AMERICAN UNIVERSITY OF ARMENIA

THE ROLE OF THE HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA IN PROMOTING GOOD GOVERNANCE IN ARMENIA

A MASTER'S ESSAY SUBMITTED TO

THE FACULTY OF THE GRADUATE SCHOOL OF

POLITICAL SCIENCE AND INTERNATIONAL AFFAIRS

FOR PARTIAL FULFILLMENT OF THE DEGREE OF

MASTER OF ARTS

BY

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YEREVAN, ARMENIA

FEBRUARY 2009

SIGNATURE PAGE

Faculty Advisor Date

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February 2009

ACKNOWLEDGEMENTS

I would like to express my gratitude to Theresa Khorozyan, my Faculty Advisor, for giving me the opportunity to work on this challenging topic and for providing continuous guidance, advice, and support throughout the course of this research work.

I would also like to express my sincere gratitude to Dr. Lucig H. Danielian, Provost and Vice President of the AUA, for her wisdom, consideration, and words of encouragement, otherwise my research work and writing could not have been completed.

I am also very thankful to all my professors of the Graduate School of Political Science and International Affairs for their assistance and help in the development of theoretical knowledge, research and analytical skills.

On a more personal note, I would like to thank my parents and my fellow students. Without their love and support this work would not have been possible. I am also very grateful to Ani Dallakyan for her help in writing my Master's Essay.

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LIST OF ABBREVIATIONS

ADB - Asian Development Bank

DAC - Development Assistance Committee

EU - European Union

HRC - Human Rights Commission

IFI - International Financial Institution

IMF - International Monetary Fund

NGO - Non-Governmental Organization

NHRI - National Human Rights Institution

OECD - Organization for Economic Cooperation and Development

OHCHR - Office of the High Commissioner for Human Rights

ROA - Republic of Armenia

UDHR - Universal Declaration of Human Rights

UN - United Nations

UNDP - United Nations Development Programme

UNESCAP - United Nations Economic and Social Council for Asia and the Pacific

WB - World Bank

ABSTRACT

The major purpose of this Master's Essay is to examine the role of the Human Rights Defender of the Republic of Armenia in the promotion of good governance in the country. With this aim, four research questions are promoted, by which the assessment of the role of the Human Rights Defender in the context of good governance is done. First, an attempt is made to find the link between good governance and human rights in the process of which it also becomes clear what good governance is. Particularly, four key elements and two practices are identified and their promotion is discussed along with the realization of certain human rights and fundamental freedoms.

Second, it is analyzed how NHRIs can overall contribute to the promotion of good governance at the national level. For that purpose the competences, responsibilities, and methods of operation of NHRIs are examined in terms of their contribution to the realization of the key elements and practices of good governance and having the Paris Principles as a major reference point.

Third, different models of NHRIs are studied. Then, those of their competences, responsibilities, and methods of operation are analyzed that can have the utmost contribution in the promotion of good governance. This is done to find the model that will contribute more than others to the promotion of good governance.

In the last section of the Essay, the Law of the Republic of Armenia on the Human Rights Defender and the annual report of the Human Rights Defender of 2008 are analyzed as a result of which certain opportunities are identified that can help him/her contribute to the promotion of good governance.

The Essay ends with recommendations on how to improve the Law on and practice of the Human Rights Defender of the Republic of Armenia so that he/she can contribute more effectively to the promotion of good governance in the country.

Introduction

In its enterprise of building or consolidating democracy and/or democratic institutions, every nation faces a number of challenges, such as the necessity to redesign state governance structures, including reforms of the legislative, executive, and judicial branches, promoting democratic decision-making processes, strengthening the rule of law, improving human rights protection, fostering civil society groups, supporting the free press, developing a free market economic system, etc. (Reif 2000).

The concept of good governance has been promoted by various international agencies as a directive for reforming or rebuilding governance structures or as a standard for domestic governance. It is believed that various state institutions that operate as supervisory mechanisms to prevent improper state action and ameliorate governance can be established in the pursuit of good governance as well. These institutions comprise electoral commissions, state auditors, anti-corruption commissions, and different types of National Human Rights Institutions (NHRIs) (ibid.).

Overall, the number of NHRIs has begun to grow as more countries have turned into democratic forms of governance or have tried to improve their democratic structure. By the time, the UN and many other international agencies have increasingly recognized the importance of these institutions in ameliorating governance and human rights protection in states (ibid.).

Armenia is a democratizing country and like other countries emerging from non-democratic regimes, it still faces a number of challenges in rebuilding its democratic institutions or reforming governance structures.

With this respect, the Master's Essay focuses basically on the role the Human Rights Defender of the Republic of Armenia can play in promoting good governance in Armenia.

The Essay brings forward the following research questions:

1. What is the link between good governance and human rights?

2. How can NHRIs generally contribute to the promotion of good governance at the national level?

3. Is there a model of NHRI that will contribute more than others to the promotion of good governance?

4. How to improve the law on and practice of the Human Rights Defender of the Republic of Armenia that it can contribute to the promotion of good governance in Armenia?

The methodology applied in this study includes (a) primary data analysis, namely analysis of certain international legal documents and the Law of the Republic of Armenia on the Human Rights Defender; as well as (b) secondary data analysis, namely review of different reports, policy papers, and scientific articles.

The Link between Good Governance and Human Rights

This section will separately examine the concepts of good governance and human rights in order to see how they are linked.

Good Governance

According to Santiso (2001), the concept of good governance is relatively new. First it was used by the World Bank (WB) in 1989 in one of its reports entitled "Sub-Saharan Africa: From Crisis to Sustainable Development," where the WB described the crisis in the region as a "crisis of governance" and promoted the idea of good governance as a necessity for structural reforms (Santiso 2001). Presently, the term "good governance" is being increasingly used in the development literature, and many international agencies are increasingly considering it as a directive for reconstructing or reforming governance structures (UNESCAP 2008).

In the following subsections, the discussions of various international agencies on good governance will be examined to see what it is.

International Financial Institutions on Good Governance

To fully encompass the idea of good governance, first, it is necessary to understand the notion of governance in general. According to Santiso (2001, 5), the WB defines governance as "the form of political regime; the process by which authority is exercised in the management of a country's economic and social resources for development; and the capacity of governments to design, formulate and implement policies and discharge functions." The author (2001) states that researchers at the World Bank Institute identify six major "dimensions" of good governance, such as voice and accountability, government effectiveness, the lack of regulatory burden, the rule of law, independence of the judiciary, and control of corruption. By examining various

reports of the WB, Santiso (2001) adds two more dimensions to the above-stated ones, namely transparency and participation in public policymaking.

Other International Financial Institutions (IFIs), such as the International Monetary Fund (IMF), the Asian Development Bank (ADB), and the Organization for Economic Cooperation and Development (OECD) address good governance issues as well.

In its 1997 publication, entitled "Good Governance: The IMF's Role," the IMF recognizes the importance of good governance for macroeconomic development and growth in member countries and identifies transparency, accountability, effectiveness and efficiency, fairness, and the rule of law as the core elements of good governance. Within the scope of its activities, the IMF contributes to the advancement of good governance in member countries in the following ways:

> First, in its policy advice, the IMF has assisted its member countries in creating systems that limit the scope for ad hoc decision making, for rent seeking, and for undesirable preferential treatment of individuals or organizations. To this end, the IMF has encouraged, among other things, liberalization of the exchange, trade, and price systems, and the elimination of direct credit allocation. Second, IMF technical assistance has helped member countries in enhancing their capacity to design and implement economic policies, in building effective policymaking institutions, and in improving public sector accountability. Third, the IMF has promoted transparency in financial transactions in the government budget, central bank, and the public sector more generally, and has provided assistance to improve accounting, auditing, and statistical systems (IMF 1997, 1).

By the above-stated means the IMF has assisted member countries to improve governance and to reduce opportunities for corruption that can have considerable macroeconomic impact (ibid.).

According to the ADB (1998, 16), "Governance is a simple concept at heart: good governance is good government." The ADB (1998) refers good governance to the quality of the relationship between government and the citizens for whom it exits and to whom it serves and

protects. It defines governance as "the manner in which power is exercised in the management of a country's social and economic resources for development" and states that the path of each nation to good governance is different and depends on many factors, such as culture, geography, political and administrative traditions, economic conditions, etc. (ADB 1998, 16). Accountability, transparency, predictability (the rule of law), and participation are identified by the ADB as four key components of good governance. Accountability is described as "the capacity to call officials to account for their actions," transparency as a "low-cost access to relevant information," predictability as a result of "laws and regulations that are clear, known in advance, and uniformly and effectively enforced," and, finally, participation is described as a means of obtaining reliable information and "a reality check and watchdog for government action" (ibid., 17).

In the 1997 "Final Report of the Ad Hoc Working Group on Participatory Development and Good Governance," the Group being set up in 1993 by the Development Assistance Committee (DAC) of OECD, it is stated that good governance plays an important role in poverty reduction, promoting gender equality, raising basic education and health standards, and reversing environmental degradation. Therein, good governance is described as composed of the elements of the rule of law, accountability, transparency, and participation, as well as a number of practices: strengthening of the rule of law by improving and reinforcing the legal, judicial, and law enforcement systems; strengthening of public sector management by improving accounting practices, budgeting and public expenditure management, and reforming civil service; control of corruption through various anticorruption strategies; and reduction of excessive military expenditure through ensuring transparency and proper control in military budgeting. In this report, special importance is given to the rule of law. According to the same source (1997, 10),

the rule of law means that (a) "[g]overnment should exercise authority in accordance with the law approved by the legitimate representatives of the people;" (b) "[t]he judicial system should be independent;" and (c) "[t]he Constitution should submit the government and the administration to the rule of law, which entails the right for the judicial system to question the lawfulness of administrative actions and to hold the State liable for its acts."

