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**The Effectiveness of National Human Rights Institutions (NHRI):
Towards Establishing an Effective NHRI in the UAE**

By

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Abstract

This is a case study on establishing a human rights institution in the UAE that would promote and disseminate the culture of human rights and fundamental freedoms in the country. The study argues that establishing a strong, politically independent, active and effective national human rights institution in the UAE sooner than later is of paramount importance. The research emphasises that this is the age of human rights and freedoms and a relevant mechanism to safeguard these freedoms should appear in the UAE. Human rights have become the norm and means of measurements of everyday life- business, politics, international relations and co-operations. In a nutshell, the UAE requires more debate, more serious studies on the issue, political dialogue and political consensus on its possible form, functions and a mandate of the new human rights institution. This study suggests that establishing a human rights institution to promote, protect, monitor and consolidate human rights and fundamental freedoms in the UAE is vital. As such organisations become the norm worldwide; the UAE cannot live in isolation.

NHRIs are useful institution and can make an important contribution to the protection and promotion of human rights in the country. In this current climate, it becomes increasingly more vital to defend and protect established international human rights standards, challenge abuses of limit maladministration in public office and glitch demographics. Establishment of a new Human Rights institution in the UAE requires and demands a careful balance between traditional values, norms and established principles and changes. Otherwise, the newly found NHRI in the UAE would be prone to suffer from structural problems, functional deficiencies

and may lack adequate mechanisms for enforcement of human rights. The time is now ripe to establish a human rights institution in the UAE to tackle the many challenges that the nation is facing in coming years, as highlighted by the international reports issued by international human rights organisations.

This study suggests a human rights approach is a crucial tool to improve the current understanding of why the UAE need to establish a National Human Rights Institution and to describe the Human rights situation in its broader context. The challenges of the UAE's human rights application and the need to consider a balanced approach incorporating a clear human rights perspective will be examined and critically evaluated throughout this thesis.

Declaration

I declare that the thesis is my own work and certify that all the material in the thesis which is not my own work has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

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Abbreviations

AI	Amnesty International
CDLR	Committee for the Defence of Legitimate Rights
CEDAW	Convention on the Elimination of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRPD	Convention on the Rights of Persons with Disabilities
CUP	Cambridge University Press
DFWAC	The Dubai Foundation for Women and Children
ECSSR	Emirates Center for Strategic Studies and Research
FLD	Front Line Defenders
FNC	Federal National Council
GANHRI	Global Alliance of National Human Rights Institutes
GCHR	Gulf Centre for Human Rights
HRC	Human Rights Commissions
HRW	Human Rights Watch
IC	Index on Censorship
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJHR	International Centre For Justice And Human Rights
ICSRF	The International Centre for Supporting Rights and Freedoms
IHRC	Islamic Human Rights Commission
ILO	The International Labor Organization
JS1	Joint Submission 1
NHRI	National Human Rights Institution
ODVV	Organization for Defending Victims of Violence (Tehran)
OHCHR	Office of the High Commissioner on Human Rights

OUP	Oxford University Press
QNHRC	Qatar National Human Rights Committee
PUP	Princeton University Press
RWB	Reporters without Borders
TAN	Transnational Human Rights Networks
UDHR	Universal Declaration on Human Rights
UNESCO	The United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNICEF	The United Nations Children’s Fund
UPR	Universal Periodic Review
WHO	The World Health Organization

Chapter 1

Introduction

The United Nations (UN) defines the conceptual notion of Human Rights to be a set of intrinsic immutable and universally applicable rules, which safeguard the welfare of every individual human being.

The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status¹.

The UN specifies that this can be attained through legally mandated human rights laws, which protect ‘individuals and groups against actions, which interfere with fundamental freedoms and human dignity’² Although human rights are usually embodied as treaties, principles or laws within the legislative framework of nation States, the UN recognises that these do not innately constitute the notion of human rights. The UN maintains, ‘human rights are inherent entitlements which come to every person as a consequence of being human’³, further arguing that the various treaties and laws governing human rights protection must be perceived as the reified acknowledgment of these fundamental inalienable rights of humanity.

