to connect at a deeper level with human suffering include: its habit of investigating even those complaints that have been made against private violators of human rights²²¹; and its conduct of periodic and unscheduled visits to prisons and other places of detention in order to monitor the compliance of the relevant agencies with the rights of the detainees.²²² Indeed, its very effective work regarding the rights of prisoners and detainees has been its greatest achievement so far.²²³

However, the NNHC's failure to establish offices at the grassroots (it has established only four offices in the last five years for a population of over one hundred and twenty million people) is a big impediment to its efforts to reach and aid the millions of "suffering humanity" that populate the country. It should have at least one office in every local government area in Nigeria,

215. Interview with AC, *supra* note 176.

216. For instance, the Indian NHC has "ordered" the state of Orissa to compensate the family of a child who died because of malnutrition. See Sripati, *supra* note 76, at 39.

217. *Id.*

218. *Id.* at 11.

219. A considerable portion of the cases handled by the Indian NHC has been cases that it took on *suo motu*. See *id.* at 20.

220. For instance, it investigated *suo motu* the unlawful killing of a citizen by the Abuja Taskforce on Environmental Sanitation. This led to the prosecution of the perpetrators of the killing. It also investigated on its own the assaults committed on several staff at two TV stations in Yobe and Ondo states by security operatives, and the mistreatment of Judge Saka Yusuf by a senior police officer. See *id.*

221. For instance, see Complaint No. C/98/072 (regarding the pollution of a citizen's water well by grease emanating from a private company's premises).

222. Interview with AC, *supra* note 176.

223. We will examine this a little more closely in Part IV of the article.

i.e. at least 400 such offices). This is crucial since a majority of the population in Nigeria consists of poor rural dwellers who can ill afford a journey to the capital to seek redress for abuses committed against them. Moreover, most of the serious human rights abuses that occur in Nigeria happen in these remote rural locations away from the scrutiny of mostly urban-based mass media and NGOs. Thus, compared to the four zonal offices that it presently maintains, the NNHC still has a very long way to go in this crucial area.

Again, the fact that the NNHC has received only about 800 complaints in the five years that it has existed (an average of 160 per annum) is disturbing, and is certainly connected to its absence at the grassroots. Compared to Nigeria's huge population, and the frequency of even those violations that are reported in the popular media, this number of petitions is relatively insignificant. In its first six years of existence, the Indian NHC received over 120,000 petitions (an average of 20,000 per annum).²²⁴ Even if it is considered that India's population is about 10 times that of Nigeria, the Indian NHC's docket is still disproportionately larger. However, the blame for the paucity of petitions in the NNHC's docket must be shared with the human rights NGOs and other popular agents. For even though the NNHC can and does act *suo motu*, a body such as the NNHC still requires to be mobilized more adequately by civil society in order to enlarge its docket. However, the Nigerian Government must retain the bulk of the blame (for failing to resource the commission as adequately as possible).²²⁵ As it gains in credibility and establishes itself much more firmly, its docket should increase considerably. On the other hand, the fact that about 95 percent of its docket has been filled by complaints lodged by ordinary Nigerians themselves, as opposed to NGOs, is commendable. It is an indication of their connection at some level with the yearnings and experience of such average citizens.

On the whole, and quite regrettably, we must conclude that there remains a huge gap between the NNHC and ordinary Nigerians, especially the voices of suffering. Despite its many strengths, and its many conscious efforts to reach these voices, the NNHC remains, even by its own admission, an urban-based elitist-oriented institution. Without closing this gap substantially, it will be most difficult, if not impossible, for the NNHC to (as it should) transform positively the human rights situation of the vast majority of Nigerians. The point is not that it does not realize that it does have to make more effort in this direction. The point is that its efforts have not so far met with success.