European Union on Good Governance

According to the Commission of the European Communities (2003, 3), which is the executive branch of the EU, "[g]overnance concerns the state's ability to serve the citizens" and "refers [particularly] to the rules, processes, and behaviour by which interests are articulated, resources are managed, and power is exercised in society." With respect to good governance it states that "[a]s the concepts of human rights, democratization and democracy, the rule of law, civil society, decentralized power sharing, and sound public administration gain importance and relevance as a society develops into a more sophisticated political system, governance evolves into good governance" (ibid., 3-4). The Commission (2001) identifies and explores five key elements of good governance: openness, participation, accountability, effectiveness, and coherence and also touches upon transparency as another element. It emphasizes that these elements underpin democracy and the rule of law and makes good governance as part of its strategy for sustainable development both within the EU and globally.

United Nations on Good Governance

The United Nations Development Programme (UNDP) (1997) defines governance as the exercise of political, economic and administrative powers in the management of a country's affairs at all stages. According to the same source (1997), governance is comprised of complex

mechanisms, processes and institutions, through which citizens and groups express their interests, mediate their differences and exercise their legal rights and duties. The UNDP states that

> Governance has three legs: economic, political and administrative. Economic governance includes decision-making processes that affect a country's economic activities and its relationships with other economies. It clearly has major implications for equity, poverty and quality of life. Political governance is the process of decision-making to formulate policy. Administrative governance is the system of policy implementation. Encompassing all three, good governance defines the process and structures that guide political and socio-economic relationships. (UNDP 1997)

The UNDP (1997) describes good governance as accountable, participatory, and transparent; effective and efficient in making the most optimal use of resources; consensus-oriented and equitable; responsive to the needs of people; and promoting the rule of law.

Among other issues with respect to good governance, the UNDP (1997) emphasizes also the protection of human rights as a basic precondition for the realization of good governance.

The United Nations Economic and Social Council for Asia and the Pacific (UNESCAP) (2008) defines governance as "the process of decision-making and the process by which decisions are implemented (or not implemented)." It mentions that the term "governance" can be used in different contexts such as corporate governance, international governance, national governance, and local governance. Since governance is the process of decision-making and the process by which decisions are implemented, the analysis of governance concentrates first on the actors involved in decision-making and its implementation as well as on the structures used in those processes. Government is one of those actors. Other actors differ depending on the level of governance. For instance, governance at the national level involves such actors as lobbyist groups, media, NGOs, multi-national corporations, etc.

The UNESCAP (2008) introduces eight major characteristics of good governance. It states that good governance is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law.

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR) (OHCHR 2007), "[g]overnance is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights." According to the same source (2007), good governance accomplishes this in a way free of abuse and corruption and in compliance with the rule of law. Moreover, the OHCHR (2007) states that "the true test to "good" governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights."

The former United Nations Commission on Human Rights through its resolutions 2000/64, 2001/72, 2003/65 identified transparency, responsibility, accountability, participation, and responsiveness (to the needs and aspirations of the people) as key attributes of good governance. The resolution 2000/64 explicitly connects good governance to an "enabling environment" contributing to the enjoyment of all human rights and "promoting growth and sustainable human development" (UN Commission on Human Rights 2000).

Good Governance: Analysis

The discussions of various international agencies on good governance show that there is no common understanding on good governance. The WB, for instance, identifies eight major dimensions of good governance, such as voice and accountability, government effectiveness, lack of regulatory burden, the rule of law, independence of the judiciary, control of corruption, transparency, and participation in public policy-making. The IMF, which like the WB identifies

transparency, accountability, and the rule of law as core elements of good governance, includes into it also the elements of efficiency and fairness. The ADB and the OECD DAC as well identify accountability, transparency, participation, and the rule of law as key components of good governance. The OECD DAC, however, describes it also as composed of a number of practices such as strengthening public sector management, control of corruption, and reduction of excessive military expenditure. Moreover, it implicitly connects good governance with human rights, mentioning that good governance can play an important role in promoting gender equality and raising basic education and health standards.

Although the WB, the IMF, the ADB, and the OECD DAC describe variously good governance, it can be observed that nearly all of them include in it elements like accountability, transparency, participation, and the rule of law.

Like the above-stated IFIs, the EU as well identifies and explores accountability, transparency, and participation as elements constituting good governance. However, it includes into good governance also elements like openness, effectiveness, and coherence. With respect to good governance the EU addresses also the issue of human rights and mentions that increasing attention to the importance of human rights may, among other things, turn governance into good governance.

Three of the UN bodies, namely the UNDP, the UNESCAP, and the UN Commission on Human Rights likewise describe good governance in terms of such elements as participation, transparency, accountability, and the rule of law. Like the IMF and the EU, the UNDP and the UNESCAP describe it also as effective and efficient and unlike all the above-mentioned international agencies, characterize it further as consensus-oriented, equitable and responsive.

The UN Commission on Human Rights describes good governance as responsive as well. However, it introduces a new element, which is responsibility.

Among the examined UN bodies, the UNDP, the UN OHCHR, and the UN Commission on Human Rights connect good governance with human rights. In this regard, the difference among them is that while the UNDP considers the protection of human rights as a precondition for good governance, the OHCHR states that good governance can be tested against the extent to which it realizes basic human rights, and the UN Commission on Human Rights connects good governance to an environment conducive to the enjoyment of human rights.

Based on the analysis of the discussions of various international agencies on good governance, the latter may, overall, be treated as a basket of various elements and practices. However, the most frequently repeated of them are the elements of participation, transparency, accountability, and the rule of law as well as the practices of controlling corruption and protecting human rights that are also considered essential for good governance. Consequently, within the scope of this Master's Essay, good governance will be treated as composed of those elements and practices.

Besides describing good governance by a number of elements and practices, some of the examined international agencies go further and provide certain conceptualizations to each of those elements.

Very good and detailed conceptualizations of the elements of participation, transparency, accountability, and the rule of law are provided, particularly, by the UNDP, the UNESCAP, and the ADB.

Participation

According to the UNDP (1997), "All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively." A similar idea on participation is expressed also by the UNESCAP (2008), which states also that participation must be informed and organized in order to be constructive. Moreover, according to "Rights Based Approach to Development Programming: Training Manual" (UN/Philippines 2002), participation is not simply consulting people. It is "involving people at all levels of social, political and economic decision-making process: in assessing the situation, in setting targets, in formulating priorities and policies, in designing plans, projects, programmes or activities, in implementing these plans, projects, programmes or activities, in monitoring and evaluating progress" (UN/Philippines 2002, 35). According to the same source (2002), participation must be free and voluntary and should not be sanctioned or threatened. For another international agency, such as the ADB (1998, 17), participation is a means of obtaining reliable information and "a reality check and watchdog for government action."

Transparency

With respect to transparency the UNDP (1997) states that it is based on the free flow of information and means that "[p]rocesses, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them." For the UNESCAP (2008) transparency implies that decisions are taken and implemented compliant with rules and regulations, and that information is freely available and directly accessible to those who will be affected by such decisions and their implementation. According

to the same source (2008), transparency means also that information is provided in sufficient amounts and in easily comprehensible forms and media. Overall, the UN/Philippines (2002, 36) states that "[c]reating effective transparency requires more than merely making information available on policy objectives, policy responsibilities, policy decisions and performance results." Transparency requires also "a high standard of the quality of information disclosed in terms of content, clarity, accessibility and data" (ibid.). The ADB (1998, 17), on the other hand, defines transparency as a "low-cost access to relevant information."

Accountability

According to the UNDP (1997) and the UNESCAP (2008), accountability means that decision-makers in the government, the private sector, and civil society organizations are accountable to the public and to their institutional stakeholders. The ADB (1998, 17) conceptualizes accountability similarly, by describing it as "the capacity to call officials to account for their actions." According to the UNDP (1997), overall, an institution or an organization must be accountable to those who are affected by its decisions or actions. Moreover, accountability cannot be realized without transparency and the rule of law (UNESCAP 2008).

The Rule of Law

By the rule of law the UNDP (1997) implies that legal frameworks are fair and enforced impartially, especially the laws on human rights; that everybody is equal before the law and is entitled to equal protection, without discrimination; and that law governs the activities of society and also the activities of each public servant. Similar to the UNDP, the UNESCAP (2008) as well states that the rule of law is about impartially enforced fair and legal frameworks. The ADB (1998, 17), in its turn, identifies the rule of law with predictability and states that it is a result of "laws and regulations that are clear, known in advance, and uniformly and effectively enforced."

Human Rights

To find the link between good governance and human rights, it is also necessary to understand the notion of human rights in general.

Human rights are rights intrinsic to all human beings, irrespective of nationality, place of residence, gender, national or ethnic origin, colour, religion, language, or any other status. Universal human rights are frequently expressed and ensured by law, in the forms of treaties, customary international law, general principles, and other sources of international law. Under the international human rights law, governments are obliged to act in certain ways or to abstain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups (OHCHR 2008).

One of the basic documents concerned with human rights and fundamental freedoms is the Universal Declaration of Human Rights (UDHR), adopted in 1948 by the UN General Assembly. Human rights were set out in the UDHR, codified and later spelled out in a series of international conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, etc. (OHCHR 2007).

The UDHR has 30 articles that are basically classified into civil and political rights and economic, social and cultural rights. Since the UDHR is the core document on basic human rights and fundamental freedoms, articles of which were later elaborated in a series of

international treaties on human rights, it will be the main document that will be referred to within the scope of this Master's Essay in examining human rights.