Todorov’s (1999) argument with regards to the dominant ideologies of Western empires, imperialisms, and colonialisms captures the apparently contradictory reading of humanity by Sepulveda and Las Casas. On the one hand there exists the racial other as an inhuman or

¹ OHCHR, *A Basic Handbook for UN Staff*, vol 2 (1997)
<<http://www.ohchr.org/Documents/Publications/HRhandbooken.pdf> > accessed 29 September 2017.

² *ibid.*

³ *ibid.*

subhuman, justifying their enslavement, eradication and the civilisation processes. Whilst conversely, the use of occupation, subjugation, and conversion are legitimate strategies used to develop and bring into the fold of humanity the naïve, innocent natives, the white man's burden⁴. However, although the researcher agrees to a degree, with the assertion that contemporary human rights are a continuation of the colonial legacy of the West, the researcher also contends that this narrative has been over exploited.

Suzan Waltz,⁵ discussed the long, multi-civilizational and multi-religious conflict between religion and human rights as an example of how the understanding of human rights differs and varies between cultures. She also highlighted the importance of approaching the issue of human rights from both a philosophical and religious perspectives.

Saad Ibrahim,⁶ the renowned Arab human right activist and distinguished scholar, observes that it is often assumed that the essentialist and communalistic nature of Islam ignores the rights of individuals. Therefore, the argument is often made that the innate democratic values are somehow alien to Islamic thought and by default Muslim societies. Ibrahim argues that the human rights record of nations is a mirror of their general economic and socio-political development rather than the role of Islam, within Muslim majority nations. Hence, this explains the significant differences in human rights records amongst these nations. A counter argument here suggests however, that despite the wealth and infrastructural development of the Gulf nations, their human rights violations are high. Ibrahim presents three underlying causes for the poor human rights records witnessed in the Arab and Muslim countries. Although a

⁴ T Todorov, *The Conquest of America: The Question of the Other* (1999) 168.

⁵ S Waltz, 'Universal Human Rights: The Contribution of Muslim States' (2004) 26 Hum. Rts. Q. 799.

⁶ S Ibrahim, *Egypt Islam and Democracy: Critical Essays* (American Univ in Cairo Press 2002).

discussion upon these factors is beyond the scope of this thesis, it suffices here to briefly introduce them.

The first factor he identifies is the presence and nature of the government as either being despotic or non- despotic. He argues that nations like Egypt have increasingly become more despotic as governments are incapable of upholding their part of the bargain; they have become more repressive against the people and have used judicial and extrajudicial means to consolidate their authority. In contradistinction, nations such as Qatar and the UAE have demonstrated their increasing democratisation through reforms, such as the establishment of elections and representative parliaments. This analysis is in line with Ibrahim's assertion that wealthier nations tend to have better human rights records or provisions.

Ibrahim⁷ also cites the conflict between the textualists, contextualists and secularists of the Islamic faith tradition. He notes that this open debate and discussion conducted through the extremes of terrorism to academic debates is at once a set back to the full appreciation and understanding of a global human rights plan on point with the Islamic faith teachings. On another level, it presents an opportunity for the contextualists to introduce their arguments and present a challenge to the traditional textualists (literalists).

The third point Ibrahim raises for the abject human rights records in the Arab and Islamic world is due to the conflation of anti-globalist and anti-hegemonic discourse with human rights norms. He argues that the credibility of the concepts democracy and human rights has been severely impacted by issues such as US foreign policy and its partiality towards Israel in the region, for example.⁸ The discussion is initiated from the basis that there is an explicit

⁷ *ibid.*

⁸ R Noack, 'Trump's U.S. Embassy Jerusalem Move: Allies Say Bad Idea - The Washington Post' (7 December 2017) <https://www.washingtonpost.com/news/worldviews/wp/2017/12/06/its-catastrophic-u-s-allies-reject-trumps-expected-jerusalem-pronouncement/?noredirect=on&utm_term=.ee205496551f> accessed 20 December 2017.

appreciation for the legitimacy of external factors, which impact upon the attitude towards and the practice of human rights safeguarding. However, there is also a recognition that ultimately it is up to national governments to take responsibility for their actions and those that occur within their defined territorial borders.