224. See Sripathi, *supra* note 76, at 5-6.

225. See GUARDIAN, 13 Dec. 1999 (on file with authors). See also NEWSWATCH, 10 Apr. 2000, at 35.

IV. CONCLUSION: THE FUTURE OF THE NIGERIAN NATIONAL HUMAN RIGHTS COMMISSION

In the foregoing parts of this paper, we have argued: (a) that the UN has formulated and applied a set of standards for the evaluation of NHCs, standards that have together constituted the dominant conception of an ideal NHC; that this dominant UN-driven conception of the ideal NHC is shared by virtually every scholar, nongovernmental organization, and governmental body that has commented on the effectiveness of NHCs; and that this dominant conception is significantly limited, and requires fundamental enlargement and revision if the NHCs that are animated by its vision are to have a significantly increased transformative potential. Such an enlarged, revised, and more holistic vision of NHCs was then offered in the last section of Part II of the paper. The purpose of this reevaluation of the dominant conception was to deepen, extend, and enlarge the UN-driven dominant conception of NHCs, and not to abandon the principal markers of that conception entirely. Finally, in Part III of the paper, we assessed the performance of the NNHC in the first five years of its existence. Our evaluation of this young institution was animated by the more holistic conception of the ideal NHC that we developed in Part II of the paper (which encompasses the principal markers of the UN conception).

In particular, our evaluation of the NNHC revealed that institution has performed most creditably in the area of the promotion and protection of prisoners' rights,²²⁶ the expansive interpretation of its mandate, the creation of awareness of its existence and activities among the urban-based elite, the diversity of its membership, cooperation with other entities, availability as an ally/resource for the work of popular agents, operational efficiency, commitment of its leadership to the human rights struggle, avoidance of excessive legalism, and a limited attention to the voices of suffering. Another area in which the NNHC has done particularly well is in raising awareness within Nigeria regarding the need to reform its overall legal framework, especially amending the Decree. It has even gone as far as producing, in consultation with Tony Anyanwu (who is a prominent parliamentarian), a draft legislation seeking to amend the Decree.²²⁷ This draft legislation aims at strengthening the NNHC's independence from the executive branch of government; securing its financial autonomy; granting it the *explicit* power to bring legal proceedings in the courts on behalf of victims of abuses; as well as granting it the explicit power to compel the

226. Incidentally, this is one area in which the performance of India's NHC has been viewed as stellar. See Sripati, *supra* note 76, at 19–20.

227. See the proposed National Human Rights Commission (Amendment) Act, 2000 (on file with the authors).

cooperation of any person, secure any information or document, and enter and search any premises. These are all very necessary powers and bear explicit reference in the legal framework that guides the NNHC's activities.

With regard to the NNHC's work in some of these areas, Soli Sorabjee, the then UN Commission on Human Rights Special Rapporteur on Human Rights in Nigeria, felt able to say that: "The National Human Rights Commission (of Nigeria) is doing commendable work in the field of human rights. It has undertaken several important initiatives, including a study of prison conditions and human rights promotional activities in conjunction with NGOs and in the field of human rights education."²²⁸ Thus, at least some of the NNHC's work has been recognized as significant even outside Nigeria.

However, the NNHC has not performed as creditably in some other areas. It has failed to profoundly affect as much as it could the overall human rights situation in Nigeria. It lacks some of the powers that are necessary to do its work effectively; has not been as physically accessible as possible to the bulk of Nigeria's mass urban poor or mass rural dwellers; has not been funded adequately; has not connected as much as is possible with the voices of suffering that form a huge segment of Nigeria's population, and has not been successful in getting the legislature and the executive to "domesticate" most of the human rights instruments that have been ratified by Nigeria. As a Nigerian high court judge has put it, while the NNHC has probably transformed positively the human rights situation of most Nigerian prisoners and detainees, it has not been as successful regarding other areas of human rights promotion and protection, such as the treatment of women, the state of the educational system, the treatment of students' union activists, and the environment.²²⁹ Still, the NNHC's flexible procedures, educational and preventive orientation, and its ability to investigate and adjudicate complaints at minimal costs (if any at all) to the complainant commend it to the poor, the needy and the oppressed as a potentially effective and credible alternative to the often highly technical and expensive procedures of the regular courts.