Although the UDHR is not legally binding on states, it represents universal values that are shared all over the world. Moreover, some lawyers think that this Declaration has become part of customary international law (Australian Human Rights Commission 2008).

Human rights are universal and inalienable. The principle of universality of human rights is the foundation of international human rights law. First emphasized in the UDHR in 1984, this principle has later been reiterated in a number of international human rights conventions, declarations, and resolutions. For instance, the 1993 Vienna World Conference on Human Rights stated that it is the obligation of states to promote and protect all human rights and fundamental freedoms, irrespective of their economic, political and cultural systems. All states have ratified as a minimum one, and 80 percent of states have ratified four or more of the basic human rights treaties, creating legal responsibilities for them and giving actual expression to universality. Moreover, some fundamental human rights norms are protected by customary international law (OHCHR 2008).

Inalienability of human rights means that they should not be taken away from human beings except in particular situations and compliant with due process. For instance, the right to liberty may be restricted if a person is found guilty of a crime by a court of law (ibid.).

All human rights, no matter if they are civil and political rights, like the rights to life, equality before the law, and freedom of expression; economic, social and cultural rights, like the rights to work, social security, and education; or collective rights, like the rights to development and self-determination, are indivisible, interdependent and interrelated. The deprivation of one right

negatively affects the others. Similarly, the improvement of one right makes the advancement of the others easier (ibid.).

All human rights are non-discriminatory and equal. The principle of non-discrimination is inherent in all the core human rights treaties and has become the central subject matter of some international human rights conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. This principle concerns everybody with regard to all human rights and fundamental freedoms and bans discrimination in relation to a number of non-exhaustive categories, like race, color, sex, etc. (ibid.). There is an article on non-discrimination in the UDHR (1948), which states that "All are equal before the law and are entitled without any discrimination to equal protection of the law." The principle of non-discrimination goes hand in hand with the principle of equality (OHCHR 2008). As it is stated in the UDHR (1948), "All human beings are born free and equal in dignity and rights."

Human rights involve rights and obligation. Under international laws, states bear obligations and duties to respect, protect and realize human rights. The obligation to respect implies that states must not interfere with or limit the enjoyment of human rights, the obligation to protect calls for states to protect individuals and groups against human rights abuses and the obligation to fulfill implies that states must take positive actions to facilitate the enjoyment of basic human rights (OHCHR 2008).

Findings

In the context of good governance, participation is basically conceptualized as people's participation in the decision-making processes of the government. Within the same context,

participation is also interpreted in terms of the freedom of association/assembly and expression, which can create an enabling environment for it. According to the Article 19 of the UDHR (1948), "[e]veryone has the right to freedom of opinion and expression." According to the Article 20.1, "[e]veryone has the right to freedom of peaceful assembly and association," and according to the Article 21.1, "[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives" (UDHR 1948). This implies that the realization of certain fundamental human rights is necessary for ensuring one of the key elements of good governance, which is participation.

In relation to good governance, transparency generally means that decisions are made compliant with the rule of law and those who are affected by such decisions have free access to relevant information. The Article 19 of the UDHR (1948) states that "[e]veryone has the right to… receive and impart information and ideas through any media and regardless of frontiers." This means that to ensure transparent public administration, citizens should have free access to information, which is a fundamental human right.

As it has been stated, good governance is accountable. It means that public officials should be accountable to people for their actions. From the human rights perspective, by ratifying a treaty on human rights, the state becomes accountable for protecting those rights both to the international community and to its citizens, who are viewed as claim-holders and state duty-bearers and can hold the state accountable for not fulfilling its duty to protect those rights (UN/Philippines 2002). It other words, human rights make public officials accountable, which is another basic requirement of good governance.

The rule of law is another key element of good governance. Within the context of good governance, it basically implies that the law must be applied to everybody, without

discrimination. Moreover, good governance is trying to achieve its objectives without any violation and following the rule of law. According to the Article 7 of the UDHR (1948) "[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law." Consequently, the fulfillment of this fundamental human right will contribute to the realization of the rule of law.

Based on the above-stated discussions, it can be inferred that the realization of certain fundamental human rights is necessary for such key good governance elements as participation, transparency, accountability, and the rule of law to happen in practice.

However, since some of the studied international agencies, namely the OECD DAC, the UN OHCHR, and the UN Commission on Human Rights refer to good governance also as a precondition for the realization of human rights and not vice-versa (as it is stated above), it can also be concluded that governance and human rights are actually linked with each other by being mutually reinforcing.

The next section will discuss the importance of NHRIs in the protection and promotion of human rights and how they can generally contribute to the advancement of good governance at the national level.

Ways NHRIs Can Contribute to the Promotion of Good Governance at the National Level

International Recognition of the Importance of NHRIs

The protection of human rights is promoted both at the international and national levels of governance (Reif 2000). Overall, the recognition of human rights universally has come true through various international and regional instruments (De Beco 2007). Ratifying a human rights treaty, states either incorporate its provisions into their domestic legislation or undertake to meet the terms in a different way (OHCHR 1993). Thus, universal human rights standards and norms are expressed in the domestic laws of the majority of countries. Frequently, however, the existence of laws to protect certain rights does not yet guarantee the effective realization of those rights, unless these laws provide also for all the relevant legal powers and institutions (ibid.). According to Reif (2000, 4), effective domestic protection of human rights necessitates "a network of complementary norms and mechanisms." As the author states,

> These include the following: state adherence to human rights treaties; implementation of international human rights obligations in domestic law; a domestic legal system that provides comprehensive substantive and procedural human rights laws; effective and accessible state institutions where individuals can obtain redress for human rights breaches, such as independent courts and national human rights institutions; a lively human rights NGO community; and a population that has developed a strong human rights culture. (Reif 2000, 3)

NHRIs are domestic institutions established by a provision in the constitution, legislation, or by means of a presidential decree or executive order. They are vested with the competence to protect and promote human rights and have come to occupy a leading position in the domestic implementation of both international human rights norms and domestic, constitutional, and other legal duties and responsibilities (Kumar 2006).

Although NHRIs are relatively new phenomena, the idea of their creation goes back to the year 1946, to the second session of the UN Economic and Social Council, where "it was decided

to invite the member states to "consider the desirability" of setting up local bodies in the form of "information groups or local human rights committees" to function as vehicles for collaboration with the United Nations Commission on Human Rights" (Lindsnaes and Lindholt 2001, 5). With the expansion of human rights instruments in 1960s and 1970s, the need for creating official human rights institutions for the national implementation of human rights grew even more. In 1978, a "Seminar on National and Local Institutions for the Promotion and Protection of Human Rights" was convened in Geneva, which resulted in the adoption of the first set of guidelines on the overall functions of NHRIs (Lindsnaes and Lindholt 2001).

A focal point, however, in the establishment and strengthening of NHRIs was the adoption of the "Principles Relating to the Status of National Institutions" commonly known as "Paris Principles" (ibid.). They were the output of the First International Workshop on National Institutions for the Promotion and Protection of Human Rights convened by the UN Commission on Human Rights and organized in Paris by the French National Advisory Commission for Human Rights in October 1991 (Lindsnaes and Lindholt 2001, De Beco 2007). Adopted subsequently by the UN Commission on Human Rights Resolution 1992/54, 1992 and the UN General Assembly Resolution 48/134, 1993, these Principles marked the beginning of serious international cooperation and standardization of NHRIs (International Council on Human Rights 2005) and have become the internationally accepted minimum standards and/or reference point for states seeking to establish them (Smith 2006).

Two years later after the Paris Principles were formulated, the World Conference on Human Rights held in Vienna in 1993 confirmed in its Declaration and Programme of Action the significant and constructive role played by NHRIs in the promotion and protection of human rights and encouraged their establishment and strengthening based on the Paris Principles. This

led to the establishment of NHRIs worldwide, especially in developing countries (De Beco 2007).

In spite of the fact that it has internationally been recognized that NHRIs can play a pivotal role in the protection and promotion of human rights, it has also been argued that there is no good reason for establishing special national machinery devoted to the protection and promotion of human rights, taking into consideration the scarce resources and an independent judiciary and democratically elected parliament, which may be considered sufficient to ensure that human rights violations do not occur. Indeed, the activities of the majority of government departments, the courts, the legislature, and, moreover, the activities of churches, trade unions, the mass-media, and many NGOs touch directly on human rights protection issues (OHCHR 1993). However, there is something fundamental and basic about NHRIs, which differs them from the above-mentioned entities – to ensure that there are no human rights abuses is their core mission and basic purpose (Kumar 2006). Moreover, the functions of these institutions are specifically defined in terms of the promotion and protection of human rights (UN Centre for Human Rights 1995).

Paris Principles Serving as Basis for the Establishment and Functioning of NHRIs

Although the tasks of NHRIs may differ considerably from country to country, and the type of the institution may depend on the unique political, historical, cultural, and economic environment of each state (Reif 2000), they share a common objective and have a common background (OHCHR 1993) as they are established, regulated and operating in accordance with the Paris Principles (Kjaerum 2003).

The Paris Principles outline various aspects of NHRIs in four sections addressing their (1) Competence and responsibilities; (2) Composition and guarantees of independence and pluralism; (3) Methods of operation; and (4) Additional principles concerning the status of commissions with quasi-jurisdictional competence.

As provided in the first section of the Paris Principles, NHRIs should be granted the authority to promote and protect human rights. For this purpose, they should be given as broad a mandate as possible.