The argument stipulates that the establishment of a NHRI within the UAE will only serve to advance and enhance the socio-political culture and climate of the nation. The Commission on Human Rights defines the purpose of the NHRI to be an authoritative, autonomous, licit institution that is both founded and established by the national government. This implies that they are established by national constitutions or acts of legislatures, guaranteeing their independence from political direction or interference, both governmental and non-governmental; they have broad mandates for the promotion and protection of human rights. The NHRI must comply with the international minimum standard for NHRIs, ‘the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles)’⁹ .

An NHRI is an official institution, which exists within the State structure but is independent from the institutions of government, parliament and judiciary. If the NHRI is designed and planned to reflect the subtle cultural nuances and traditions, such as respect for heritage, status and authority then both society and the government can utilise it as a vehicle for mutual governance.

It must also be acknowledged that the concept of the NHRI is a recent development and so there is a degree of uncertainty with regards to its full potential and functionality. This limited awareness of the NHRI is reflected by the review of literature, which reveals a dearth in the

⁹ UNGA, ‘A/RES/48/134. National Institutions for the Promotion and Protection of Human Rights’ <<https://www.un.org/documents/ga/res/48/a48r134.htm>> accessed 27 May 2019.

study and exploration of (native) Emirati perspectives on human rights and establishing the first NHRI in UAE. The literature that exists predominantly reflects the perspectives of (external) international human rights organisations and media agencies, who have cited the UAE for its flagrant human rights practices and limited provisions. They argue that the UAE government is too tribal and anachronistic to cope with the reality of its meteoric development and the economic boom, accompanied by the mass migration of an international labour force which has introduced previously alien concepts to the nation and the region.

The onus of this study is to address the lacuna in the literature by capturing and analysing primary first-hand data on native Emirati perspectives on human rights and the formation of a NHRI in the UAE. This implies that the focus is on those involved in the process of developing, sustaining, and maintaining or ensuring human rights provisions in a professional capacity in the UAE. Consequently, the adopted methodological structure, the exploratory qualitative approach is undertaken with this appreciation. The exploratory aspect of the methodology demonstrates that this is a pioneering investigative study, which seeks to capture the direct perspectives of the ‘social actors’ and provide the impetus for further research into previously unidentified areas.

1.1 Research Questions

The objective of this thesis is to explore the establishment of a NHRI in the UAE. In order to analyse and decipher the narrative within the broader context of the UAE, this thesis explored the purpose for the establishment of a NHRI in the UAE through the following central research questions:

- 1. What aspects of the existing social, political and legislative milieu facilitate the establishment of an NHRI in the UAE?*
- 2. What is the theoretical purpose of NHRIs in accordance to the Paris Principles and their place in the Arabian Gulf Region?*

3. *What are the perspectives of the Emirati population and Human Rights activists on Human Rights Issues and on the need for an NHRI in the UAE?*
4. *What is required for the establishment of an NHRI in the UAE?*

In order to address the research questions, as per the requirements of the exploratory study, a comprehensive review of literature, alongside a series of six in-depth semi-structured interviews, will be conducted. The literature review is to be conducted through both a socio-legal approach and comparative legal analysis. The socio-legal approach explores law as a social phenomenon or type of social experience. Socio-legal scholars often characterise their approach as the ‘difference between law in book and law in action’¹⁰ Murphy and Morris argue that socio-legal research can reveal the political nature of laws and indicate whether laws have achieved their intended effect. This can assist in law reform proposals by linking law and policy goals with the experiences of groups who interact with the law. Socio-legal research is interdisciplinary, based on sociology, criminology, economics and politics and can investigate the social role of law or explore law as a form of power or a cultural practice.¹¹ Consequently, as the Paris Principles do not provide fixed, but rather general guidelines on establishing a suitable model, the socio-legal approach requires that the thesis examine the prevailing legal, political, economic system, historical and traditional experiences alongside a comparison of the region in which the State is located. The additional application of the comparative legal analysis approach provides insight with regards to observing how political, social and legal problems are resolved in other jurisdictions.