Yet, despite its comparative advantage in some areas vis-à-vis the regular courts, the future of the NNHC could be bleak if the government does not sufficiently empower and resource it, and if it does not reinvent itself so as to be much more proactive, mass-oriented than it has been so far. For instance, thus far, the NNHC has not been as bold as it could be in interpreting section 6(a) of the Decree (which permits it to do such other

228. See NATIONAL HUMAN RIGHTS COMMISSION, BRIEF ON THREE YEARS OF NATIONAL HUMAN RIGHTS COMMISSION 7 (1999).

229. Interview with NCC, *supra* note 23.

things as are necessary or expedient for the performance of its functions under the Decree). Quite surprisingly to us, and in a departure from its usual liberal construction of that Decree, it seems to have interpreted that provision in a rather narrow way. It has interpreted it as not permitting it to sue in court on behalf of victims of human rights abuses. Yet, sections 1 and 5 permit the NNHC to seek redress for, and assist, such persons. Would the NNHC not therefore be permitted by section 6(a) to sue in court in order to assist, or seek redress for, such victims? Another way in which the NNHC might reinvent itself is by it requiring all government departments and the security agents to submit annual or bi-annual reports to its Governing Council on their efforts to ensure the conformity of their conduct with the human rights obligations that have been assumed by Nigeria (either domestically or internationally).²³⁰ Clearly, the NNHC could comfortably do so pursuant to its section 5 powers to "monitor and investigate all alleged cases of human rights violations in Nigeria" and "undertake studies on all matters pertaining to human rights." Yet another indication that the NNHC has not been able to do all that it can within its current legal framework is that it has not reviewed and presented a commentary on the compatibility of existing laws with Nigeria's international obligations; a project that is undoubtedly authorized by the Decree.²³¹

However, it will be naive to expect from the NNHC much more than it is designed for, or able to, deliver. This point seems superfluous at first until it is realized that far too many scholars seem to have too high an expectation regarding the ability of NHCs to transform positively their target societies. Brilliant as they often are, such scholars seem to view the ideal NHC as a kind of panacea, as opposed to a resource. For instance, Fateh Azzam has declared in frustration that: "Sadly, and despite serious effort [by the Palestinian NHC] and some tangible progress, human rights violations continue in the Palestinian territories. . . ." ²³² It is almost as if Azzam imagines that there will come a day when human rights violations will cease completely in the Palestinian territories, and that if that happens, the activities of the Palestinian NHC will be the principal reason for this new dispensation! Nowhere in the world is the flawless observance of human rights a mass cultural fact. And if history has taught us anything, it is that even the most democratic countries are prone to commit even egregious human rights abuses under certain circumstances. Thus, we cannot expect any NHC, no matter how powerful or endowed, to cause the cessation of

230. The authors are grateful to NCC for providing us with this insight. See *id.*

231. For instance, the Palestinian NHC has reviewed and commented on over 13 laws, including the Basic Law. See Azzam, *supra* note 76, at 343–44.

232. *Id.* at 344.

human rights abuses. The best NHC can only contribute to the reduction in the frequency of the incidences of abuse. Even the best NHC cannot *eradicate* human rights violations from the body politic. Even an ideal kind of NHC can only become a valuable resource, and not a panacea.²³³ *We should therefore not expect too much from these institutions lest we fail to appreciate fully the significance of their usually modest accomplishments.* There is no good reason to imagine or view the NNHC's performance any differently. With this last caveat in mind, our general view of the NNHC's first and very difficult five years is that while that young institution has been "far less than a saviour" it has also been "much more than a sham." Like the Palestinian NHC, it has: "succeeded in helping many individual victims of violations to gain redress, and in making human rights [more of] an issue of concern in the political lexicon . . . [prevalent in Nigeria]."²³⁴ Should it continue to move in this same general direction, it has the potential of becoming a great institution.

233. For an analogous argument, see P. Burns & O. Okafor, *The United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment or How it is Still Better to Light a Candle than to Curse the Darkness*, 9 OTAGO L. REV. 399 at 427-32 (1998).

234. See Azzam, *supra* note 76, at 343.