Further, the Paris Principles list a set of responsibilities for NHRIs, which can be grouped in six categories. According to these responsibilities, a NHRI should:

1. In an advisory capacity, submit opinions, recommendations, proposals and reports on any issue related to the protection and promotion of human rights to the Government, Parliament and any other competent body, either at the request of the authorities concerned or on their own initiative; these opinions, recommendations, proposals and reports should concern to the following areas:

- Legislative and administrative provisions that are intended to preserve and extend the protection of human rights; with this respect, the institution may examine the legislation and administrative provisions in force to make sure whether they conform to fundamental human rights and, when necessary, recommend adopting a new legislation and administrative measures or amending the ones in force;

- Any situation of infringement of human rights;

2. Follow that national laws, regulations, and practices comply/harmonize with the international human rights instruments to which the state is a party, as well as endorse ratification and/or accession to those instruments and guarantee their implementation;

3. Communicate with regional and international organizations and contribute to the reports that states are required to submit to regional and international institutions and committees compliant with their treaty obligations;

4. Educate and inform in the field of human rights as well as assist in the formulation of educational human rights programmes and in human rights research and participate in their implementation at schools, universities, and in professional circles;

5. Receive complaints and make investigations of alleged human rights violations;

6. Prepare and publicize reports on human rights matters, by making use of all press organs, when necessary.

The second section of the Paris Principles identifies independence and pluralism as the key elements of the composition of NHRIs. In relation to both of these elements, the Principles provide that the personnel of NHRIs should be appointed by an official act establishing the specific duration of the mandate, which may be renewable. The appointment procedures should ensure pluralist representation of different social forces engaged in the promotion and protection of human rights, including NGOs dealing with human rights issues, trade unions, associations of lawyers, doctors, journalists, famous scientists, etc.

Under the Paris Principles, NHRIs should have an independent infrastructure to perform their functions. With this respect, specific importance is attached to the need for adequate funding that will allow NHRIs to enjoy actual independence from the Government and not be subject to financial control, which might affect this independence.

In the third section, the Paris Principles address methods of operation and, implicitly, the powers of NHRIs. Thus, within the framework of its operation, a NHRI is entitled to:

- Consider any issue falling within its competence without authorization from any higher authority;

- Speak to any person and acquire any information and documentation necessary for assessing situations under its competence and gather any evidence needed to consider them;

- Speak to public directly or through media, particularly in order to announce its opinions and recommendations;

- Meet regularly and, if necessary, in the presence of all its members;

- Set up working groups from its members and establish local or regional sections to help it in performing its functions;

- Consult with other authorities responsible for human rights protection and promotion;

- Develop relations with NGOs concerned with human rights protection and promotion, economic and social development, combating racism, and with the ones protecting, particularly, vulnerable groups (mainly children, migrant workers, refugees, and physically and mentally disabled persons).

Finally, the last part of the Paris Principles provides additional principles regarding the status of NHRIs with quasi-judicial competence, according to which they have the authority to handle complaints or petitions concerning individual situations. Thus, a NHRI with quasi-judicial competence can:

- Try to find a friendly resolution of the conflict through conciliation, a binding decision, etc;

- Inform the individual who lodged a complaint on violation of his/her rights on special remedial activities available to him/her and facilitate access to these remedies;

- Hear any complaints or petitions or transmit them to any other competent authority as prescribed by the law;

- Make recommendations to the competent authorities, especially by suggesting amendments or reforms in the legal structure, regulations, and administrative practices, in particular if they have caused the problems faced by the persons lodging the complaints in order to protect their rights.

Findings

Based on the findings of the first section and the analysis of the current section the following cases of contribution of NHRIs to the promotion of good governance can be observed.

Overall, since the role of NHRIs is to protect and promote human rights, it means that they are in a position to promote good governance elements such as participation, transparency, accountability, and the rule of law. They can promote participation and transparency, by ensuring such fundamental human rights as freedom of expression and assembly, the right to participate in the government of one's country, and the right to freely receive and impart information. These institutions will promote accountability, following that the state protects and promotes human rights complaint with the international human rights treaties that it has ratified as well as with the domestic human rights laws and also making the government and public officials accountable to the people for their decisions and actions. They can also promote the rule of law, by ensuring that everybody is equal before the law and is entitled to equal protection of the law, without discrimination.

NHRIs can contribute to the realizations of the above-mentioned four core elements of good governance, particularly, under certain competences, responsibilities, and methods of operation provided for by the Paris Principles.

1. NHRIs can function as mechanisms through which members of the public can participate in the government of the country, including the regulation of the conduct of public administration. Such participation will be based on the mechanisms of individual complaints of NHRIs. If a NHRI is entitled to make recommendations on laws and policies based on its observations summarized as a result of individual complaints, then it can contribute to participation, having influence on decision-making/policy-making processes. In other words, such participation will take place when the NHRI finds shortcomings in laws, policies and/or their implementation, while dealing with individual complaints, and makes corresponding recommendations.

As it has already been noted, NHRIs are responsible also for educating and informing in the field of human rights, assisting in the formulation of programmes for the teaching of and research into human rights and taking part in their execution in schools, universities, and professional circles. Consequently, by educating and raising awareness on human rights, NHRIs provide members of the public with the opportunity to recognize their rights and adequately respond to the violations of those rights. That is, to participate either directly or through legitimate intermediate institutions (NGOs, trade unions, etc.), which represent their interests, in the amendment/change of a government decision or improvement of an administrative conduct that resulted in a human rights violation. Besides, if members of the public are educated on human rights, it presupposes that they are aware of NHRIs as well, to which they can bring complaints on human rights violations. Consequently, people participate also by NHRIs, since these institutions are authorized by the Paris Principles to receive complaints from individuals or groups, investigate alleged human rights violations and, in case the complaint is justified, advise,

give recommendations and make proposals on remedial actions to the government, parliament and any other relevant body and oversee their implementation.

In other words, NHRIs can contribute to the realization of participation by (a) receiving and investigating complaints on human rights abuses and/or maladministration; (b) submitting opinions, recommendations, proposals and reports on any issue related to the protection and promotion of human rights (including on laws and policies) to the Government, Parliament and any other competent body; and (c) educating and raising awareness on human rights.

2. Another way in which NHRIs can contribute to good governance is by promoting accountability on any issue related to human rights protection, particularly by making the government accountable to members of the public. They can do this based on certain responsibilities provided for by the Paris Principles, such as reviewing all the government decisions and activities that have any bearing on human rights as well as monitoring the overall human rights situation in the country and the compliance of the state with the undertaken international, regional and domestic human rights obligations.

For making the government accountable, there must also be created direct links between the public, the NHRI, and the executive or administrative branch in order to make the latter comply with the results of the investigations conducted by the institution, analyze its behavior according to the norms of law and equity and adequately respond to the given recommendations. Owing to this link, through the NHRI public authorities and the administration become accountable to those who are directly affected by their decisions and actions.

As it has been stated, a major responsibility of NHRIs is to receive complaints from the citizens of the state against government officials and state institutions, conduct fair, objective and unbiased investigations and, in case the complaint is justified, give recommendations to and

advise relevant authorities on remedial actions. Moreover, irrespective of how the government, parliament and any other relevant body would respond to the recommendations, proposals, opinions and reports of NHRIs, under the Paris Principles, these institutions should also prepare and publicize reports on those responses. As a result, NHRIs will raise the level of state accountability to the citizens.

NHRIs can significantly contribute to accountability also by educating and raising awareness on human rights. Based on the arguments provided for participation with respect to this, it can be inferred that if individuals know their rights, they can call the government accountable for violating those rights and can do this through NHRIs as well.

To sum up, NHRIs can promote accountability on any issue related to the protection of human rights through (a) the review and monitoring of policies and laws; (b) conducting investigations and submitting recommendations, proposals, opinions and reports to the relevant authorities; (c) publicizing the responses of those authorities to the given recommendations, proposals, opinions and reports; and (d) educating and raising awareness on human rights.

3. Being one of the major elements of good governance, transparency, first of all, implies that the conduct of the government and public officials must be transparent. Such a transparency is implemented through the formal, objective scrutiny of the NHRI and through the public reporting of the results, as provided for by the Paris Principles. Furthermore, within the context of good governance, in order to have a transparent public administration, citizens should have free access to information, especially on those governmental decisions and actions that have direct bearing on their rights and interests.

Consequently, the major way in which NHRIs can contribute to transparency is to make sure that citizens' right to free access to public information is protected by law and practice.

In practice, NHRIs can contribute to the realization of transparency of the conduct of the government and public officials guided by the competence to protect and promote human rights, in this case, especially the citizens' right to free access to public information, and through the following methods of operation set for by the Paris Principles: a) speaking to any person and acquiring any information and documentation necessary for assessing the situations under their jurisdiction as well as gathering any evidence needed to consider them; and based on that b) addressing the public directly or through media, particularly in order to announce its opinions and recommendations and, doing this, by imparting the information in sufficient amounts and in easily comprehensible forms.

4. Based on the above-stated on the rule of law, in the scope of good governance, it means that the law should govern not only the activities of the society but also the activities of each public servant. There should be no external factor besides the law that should affect the decisions and activities of public servants. The rule of law implies that everybody is equal before the law, that no one should be above the law and that everybody should be guided by the law in their activities. The rule of law and respect for human rights must be realized in practice, first of all, by public servants, since ordinary citizens get contacted especially with them on daily bases on issues concerning their interests and rights. It is the dissatisfaction of ordinary citizens with public servants that causes much of the complaints to a NHRI. By receiving a complaint, the NHRI usually launches an investigation to find out whether there was a violation of law by the public servant, which, in fact, caused dissatisfaction. If the NHRI finds a case of faulty administration, it, according to the Paris Principles, submits opinions, recommendations and suggestions to the relevant body and by following the implementation of those recommendations

and suggestions, actually, contributes to the realization of the rule of law within the context of public administration.