This does not imply that examples and standards from other nations are automatically appropriate for the UAE context. The researcher agrees with Siems that the transplanting of

¹⁰ C Morris and G Murphy, *Getting a PhD in Law*, vol 35 (Bloomsbury Publishing 2011).

¹¹ *ibid.*

foreign legislations and rules into domestic law should be undertaken with great care and consideration¹². In support, Legrand contends that in actual practice, it is difficult to import, borrow or transplant rules¹³. The thesis adopts the middle ground by adopting the best practices with consideration to the domestic UAE context. In order to capture soft data, the study will conduct a series of interviews. The data as derived from the dialogical interview process is analysed through the qualitative method.¹⁴

It should also be recognised here that this research project represents a personal response of a young native Emirati citizen to the fundamental issue of human rights in the UAE. The researcher, in working as a senior officer in the Sharjah Police Department in the UAE, is an example of the increasing awareness and interest in International human rights norms within governmental agencies at both the federal and regional levels. Furthermore, it should also be taken into consideration that the researcher is not seeking to establish a traditional comparative law thesis, which aims to demonstrate the similarities and differences that exist between institutions. The aim of this exploratory study is to initiate proactive dialogue and discussion about human rights and the potential to establish an NHRI to oversee their development in the UAE.

1.2 Organisation of Study

The thesis begins in chapter two by addressing the question, *what aspects of the existing social, political and legislative milieu facilitate the establishment of an NHRI in the UAE?* It does this by firstly introducing the discussion on the phenomenal socio-economic growth experienced by the UAE. The argument presented then examines the Constitution and Federal structure of

¹² M Siems, *Comparative Law*, vol 4 (1st edn, Cambridge University Press 2014) 4-23.

¹³ P Legrand, 'What "Legal Transplants"?' (2001) 55 *Adapting legal cultures* 67 cited in; D Nelken and J Feest (eds), *Adapting Legal Cultures*, vol 55 (Bloomsbury Publishing 2001).

¹⁴ See Chapter four

the UAE where it is demonstrated that the Emirate rulers have maintained their hereditary tribal and patrimonial structure, which is evident in the organisation of the State. The chapter then proceeds to argue that the formation of the Federal National Council (FNC) and the first election of the FNC members in December 2006 represent the intentions of the government to transform their society. It is asserted that despite some issues of note, the formation of the Federal National Council and the election process demonstrated the UAE's commitment to establish an election-based, democratic culture for the first time, ahead of its more established regional neighbours. The discussion then suggests that the rapid global economisation and growth had overwhelmed society, the consequences being the violation of human rights. The argument presented describes and critically analyses the formal methods of the political process to safeguard the provisions for human rights. It is noted that the UAE Constitution contains measures to guarantee the freedoms and rights to all citizens. Finally, the chapter concludes by noting that the UAE government is currently seeking to establish its own NHRI by reviewing the provisions afforded to the Federal National Council.

Chapter three is focused upon tackling the core objective and question of *what the theoretical purpose of NHRI was in accordance to the Paris Principles and its place in the Arabian Gulf Region?* Discussion is initiated with a clear definition of the notion and concept of NHRI, as proposed by the UN. The chapter then analyses the core principles of functionality for NHRIs as recommended by the Paris Principles. The discussion then explores the core objective of the chapter by examining the jurisdiction and investigatory powers afforded to NHRIs by the Paris Principles. This also includes its role in investigating individual cases and bringing them before parliament and the compliance of NHRIs with the Paris Principles. The argument stipulates that the Paris Principles must be analysed from a developmental perspective, whereby they become identified with a set of prerequisites that must be attained for the NHRI to function with its designated purpose. The final section of the chapter proceeds to discuss the

establishment of NHRIs in the broader Arab world. It is argued here that, despite the establishment of the NHRIs, there appears to be a universal crackdown on human rights activists in many of the Middle Eastern and North African nations. The chapter concludes by observing that the establishment of a successful NHRI is dependent upon a democratic civil society that understands the role of social and political activism.

The objective of the fourth chapter is to investigate the question: *What are the perspectives of the Emirati population and Human Rights activists on Human Rights Issues and on the need for an NHRI in the UAE?*

The chapter is organised into three main sections. The first section begins by examining the ‘exploratory’ research method, which is used to conduct the fieldwork, the research design developed upon the premise that the sample population from which the data is to be generated and collated are all individuals that are in some capacity either directly responsible for the preservation of human rights provisions, experienced violation of their human rights provisions, or are commentators, jurists or activists in the UAE. The discussion will then move on to the use of the Semi-Structured Interviews alongside Document Analysis as the main data collection instruments to extract data from the study participants and the review of literature. This section concludes with a discussion on the use of the deductive approach to evaluate the data and its compliance with the recommendations mandated by the British Educational Research Association¹⁵. The second section of the chapter will begin by discussing the adoption of an ‘exploratory qualitative case study’ to be implemented for data collection and analysis. Established themes will be explained and the subsequent data analysis.

¹⁵ BERA, ‘Ethical Guidelines for Educational Research’ <https://www.bera.ac.uk/wp-content/uploads/2018/06/BERA-Ethical-Guidelines-for-Educational-Research_4thEdn_2018.pdf?noredirect=1> accessed 1 November 2018.

The third and final section of the chapter will present and discuss at length the two major findings from the data analysis phase.

The fifth chapter seeks to address the core objective and question of *what is required for the establishment of an NHRI in the UAE?* The chapter begins by introducing the mechanisms used to propagate the discourse on human rights norms. The focus of the chapter is then exclusively upon the UAE, whereby it is noted that the UAE has recognised the necessity and value of human rights through its international commitments. This is further supported by the data collected in chapter four where the data derived from the interviews testifies to UAE's international commitments and its active process to change and implement policies that adhered to these international standards. The chapter then moves to discuss the notion of radical culture universalism (normative commitments), which argues for human rights discourse to be focused upon culture specific values and the Spiral Model, which postulates that change is possible in repressive governments as a result of a combination of pressures.

The final section of the chapter seeks to address the possibility for the formation of NHRI in the UAE. It is argued that there exists no homogenous model or structure for an ideal NHRI. Accordingly, due to the inherently unique cultural contexts; the NHRI should reflect the society in which it is established. It is argued that the most suitable type of NHRI for the UAE would be the more pluralistic based institution, such as the Human Rights Commission, which adheres to the fundamental standards of the Paris Principles.

The sixth and final chapter provides the conclusion to the thesis and is written to express the researcher's personal perspective and summarise the entire study and its findings. The argument stipulates that the major findings of the study are encompassed in the appreciation of the culture and tradition of the region. The government, it is argued, is an expression of that context, therefore, the government is not only central to the formation of the NHRI; in its own existence it encloses the very purpose of government, safeguarding their citizens' fundamental

human rights. The argument then contends that the NHRI to be established in the UAE should be focused upon an educational endeavour. The purpose of the NHRI is broadly objectified, in its authority to contribute to schools and training curriculums alongside social policy debates. The overarching aim of the NHRI at this stage is to transform UAE society through the understanding and appreciation of international human rights norms alongside indigenous beliefs and customs. In summation, it is argued that the potential NHRI should be granted a unique special constitutional status within the overarching political structure of UAE in line with the Paris Principles. This could empower it to affect all of UAE society as a medium for education and awareness of human rights norms with the funding and support provided by the UAE government as an indicator of its sincerity and promised progress in its county's human rights.