Summing up the analysis done in this part, it can be inferred that NHRIs can play a significant role in the promotion of good governance at the national level, by realizing the four core elements of good governance guided by the examined competences, responsibilities, and methods of operation set for by the Paris Principles.

However, within the scope of this Master's Essay, good governance is also about combating corruption and protecting human rights, which are treated as practices contributing to the strengthening of good governance. Thus, it is also necessary to examine how NHRIs can contribute to the effective implementation of these practices.

Overall, corruption can be a major cause of various evils within societies. According to Kumar (2006), corruption creates serious challenges for governance as well. The author (2006) states that in developing countries, this problem is manifested in the malfunctioning of institutions responsible for governance, in the creation of an atmosphere of disrespect for law and human rights, and in undermining the effective functioning of democratic institutions. Therefore, among other laws related to human rights, there should be a law on anti-corruption, the effective implementation of which, in its turn, will contribute also to corruption-free governance. What NHRIs can do with this respect, is to recommend the adoption of such a law and oversee its implementation within the scope of their jurisdiction, given that the Paris Principles provide them with such competencies. Thus, NHRIs can actually contribute to the control over corruption both in the public and private sectors and therefore also to the promotion of good governance.

The protection of human rights is another practice, which is considered to be the core mission of NHRIs, since they are actually established to act as mechanisms overseeing state compliance with the undertaken international human rights obligations as well as domestic, constitutional, and other legal obligations.

The Model of NHRI that Promotes Good Governance the Most

Ombudsman, Human Rights Commission, and Hybrid Human Rights Ombudsman

As it has been stated in the previous section, "NHRIs are domestic institutions established through a provision in the constitution, legislation, or by way of a presidential decree or executive order" (Smith 2006, 759), "the functions of which are specifically defined in terms of the promotion and protection of human rights" (UN Centre for Human Rights 1995, 6).

Although NHRIs share a common objective, which is the human rights protection and promotion (OHCHR 1993) and are established basically having the Paris Principles as a major reference point (Kjaerum 2003), their tasks may differ considerably from country to country and the type of the institution may depend on the unique political, historical, cultural, and economic environments of each state (Reif 2000).

According to the International Council on Human Rights (2005), NHRIs take many forms and can be categorized in relation to their mandate, organizational composition, or the political and legal traditions in which they function.

> Thus we can distinguish single- from multi-member institutions; those whose primary orientation is to advise governments on matters of human rights policy from those that handle individual complaints; and those working on all human rights, including economic, social and cultural (ESC) rights, from those focusing on specific issues, such as discrimination. We can equally place institutions within Hispanic, Francophone or Commonwealth tradition; or organize them by continent; multi-member institutions that receive complaints in most of Africa and Asia, single-member *Defensores del Pueblo* in Latin America, *Ombudsman* in European Nordic countries, advisory institutions in Europe, and so on. (International Council on Human Rights 2005, 5-6)

In other words, there exist "as many typologies of NHRIs as papers written about them" (ibid., 6).

In spite of this considerable variance, however, the UN has identified the Ombudsman and the Human Rights Commission (HRC) as including the majority of NHRIs (UN Centre for Human Rights 1995). Reif (2000) suggests also the Hybrid Human Rights Ombudsman as a contemporary adaptation of the two types of NHRIs, established in a number of democratizing states.

According to Reif (2000, 6), a NHRI may be established as "a distinct institution in its own right responsible only to the legislature, an independent office of the legislature or an arm's-length office of the executive branch." The mandate of the institution to protect and promote human rights may include government conduct only but may, particularly with regard to HRCs, also be broaden to include cases in the private sector. Yet, when the government conduct is investigated, which is the major focus of a number of NHRIs and frequently the only focus of the Ombudsman, the majority of institutions can only investigate conduct related to public administration, while the conduct of the legislative and judicial branches and the "policy-making element" of the executive branch are most often excluded from their jurisdiction (Reif 2000).

All the Ombudsmen and Hybrid Human Rights Ombudsmen and many HRCs are authorized to investigate individual complaints and make recommendations when necessary (ibid.). Though they cannot make legally binding decisions, Reif (2000, 7) states that "some institutions have been given stronger powers of enforcement, such as the power to make decisions, prosecute and refer or take cases to court or other tribunals for a judicial determination."

Ombudsman

The classical Ombudsman is a mechanism functioning to monitor and improve the legality and fairness of public administration (Reif 2000). More specifically, the Ombudsman "exists to

protect the rights of individuals who believe themselves to be the victim of unjust acts on the part of the public administration" (UN Centre for Human Rights 1995, 8). Consequently, the Ombudsman frequently acts as an unbiased mediator between an aggrieved individual and the government (UN Centre for Human Rights 1995).

The Ombudsman, who is often a single individual but may also be a group of individuals (UN Centre for Human Rights 1995), is appointed by the legislative branch to investigate the administrative conduct of the government (Reif 2000). The conduct of the judiciary and the legislative itself are usually not within its jurisdiction (ibid.).

While the institution of the Ombudsman is not precisely the same in any two countries, all follow similar procedures in the performance of their duties. The Ombudsman receives complaints from the members of the public and investigates these complaints provided that they fall within its competence (UN Centre for Human Rights 1995). As a rule, he/she does not have the authority to receive and investigate complaints from the private sector. The Ombudsman is authorized to undertake investigations either on the receipt of a complaint or on his/her own initiative (Reif 2000). Such self-initiated investigations frequently relate to issues that the Ombudsman may have determined to be of broad public concern or that affect group rights and for that reason are not likely to be the subject of an individual complaint. Moreover, in the process of investigation, the Ombudsman is normally granted access to the documents of all relevant public authorities, and may also have the authority to compel witnesses, including government officials, to provide information (UN Centre for Human Rights 1995). If faulty administration is found, the Ombudsman makes recommendations in order to eliminate the illegality or unfairness (Reif 2000). If the recommendation is not acted upon, the Ombudsman may submit a specific report to the legislature (UN Centre for Human Rights 1995). This will be

in addition to an annual report to the same body and to the government on the activities of the office (UN Centre for Human Rights 1995, Reif 2000). The report may include information on problems that have been identified and include suggestions for legislative and administrative change (UN Centre for Human Rights 1995).

The classical Ombudsman does not have the authority to make legally binding decisions. Instead, it hinges on "soft" powers of persuasion and the ability to publicize, including when the government fails to implement recommendations made" (Reif 2000, 9). When necessary, the Ombudsman can also refer the case to the court (Reif 2000).

Although the Ombudsman traditionally does not have an express human rights mandate, in reality, it frequently "handles some cases that raise a jurisdictional human rights issue that is dealt with by using human rights norms" (Reif 2000, 9). Moreover, some of the newer ombudsman offices have been vested with corruption-fighting mandates (Reif 2000).

The majority of countries, which have established the Ombudsman type of a NHRI, have preserved the name "ombudsman." Some, however, have given them different titles showing the duties of the institution, like Public Protector in South Africa, Protector of the Citizen in Quebec, Canada, Parliamentary Commissioner for Administration in the United Kingdom, Sri Lanka, People's Advocate in Austria, etc. (ibid.).

Human Rights Commission

The HRC "has as its express mandate the protection and promotion of human rights" (Reif 2000, 10). It is established to ensure that laws and regulations related to the protection and promotion of human rights are effectively implemented (UN Centre for Human Rights 1995). The HRC is concerned primarily with the protection of persons against discrimination of all

forms and with the protection of civil and political rights. It may also be authorized to promote and protect economic, social and cultural rights (ibid.).

The HRC may be appointed by the executive, the legislature or by the combination of the two and may be required to systematically report to the body/bodies by which it is appointed (Reif 2000).

The HRC is composed of a number of members (ibid.), usually of various backgrounds, each with particular interest, expertise or experience in the field of human rights[1] (UN Centre for Human Rights 1995). One of the functions common to the majority of HRCs is to receive and investigate complaints from individuals (and sometimes from groups) alleging human rights abuses "committed in violation of existing national law" (ibid., 7). In order to perform its tasks properly, the HRC is mostly capable of obtaining evidence related to the matter under investigation, since there may be lack of cooperation on the part of the individual or body complained against. It can undertake inquires either on the petitioner's request or on its own initiative (UN Centre for Human Rights 1995). The HRC may have jurisdiction over both the public and private sectors. Sometimes, however, its jurisdiction may be confined to one sector only (Reif 2000).

In the investigation and resolution of complaints, many HRCs rely on conciliation and/or arbitration. In the process of conciliation, the HRC tries to bring the two parties together "in order to achieve a mutually satisfactory outcome" (UN Centre for Human Rights 1995, 7). If it does not work, the HRC resorts to arbitration in which it issues a determination, after a hearing (UN Centre for Human Rights 1995).

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[1] Each country, however, may set particular requirements or limits for the selection of the members, "such as quotas on the number of representatives or candidates from different professional categories, political parties or localities" (UN Centre for Human Rights 1995, 7).

Although the HRC has no authority to make laws or impose a legally binding decision on parties to a complaint, it does not imply that the settlement on appropriate remedial actions recommended by the HRC can be overlooked. In certain cases a special tribunal will hear and determine issues deriving from an unresolved complaint (ibid.). However, "[i]f no special tribunal has been established, the commission may be able to transfer unresolved complaints to the regular courts for a final and binding determination" (UN Centre for Human Rights 1995, 7).

Another function of the HRC is the regular review of the human rights policy of the government "in order to detect shortcomings in human rights observance and suggest ways of improving it" (UN Centre for Human Rights 1995, 8). The HRC may as well monitor the compliance of the state with its domestic legislation and with international human rights laws, and, if needed, recommend changes (UN Centre for Human Rights 1995). In other words, it can provide advice to government on human rights law and policy. It can also use media to publicize its work (Reif 2000).