Chapter 2

Aspects of the Existing Social, Political and Legislative Milieu facilitating the establishment of an NHRI in the UAE

The UAE has been criticised by international non-governmental organisations and the media for its human rights record and provisions. Until recently this issue has received little attention in the UAE, whereby constitutional rights are almost exclusively viewed in terms of the individual's relationship with the State and its institutions. However due to the substantial economic growth of the domestic UAE economy and the mass migration of an International labour force, the governmental policies and practices of the UAE government are under far greater International scrutiny. Although the UAE has tended to favour its traditional tribal culture over international human rights discourse, it has acknowledged this shortcoming and is working to implement the necessary changes through both its informal and formal political processes. This chapter seeks to explore one of the core questions of this thesis in that: *What aspects of the existing social, political and legislative milieu facilitate the establishment of an NHRI in the UAE?*

2.1 The Socio-Political Status Quo of the UAE

The unearthing of oil, together with the lifting of trade barriers, has opened the UAE to the outside world and converted the once 'small sheikhdoms, subsisting on pearling, fishing, herding and agriculture, to a modern state with a high per capita income and substantial trade surplus'¹⁶. It has become an attractive prospect for foreign investments, as multinational corporations investing in the UAE benefit from reduced or minimal utility costs and full ownership of their businesses in the free trade zone. They are also exempt from taxes in all

¹⁶ E Linden, *Focus on Terrorism*, vol 7 (Nova Publishers 2006) 65.

sectors (excluding banking) and encounter no restrictions on the repatriation of capital and the free movement of labour.¹⁷

The subsequent influx of a sizable expatriate global labour force has had a profound effect upon the political stability and socioeconomic development of the UAE. According to the 2010 census, there are 8,264,070 inhabitants of the UAE; the vast majority (7,316,073) are of foreign origin, with the native Emiratis only accounting for 11% (947,997). This radical discrepancy has forced UAE policy makers to reevaluate their commitment and obligations towards these foreign economic migrants to the nation.¹⁸

From a historical perspective, the notion of citizenship is a recent phenomenon. It has only emerged after the discovery of oil, the arrival of major corporations investing in the region and the subsequent migration of a large expatriate population. Loyalty to tribe and family was conceived to be of far greater importance than allegiance to artificial borders or territory across the Arabian Peninsula. However, shortly after obtaining independence, the UAE formally restricted the possibility of obtaining citizenship. Article 4 A1 in the Nationality Law states¹⁹ that:

Any person who has preserved its normal residence-ship in the State since 1925 is to be registered in the register of Nationality according to a statistical declaration of such a person's family. The children of such persons and children of their male children resident in the state since birth shall also be registered²⁰.

¹⁷ Ministry of Economy, O Amer, 'The Economic and Social Developments in the UAE 2000-2005' <<http://www.economy.gov.ae/English/Pages/default.aspx>> accessed 15 April 2016.

¹⁸ Committee on the Elimination of Racial Discrimination (CERD) , 'Report Submitted by State Parties in Accordance with Article 9 of the Convention on the Elimination of Racial Discrimination, UAE' (2009) UN Doc CERD/c/ARE/12-17 para 43.

¹⁹ 'UAE Cabinet Decision No.2 of 1972, On Issuing the Executive Regulation for the Law of Nationality and Passports' (1972) 5 *Lexis Middle East Law*.

²⁰ *ibid*.

Kapiszewski observes that it was mandated to increase the ‘size of the nation’s citizenship, as Abu Dhabi, in particular, wanted to enhance its political weight against the other smaller Emirates’²¹. Although non-localised Arabs have received citizenship, it is an exception rather than the norm and even the political rights of the naturalised citizens are curtailed and restricted. Davidson argues that with regards to the status of non-citizens in the country, they are ineligible ‘to participate in the political process’²² as a result of the protectionist tribal heritage of the nation. As discussed later in Section 2.1, the political context in which the UAE was formed is based upon a traditional tribal heritage, which is administered via a hybrid, neo-patrimonial system of government²³ with the extraordinary levels of socio-political and economic development attained by the UAE having led to greater levels of international scrutiny upon its human rights record.

Deutsch²⁴ and Lerner²⁵ argue that traditional political systems dominated by patriarchal or patrimonial authorities will eventually transform due the rise of modernisation. Beblawi²⁶ supports this argument by stipulating that the great socio-economic growth experienced by these Rentier States²⁷ is due to the ownership of substantial oil revenues within their jurisdictions. However, analysts agree that this profitability would eventually translate into the development of schools, universities, hospitals and formal government institutions. These would in turn lead to the formation of a new middle class that would ultimately be dissatisfied

²¹ A Kapiszewski, *Nationals and Expatriates: Population and Labour Dilemmas of the Gulf Council States*, vol 51 (Ithica Press 2001) 51.

²² C Davidson, ‘The United Arab Emirates: Prospects for Political Reform’ (2009) 15 *Brown J. World Aff.* 118.

²³ *ibid.*

²⁴ Karl W Deutsch, ‘Social Mobilization and Political Development’ (1961) 55 *American political science Review* 493, 514.

²⁵ D Lerner, *The Passing of Traditional Society: Modernizing the Middle East*. (Free Press 1961).

²⁶ H Beblawi, *The Rentier State in the Arab World* (1990) in ; G Luciani (ed), *The Arab State*, vol 24 (Routledge 1990).

²⁷ Beblawi (n 26).

with its non-participatory political structures²⁸. In consequence, investors, entrepreneurs, and an increasing number of stakeholders in the UAE would demand greater transparency and accountability. Conversely, the National Report presented to the Human Rights Council by the UAE government²⁹ argues against the absolute castigation and ridiculing of initiatives to expand the formal participation of its citizens through semi-elected councils. The report contends that despite the inability of the UAE to attain immediate desirable results, it nevertheless demonstrates the commitment of the UAE leadership to the development and progress of their societies. So it is reasoned that genuine political liberalisation will develop naturally in relation to UAE's rapid economic development, which may serve as a catalyst for political reform. Davidson³⁰ argues that the rise of the non-oil sectors has already led to the UAE as premier destination for global events, tourism and the emergence of a large-scale urban society. Furthermore, UAE's early adoption of technology and telecommunications makes it a regional leader and global hub for online commerce³¹. The discussion concurs with Khalaf's³² observation that the impact of modernisation upon the region has already replaced poverty, illiteracy and illnesses with high incomes, free services in education, health, housing, sanitation and infrastructure.

²⁸ Deutsch (n 24) 493-514.

²⁹ 'The UAE National Report Presented In Accordance with Article 15 (a) of the Appendix to the Decision of the Human Rights Council 1/5' <http://www.uae-embassy.org/sites/default/files/pdf/UAE_MinistryofLabour_National_Report_to_UN.pdf> accessed 16 December 2016.

³⁰ Davidson (n 22).

³¹ *ibid.*

³² S Khalaf, 'Poetics and Politics of Newly Invented Traditions in the Gulf: Camel Racing in the United Arab Emirates' (2000) 39 *Ethnology*, 243-261.

2.2 Foundations and Formation of the UAE

The UAE is a federal nation state, comprised of seven previously independent Sheikhdoms³³. Preceding 1971, these Sheikhdoms although independent, were collectively referred to as the Trucial Sheikhdoms, as they were signatories to a protectorate treaty with the Colonial British Empire.

Zahlan³⁴ asserts that the greatest impact of the signed treaties was that it allowed the Trucial States to exist in an international bubble, whereby the British managed all the external affairs of the States. This isolation allowed the leaders to develop their state craftsmanship and to establish core legislative and bureaucratic structures to function as an independent nation state.