Very often, the HRC is also responsible for educating and raising awareness on human rights. Such a task may involve informing the public about the functions and purposes of the HRC; initiating discussions about various important issues in the field of human rights; organizing seminars and training courses; producing and disseminating human rights publications, etc. (UN Centre for Human Rights 1995).

Hybrid Human Rights Ombudsman

The Ombudsman and the HRC described above are referred to as the classical models of NHRIs. Although some countries continue to create the classical models of NHRIs, others prefer to give them new roles or establish an institution that incorporates traits proper both to the

Ombudsman and the HRC (Osogo 2006). Reif (2000, 11) names it "Hybrid Human Rights Ombudsman," since it has expressly been given two roles "to protect and promote human rights and monitor governmental administration." This is a NHRI that can neither be categorized as an Ombudsman nor as a HRC. In some aspects, however, the Hybrid Human Rights Ombudsman is like the Ombudsman rather than the HRC, since commonly one person holds the office, it usually does not have the power to examine complaints in the private sector and is frequently appointed by the legislature. In other aspects, the Hybrid Human Rights Ombudsman is like the HRC when its major role is human rights education, advice, and protection. Moreover, the hybrid institution may have new authorities related neither to the Ombudsman nor to the HRC. It is the power to bring cases to constitutional courts (Reif 2000).

Major Differences and Similarities

The descriptions of the NHRIs given above made it possible to compare and contrast the three models of NHRIs, particularly in terms of their differences and similarities, and to find out which of them will contribute more to the promotion of good governance.

The overall goal of the Ombudsman is to monitor and improve the legality and fairness of public administration, whereas the major goal of the HRC is to ensure that laws and regulations concerning the protection of human rights are effectively applied. Although the Ombudsman does not have an express human rights mandate, as the HRC, frequently, it handles cases that raise a jurisdictional human rights issue that is dealt with by applying human rights norms. Unlike the HRC, the Ombudsman may also be given a corruption-fighting mandate.

The main powers and responsibilities of the Ombudsman are to receive and investigate complaints, make recommendations and report to the government and the legislature, whereas

the main powers and responsibilities of the HRC include also monitoring human rights laws and policies and correspondingly providing advice to the government.

Other differences between the Ombudsman and the HRC are as follows:

1. While the Ombudsman is usually composed of one person, the HRC includes many members;

3. The Ombudsman is appointed by the legislature; the HRC may be appointed either by the legislature or the executive, or some combination of the two;

4. The Ombudsman can accept complaints only from the public sector, whereas the HRC may have jurisdiction over both the public and private sectors;

5. Unlike the Ombudsman, the HRC can educate and raise awareness on human rights and do research.

There are the following similarities between the Ombudsman and the HRC:

1. When conducting investigations both has the power to obtain all the necessary information, documentation, evidence, to speak to any person, etc. that is necessary to resolve the matter in question;

2. Like the Ombudsman, the HRC as well can undertake investigations either on the petitioner's request or on its own initiative;

3. Neither has the authority to make laws or impose legally binding decisions but can transfer unresolved cases to regular courts for a final and binding determination;

4. Both can suggest statutory amendments/changes to the legislature; the Ombudsman can also recommend an administrative change;

5. The Ombudsman as well as the HRC can use media to publicize their work, including when the recommendations made are not implemented.

As it has been stated above, the Hybrid Human Rights Ombudsman has an express mandate to protect and promote human rights and monitor government administration. Furthermore, it has almost all the powers and responsibilities proper to both the Ombudsman and the HRC. Occasionally, however, the Hybrid Human Rights Ombudsman may resemble more either to the Ombudsman or the HRC in certain features. These are the following:

- Similar to the Ombudsman, the Hybrid Human Rights Ombudsman is usually one person; it does not have the power to examine complaints in the private sector, and is appointed by the legislature;

- Unlike the Ombudsman but like the HRC, the hybrid institution can also educate and raise awareness on human rights.

Findings

As it has previously been mentioned, overall, NHRIs can contribute to the promotion of good governance, by realizing its four key elements, such as participation, accountability, transparency, and the rule of law as well as the practices of controlling corruption and protecting human rights under certain provisions of the Paris Principles.

Against this background and having the detailed examination and analysis of the competences, responsibilities, and methods of operation of the three models of NHRIs, it is now possible to determine the model that will contribute more than others to the promotion of good governance. This will be done, by drawing lines of comparison between these competences, responsibilities, and methods of operation and the ones identified generally as necessary for NHRIs in the promotion of good governance having reference to the Paris Principles.

NHRIs can contribute to the realization of *participation* via (a) receiving and investigating complaints on human rights abuses and/or maladministration; (b) submitting opinions, recommendations, proposals and reports on any issue related to the protection and promotion of human rights (including on laws and policies) to the Government, Parliament and any other competent body; and (c) undertaking human rights education and awareness raising activates.

The Ombudsman is authorized to do the following from the above-stated: a) receive complaints and undertake impartial investigations into the administrative conduct in question; b) give recommendations to the relevant body in order to eliminate the illegality and/or unfairness if faulty administration is found, and submit reports to the government and the legislature, including in them also suggestions for legislative amendments/changes, when necessary.

The HRC, on the other hand, will do the following: a) receive and investigate complaints made by members of the public that their rights have been violated; b) provide advice to the government on human rights law and policy, make recommendations on how to resolve the matter in question and report on its activities to the body/bodies by which it is appointed; as well as c) educate and raise awareness on human rights, which the Ombudsman is not authorized to do.

Consequently, in contributing to the realization of participation, the abilities of the Ombudsman are somewhat limited as compared to those of the HRC, since the latter can also educate and raise awareness on human rights.

NHRIs can contribute to the realization of *accountability* with regard to any issue on human rights protection by (a) reviewing all the decisions and activities of the government that have any bearing on human rights as well as monitoring the overall human rights situation in the country and the compliance of the state with the undertaken international, regional and domestic human

rights obligations; (b) conducting investigations and submitting recommendations, proposals, opinions and reports to the relevant authorities; (c) publicizing the responses of those authorities to the submitted recommendations, proposals, opinions and reports; and (d) educating and raising awareness on human rights.

The Ombudsman is empowered to do the following from the above-listed: a) monitor the legality and fairness of public administration; b) undertake investigations, make recommendations and submit reports to the government and the legislature; and c) rely on the ability to publicize and to submit a special report to the legislature, including when the relevant bodies fail to implement recommendations made.

The HRC, in its turn, is authorized to (a) review on regular basis the human rights policy of the government as well as monitor the compliance of the state with its domestic legislation and with international human rights laws; (b) undertake inquires and/or investigations into the alleged human rights violation, provide advice to the government on human rights law and policy and make recommendations on how to resolve the issue in question, (c) publicize the results of its work through media; and (d) educate and raise awareness on human rights.

As it has been noted, unlike the HRC, the Ombudsman does not have the responsibility to engage in educational and awareness raising activities on human rights and, consequently, has fewer opportunities to contribute to the realization of accountability than the HRC.

NHRIs can contribute to the realization of *transparency* of the conduct of the government and public officials guided by the competence to protect and promote human rights, in this case, particularly, the citizens' right to free access to public information, and through the following methods of operation provided for by the Paris Principles: a) speaking to any person and acquiring any information and documentation necessary for assessing the situations under their

jurisdiction as well as gathering any evidence needed to consider them; and based on that b) addressing the public directly or through media, particularly in order to announce its opinions and recommendations and, doing this, by imparting the information in sufficient amounts and in easily comprehensible forms.

Although the Ombudsman does not have an express human rights mandate, it frequently engages in human rights protection. The Ombudsman may receive a complaint, involving human rights issue intertwined usually with a maladministration complaint, as well as a jurisdictional complaint on a human rights violation.

The Ombudsman functions based on the following of the above-mentioned methods of operation: b) getting access to the documents of all relevant public authorities and compelling witnesses, including government officials, to provide information; c) besides transmitting its recommendations to both the petitioner and the office or authority complained against, informing also the public on these recommendations and the results, by making use of any media, including when the recommendations are not acted upon.

The HRC as well has the power to obtain any evidence regarding the matter under investigation and the power to publicize. However, the express mandate of the HRC to protect and promote human rights, ensuring that laws and regulations concerning the protection and promotion of human rights are effectively implemented, creates for it more favourable grounds to promote transparency.

In the previous sections, it is emphasized that *the rule of law* and respect for human rights must be realized in practice, first of all, by public servants, since ordinary citizens get contacted especially with them on daily bases on issues concerning their interests and rights. Commonly, it

is the dissatisfaction of ordinary citizens with public servants that causes much of the complaints to a NHRI.

NHRIs can contribute to the realization of the rule of law by (a) receiving a complaint and undertaking an investigation to find out whether there was a violation of law on the part of the public servant, which actually caused dissatisfaction and resulted in the lodging of a complaint; (b) submitting opinions, recommendations, and suggestions to the relevant body in case the complaint is justified; and finally, (c) following the implementation of the recommendations, suggestions, etc.

The realization of the rule of law, within this context, will actually depend on the effective performance of all the succeeding functions mentioned above, and particularly on that of the last one.

Therefore, within the scope of its competences, the Ombudsman will do the following to contribute to the realization of the rule of law: a) receive and carry on unbiased investigation into the alleged faulty administrative conduct; b) make recommendations to eliminate the illegality or unfairness if the complaint is justified; and c) undertake corresponding actions in case the recommendation is not acted upon, such as publicizing and/or submitting a special report to the legislature.

The HRC, on the other hand, will (a) investigate complaints made by members of the public on the violation of their rights; (b) make recommendations to resolve the matter in question; and if this is unsuccessful, (c) refer the dispute to binding forms of settlement, such as human rights tribunals and courts as well as use its power to publicize.

Judging from the above-stated, both the Ombudsman and the HRC can equally contribute to the realization of the rule of law, each according to its abilities.

When describing and analyzing the three models of NHRIs, it has been mentioned that the Hybrid Human Rights Ombudsman has an express mandate both to protect and promote human rights and monitor public administration. With regard to this, the Hybrid Human Rights Ombudsman has almost all the responsibilities and powers typical of the Ombudsman and the HRC. Particularly, it has all those responsibilities and powers that, according to the above-done analysis, are necessary for the realization of the four elements of good governance, including those powers and responsibilities that are, for instance, typical of the Ombudsman but atypical of the HRC, and vice-versa.

With respect to such good governance practices as controlling corruption and protecting human rights, in the previous section, it is stated that generally, NHRIs can contribute to controlling corruption, by suggesting the adoption of an anti-corruption law among other laws related to human rights and following its implementation within the scope of their competencies. The Ombudsman can do this, since in its annual report to the executive and the legislative branches he/she can include not only information on the activities of the office, the results of its work, and the problems that have been identified, but also provide suggestions for legislative and administrative change. The same can do the HRC, by suggesting statutory amendments to the legislature. Nevertheless, in comparison with the abilities that the Ombudsman has to contribute to the control of corruption, those of the HRC are somewhat limited. As it has been noted, besides its principal mandate, the Ombudsman may also be given a corruption-fighting mandate. Moreover, even if the Ombudsman does not have a corruption-fighting mandate, it still can contribute to the control over corruption more than the HRC, since it is authorized primarily to monitor the conduct of public administration in order to ensure that it is legal and fair and

consequently not corrupt as well. There can be no legality and fairness in public administration if the latter is corrupt.

All the means through which the Ombudsman and the HRC can hinder the spread of corruption can be applied by the Hybrid Human Rights Ombudsman, since it has an express mandate both to protect and promote human rights and monitor public administration and almost all the responsibilities and powers typical both to the Ombudsman and the HRC.

Taking into consideration all the above-stated, it can be inferred that the model which will contribute to the promotion of good governance the most is the Hybrid Human Rights Ombudsman.

Improving the Law on and Practice of the Human Rights Defender of the Republic of Armenia to Promote Good Governance in Armenia

In the previous section, it has been found out that from the discussed three models of NHRIs, namely the Ombudsman, the HRC, and the Hybrid Human Rights Ombudsman, the latter can contribute more than others to the promotion of good governance. Consequently, with respect to the Human Rights Defender of the Republic of Armenia (hereinafter referred to as the Defender), it is necessary to determine to which of the examined models of NHRIs it resembles more and to what extent it can contribute to the realization of the identified key good governance elements and practices. This will be done by analyzing mainly the Law of the Republic of Armenia on the Human Rights Defender (hereinafter referred to as the Law) that took effect on January the first in 2004.

The Law on the Human Rights Defender of the Republic of Armenia in the Context of Good Governance Promotion

According to the Article 2 of the Law (2004), the Defender "protects the human rights and fundamental freedoms violated by the state and local self-governing bodies or their officials." In other words, the Defender has an express human rights mandate and with respect to this, resembles more the HRC. The same idea can be supported by the Defender's oath, which is as follows, "I swear… to defend the human rights and fundamental freedoms of individuals and citizens" (Article 3.2, Law of the ROA on the Human Rights Defender 2004).

As it has already been stated, generally, NHRIs can contribute to the realization of *participation* via (a) receiving and investigating complaints on human rights abuses and/or maladministration; (b) submitting opinions, recommendations, proposals and reports on any issue related to the protection and promotion of human rights (including on laws and policies) to

the Government, Parliament and any other competent body; and (c) undertaking human rights education and awareness raising activates.

The Defender can do the following from the above-listed:

a) "[C]onsider the complaints of individuals (including citizens) regarding the violations of human rights and fundamental freedoms… caused by the state and local self-governing bodies and their officials" (Article 7.1, Law of the ROA on the Human Rights Defender 2004);

b) "[P]ropose to the state or local self-governing body or his/her official, the decisions or actions (inaction) of whom have been qualified by the Defender as violating human rights and freedoms, to eliminate the committed violations, by indicating the possible measures necessary and subject to implementation for the restitution of human and civil rights and freedoms," "[u]pon necessity… submit special reports to the President of the Republic of Armenia and the National Assembly," and "[e]ach year… deliver a report on his/her activates and on human rights situation in the previous year to the President of the Republic of Armenia and the representatives of legislative, executive, and judicial authorities…" (Articles 15.1.1), 15.5, 17.1, Law of the ROA on the Human Rights Defender 2004).

c) Although the Law does not authorize the Defender to engage in educating and awareness raising activities on human rights, the institution has within its staff Public Relations and Information Department that acts also to ensure the development of necessary outreach programmes to gain maximum dispersion of information related to the issues of protecting human rights and fundamental freedoms and undertakes certain activities for raising public awareness as well as publishes information on human rights (www.ombuds.am). This way the Defender tries to fill in the gap in the Law, which does not authorize him/her to undertake human rights education and awareness raising activates that are the privileges of the HRC and the

Hybrid Human Rights Ombudsman. Thus, the opportunities of the Defender to contribute to the realization of participation are somewhat limited.

The Defender, however, has another opportunity to contribute to participation. Particularly, it is entitled to establish regional representative offices that will make him/her more available for the members of the public living in distant areas of Armenia (Article 23.3, Law of the ROA on the Human Rights Defender 2004).

As it has previously been mentioned, overall, NHRIs can contribute to the realization of *accountability* with regard to any issue on human rights protection by (a) reviewing all the decisions and activities of the government that have any bearing on human rights as well as monitoring the overall human rights situation in the country and the compliance of the state with the undertaken international, regional, and domestic human rights obligations; (b) conducting investigations and submitting recommendations, proposals, opinions and reports to the relevant authorities; (c) publicizing the responses of those authorities to the submitted recommendations, proposals, opinions and reports; and (d) educating and raising awareness on human rights.

The Defender can do the following from what is listed above:

a) According to the Article 7.3 of the Law (2004), the Defender has the right to attend the Cabinet meetings and the meetings of other state bodies when issues related to human rights and fundamental freedoms are discussed. This means that the Defender has an opportunity to review and/or be aware of all the decisions and activities of the government that have any bearing on human rights. Although the Law does not explicitly entitle the Defender to make recommendations and advice on policies and laws, nevertheless, when necessary, he/she can do that through special and annual reports to the executive and legislative bodies. For instance, in his annual report of 2008, the Defender suggests a number of legislative amendments.

b) The Defender undertakes impartial investigations, makes recommendations, and submits proposals and reports to the relevant bodies (Articles 11.1.1), 15.1.1), 15.5, 17.1, Law of the ROA on the Human Rights Defender 2004).

c) Under the Article 15.6 of the Law (2004), the Defender is expressly empowered to "publish through mass media special information on the state or local self-governing authority or his/her official who failed to comply or complied partly with the requirements of his/her motion, together with the responses of the state or local self-governing authorities or their officials to the Defender's decision and motion…" Moreover, the Law provides the Defender with another opportunity to make the relevant authorities accountable to him/her and thus to members of the public. The Article 15.3 stipulates that the state or local self-governing body, which has received the Defender's motion, is required to inform the Defender about the measures taken and do it in a written form (Law of the ROA on the Human Rights Defender 2004).

With regard to promoting accountability, the weak point of the Law refers again to the lack of a corresponding provision that would authorize the Defender to undertake educational and awareness raising activities on human rights.

Transparency is another key element of good governance in the realization of which NHRIs can play an important role, particularly in the realization of transparency of the conduct of the government and public officials. As stated already, they can do this guided by the competence to protect and promote human rights, in this case, primarily the citizens' right to free access to public information, and through the following methods of operations set for by the Paris Principles: a) speaking to any person and acquiring any information and documentation necessary for assessing the situations under their jurisdiction as well as gathering any evidence needed to consider them; and based on that b) addressing the public directly or through media,

particularly in order to announce its opinions and recommendations and, doing this, by imparting the information in sufficient amounts and in easily comprehensible forms.

Since the Defender has an express human rights mandate, it obliges him/her to protect also the citizens' right to free access to public information, by which the Defender will actually contribute to transparency.

The Defender can contribute to transparency also through the following methods of operation provided for by the Law:

a) In the examination of issues raised in a complaint, the Defender is authorized to "have free access to any state institution or organization, including military units, prisons, preliminary detention facilities and penitentiaries," "require and receive information and documentation related to the complaint from any state or local self-governing bodies or their officials" as well as from civil servants and "familiarize with any information and documentation related to the complaint" (Articles 12.1.1), 12.1.2), 12.1.3), 12.1.6), Law of the ROA on the Human Rights Defender 2004).

b) With respect to publicizing, the Defender can deliver unscheduled public reports if there are cases producing widespread public response or if there are flagrant human rights infringements or mass occurrence of non-elimination of these infringements (Article 17.2, Law of the ROA on the Human Rights Defender 2004). Additionally, as it has been noted, the Article 15.6 of the Law (2004) entitles the Defender to publish special information on the authorities that failed to respond to his/her motion or did not comply or complied only partly with the requirements of the motion.

Taking into consideration the above-stated on transparency, the Law provides the Defender with a wide range of powers through which it can largely contribute to the happening of transparency in practice.

With respect to another element of good governance as *the rule of law*, it has previously been mentioned that basically, NHRIs can contribute to its realization by (a) receiving a complaint and carrying on an investigation to find out whether there was a violation of law on the part of the public servant that actually caused dissatisfaction and resulted in the lodging of a complaint; (b) submitting opinions, recommendations, and suggestions to the relevant body in case the complaint is justified; and finally, (c) following the implementation of the recommendations, suggestions, etc.

The realization of the rule of law, within this context, will actually depend on the effective performance of all the succeeding functions mentioned above, and particularly on that of the last one.

Under the Law, the Defender is authorized to do the following from the above-listed:

a) The Defender receives a complaint and makes a decision on accepting the complaint for consideration and, when necessary, undertakes inquiries and/or investigations (Articles 11.1, 11.1.1), 11.4, 12, Law of the ROA on the Human Rights Defender 2004).

b) Based on the findings of the considered complaint, he/she proposes to the relevant bodies responsible for violations of human rights and fundamental freedoms "to eliminate the committed violations, indicating the possible measures necessary for and subject to implementation for the restitutions of human and civil rights and freedoms" (Article 15.1.1), Law of the ROA on the Human Rights Defender 2004).

c) Finally, following the implementation of his/her recommendations and suggestions, the Defender can bring an action before the court if the state or local self-governing body or his/her official refuses to comply with them or complies only partly and not within the prescribed period of time (Article 15.1.4), Law of the ROA on the Human Rights Defender 2004). Moreover, the Defender is also empowered "to recommend that the authorized state agencies execute disciplinary or administrative penalties or file criminal charges against the official whose decisions or actions (inaction) violated human rights and fundamental freedoms…" (Article 15.1.5), Law of the ROA on the Human Rights Defender 2004).

It should be mentioned that the power of the Defender to bring an action before the court is a function proper to both the HRC and the classical Ombudsman, since both are entitled to refer cases to courts.

Based on what is said above on the rule of law, it can be inferred that the Law provides the Defender also with a number of opportunities for realizing this element as well.

With regard to such good governance practices as controlling corruption and protecting human rights, it has been noted that generally, NHRIs can contribute to controlling corruption by recommending adoption of an anti-corruption law among other laws related to human rights and following its implementation within the scope of their competences.

Although the Law does not directly provide the Defender with an authority to recommend statutory changes, in the second part of his annual report of the year 2008 on the activities of the institution during the previous year, the Defender analyzes seriously cases of human rights violations that result from legislative shortcomings and gives concrete recommendations/suggestions on how to recover those rights, by introducing amendments in the legislation. Thus, it can be inferred that the Defender can still have its contribution in controlling

corruption in the country, by recommending the introduction of an anti-corruption law in case he finds it necessary as a result of monitoring and analysis.

Overall, according to the competences, responsibilities, and methods of operation provided for by the Law, the Defender exists chiefly for the purpose of protecting human rights. For this idea can very well testify particularly Articles 2, 7.1, 11.4, 15.6, 17.1, and 17.2 of the Law and many other articles as well.

Based on the analysis done in this section, it can be inferred that although the Defender is not a hybrid institution, since it does not have an express mandate to monitor government administration and/or oversee maladministration, it resembles both to the HRC, as it has a direct mandate to protect and promote human rights as well as to the Ombudsman, since it is not entitled to educate and raise awareness on human rights. Moreover, it is one person, like the Ombudsman. Although the Hybrid Human Rights Ombudsman has been identified as the model that will contribute more than others to the promotion of good governance, it, nevertheless, cannot be denied that the Law provides sufficient basis for the Defender to contribute to the promotion of good governance through contributing to the realization of its major elements and the two practices. There are, however, certain powers that the Law does not provide for and that will make the Defender's practice more effective with this respect.

Ways to Improve the Law on and the Practice: Recommendations

As it has been found out, under the Law, the Defender is not authorized to educate and raise awareness on human rights. This is not to say that the lack of such a power can be regarded as a shortcoming of the Law, since the institution resembles in this case to the Ombudsman, which does not have such a responsibility at all. However, as the analysis show, the Human Rights

Defender of the Republic of Armenia is established also in line with the Paris Principles that make all NHRIs responsible for educating people on their rights and freedoms. Moreover, as it has been found out, besides being one of the major tasks of each NHRI, human rights education and awareness raising is important also for the realization of such good governance elements as participation and accountability. Consequently, if the Law makes the Defender responsible also for performing such a task, it will create another opportunity for him/her to contribute to the promotion of good governance, by providing more active participation on the part of members of the public and raising the level of government accountability to the citizens. Furthermore, the importance of educating and raising awareness on human rights is emphasized also in the Defender's annual report of 2008. Therein, the Defender (2008) states that the necessity to raise public awareness on human rights and laws is based on the ignorance of the largest part of our society of its human rights and fundamental freedoms as well as on the absence of the wish to be defended against public authorities, the right to which they have under the law.

According to the Defender (2008), such an ignorance and lack of wish on the part of members of the public result also in corruption practices and give another opportunity to public authorities and their representatives to violate those rights of citizens that they are obliged to protect. This statement made by the Defender is supportive of the inference that corruption can hinder the promotion of good governance. Consequently, it becomes necessary to have an anti-corruption law which will also contribute to the practice of controlling corruption within the context of good governance. Thus, it is necessary that the Defender engages in fighting against corruption as well. He/she can do this by receiving and investigating complaints related to corruption and monitoring the overall human rights situation in the country from that perspective. Further, if the Defender concludes that a number of human rights are constantly

violated particularly because of corruption on the part of public authorities, he/she can advise a relevant legislative amendment or an introduction of an anti-corruption law. Consequently, it should be mentioned that if the Law provides the Defender with an authority to make recommendations and/or suggestions on legislative amendments, he/she can seriously work on the adoption of such a law, since corruption is also widespread in Armenia as in many other post-Soviet countries that are on their ways to democratization and have already adopted an anti-corruption law facing the same problem.

To sum up, three major recommendations can generally be made on how to improve the Law on and practice of the Human Rights Defender of the Republic of Armenia so that it can contribute more to the promotion of good governance in the country.

First of all, the Law should make the Defender responsible for educating and raising awareness on human rights. This will help him/her to contribute more to the realization of such good governance elements as participation and accountability. Further, a provision entitling the Defender to recommend legislative amendments/changes should be introduced into the Law. Having such an authority, he/she will also have an opportunity to suggest introducing an anti-corruption law and thus, contribute to the practice of controlling corruption. Moreover, such a function will as well ensure participation in decision-making and promote the rule of law. Finally, if the Defender is given a strong mandate to monitor the implementation of laws and policies and make recommendations on legal amendments/changes and policies, he/she will be able to contribute more effectively to participation, accountability, and the rule of law.

Conclusion

At the beginning of this study, an attempt has been made to find a link between good governance and human rights. For that purpose, the concept of good governance has been examined based on various descriptions given to it by a number of international agencies such as the WB, the IMF, the ADB, the OECD on the part of the DAC, the EU on the part of the Commission of the European Communities, and the UN on the part of the UNDP, the UNESCAP, the OHCHR, and the UN Commission on Human Rights. As a result of that examination, it has been concluded that, overall, there is no common understanding of what good governance is, since it is treated basically as a basket of various elements and practices. However, provided that some of those elements such as participation, transparency, accountability, and the rule of law, as well as the practices of controlling corruption and protecting human rights appeared in the descriptions of almost all of the above-stated agencies, good governance has been defined in the Essay as composed of those elements and practices. Then, as a result of discussing human rights, having the UDHR as a major reference point and the ideas expressed by the agencies with respect to good governance and human rights, it has been found out that they are linked by being mutually reinforcing, one serving as a precondition for the other and vice-versa.

In the next section of the Essay, it has become clear that NHRIs can overall contribute to the promotion of good governance at the national level by realizing its four key elements and contributing to the practices mentioned above under certain competences, responsibilities, and methods of operation set for by the Paris Principles. Based on the findings of this section and the examination of the three basic models of NHRIs, such as the Ombudsman, the HRC, and the Hybrid Human Rights Ombudsman, in terms of their mandates, competences, responsibilities,

powers, and methods of operation, it has been concluded that the model which will contribute more than others to the promotion of good governance should necessarily be a hybrid institution like, for instance, the Hybrid Human Rights Ombudsman.

In the light of all those analysis as well as based on the examination of the Law, first, it has been concluded that although the Defender is not a hybrid institution, since it does not have an express mandate to monitor government administration and/or oversee maladministration, it resembles both to the HRC, as it has a direct mandate to protect and promote human rights as well as to the Ombudsman, since it is not entitled to educate and raise awareness on human rights. Moreover, it is one person, like the Ombudsman. Second, with respect to the examination of the Law in terms of the opportunities that it can provide for the Defender to contribute to the realization of major good governance elements and practices, it has been inferred that the Law actually creates quite favourable bases for the Defender to play an important role in the promotion of good governance. Nevertheless, having as a reference point also the previous discussions on how NHRIs can generally contribute to the promotion of good governance, it has been concluded that with respect to this, the Law still has certain weaknesses. Particularly, it does not provide the Defender with the responsibility to educate and raise awareness on human rights, which appears to be very important in the realization of such good governance elements as participation and accountability. Another weak point of the Law is that it does not authorize the Defender to make recommendations regarding legislative amendments/changes, since it has also been concluded that generally, NHRIs can contribute to the realization of certain good governance elements and, particularly, contribute to the practice of controlling corruption, having such a power. Consequently, at the end of the last section of the Essay, three major

recommendations have been given on how to improve the Law on and practice of the Human Rights Defender that it can contribute to the promotion of good governance. They are as follows:

1. To make the Defender responsible under the Law for educating and raising awareness on human rights;

2. To introduce a provision in the Law that will vest the Defender with the authority to recommend amendments/changes in the legislation;

3. To entitle the Defender with a strong mandate to monitor the implementation of laws and policies and make recommendations on legal amendments/changes and policies.

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