A further crucial effect of this isolation was the protection and reinforcement of Arab tribal customs and heritage. Heard-Bey³⁵ maintains that this continuation and strength of the tribal nature of the people was a necessity for survival. Due to the climatic and geographic structure of the Arabian Peninsula, each tribe was specialised to harness its own industry and economic activities as a group. In the Arabian Gulf the predominant industry for commerce was agriculture, camel, goat, horse breeding, fishing and pearling. Heard-Bey³⁶ expands this point with the example of the two most dominant tribes in the present-day United Arab Emirates. The Qawasim tribe from the mountains in the desert outside Sharjah and along the entire coastlines of the Arabian Peninsula were specialised in pearling and fishing. Whilst the Bani Yas, split into two families, the al-Nahyan, traditionally the rulers of Abu Dhabi were date

³³ Abu Dhabi (Capital of the UAE: est. 1761), Ajman (est. 1816), Dubai (est. 1833), Fujairah (est. 1876), Ras Al-Khaimah (est.: 1708), Sharjah (est.: 1727), Umm Al-Quwain (est.: 1775) RS Zahlan, *The Origins of the United Arab Emirates: A Political and Social History of the Trucial States* (Routledge, Abington 1978) 1–15.

³⁴ RS Zahlan, *The Making of the Modern Gulf States: Kuwait, Bahrain, Qatar, the United Arab Emirates and Oman*, (Unwin Hyman 1989).

³⁵ FH Bey, *From Trucial States to United Arab Emirates: A Society in Transition*, (Longman Group 1996).

³⁶ *ibid* 68.

farmers in the desert and the Maktoum, rulers of Dubai since 1833, were fishermen by heritage and tradition. Furthermore, many wandering Bedouin tribes of the desert also belonged to either the Qawasim or the Bani Yas. Therefore, Heard-Bey³⁷ argues that the foundations for the eventual independent nation state of the UAE are based upon a tribal confederation.

Zahlan observes that, in addition to these tribal affiliations and practices, ‘The entry of the oil companies in search of concessions soon after World War I... became a major milestone in the socio-political and economic evolution of the region...’³⁸ Predominantly Western oil corporations had to work with the rulers of the different Trucial States who owned the raw natural resources within their political boundaries. Although this further enhanced the credibility and legitimacy of the rulers, it also made the oil corporations ‘agents of major change...’³⁹ Since the socio-politico tribal society was focused solely upon the authority over people rather than over territory or boundaries, the precise demarcation of each Emirate’s boundaries had yet to be defined⁴⁰.

With the discovery of oil in the region from as early as 1932 (Bahrain) and then the initiation of major exploration and discovery of oil in Abu Dhabi (1959)⁴¹ and Dubai (1966)⁴² every Emirate sought to cement and extend its territorial claims. Heard-Bey⁴³ contends that when the British declared their intentions in 1968 to terminate its special protective relationships with the Trucial Sheikdoms by 1971, the tribal rulers of these States were taken aback. The resolution presented by the British to negate these possible threats was to unify these small

³⁷ *ibid* 32.

³⁸ Zahlan (n 34) 16.

³⁹ *ibid*.

⁴⁰ Bey (n 35) 56.

⁴¹ MQ Morton, ‘The Abu Dhabi Oil Discoveries’ (2011) 8 *GeoExPro Magazine* pt 3
<<http://www.geoexpro.com/articles/2011/03/the-abu-dhabi-oil-discoveries> > accessed 15 April 2017.

⁴² RE Owen, ‘One Hundred Years of Middle Eastern Oil’ (2008) 24 *Middle East Brief* 1.

⁴³ *ibid*; MC Hudson (ed), *Middle East Dilemma: The Politics and Economics of Arab Integration* (Columbia University Press 1999).

independent sheikhdoms into a single nation state. Hence, on the 18th of February 1968, the rulers of Abu Dhabi and Dubai convened on the agreed demarcated borders between their emirates and declared the unification of their respective States. Furthermore, they sought to invite the leaders of the other Sheikhdoms establishing the Trucial States encompassing Qatar and Bahrain. However, due to significant differences between the States, the process of unification proved to be unsuccessful with regards to the union with Bahrain and Qatar. Henceforth, on the 14th August 1971, Bahrain declared its independence, with Qatar following on the 1st of September 1971. The remaining emirates, apart from Ras al- Khaimah, agreed upon a provisional constitution and joined Abu Dhabi and Dubai on 2 December 1971. Ras al- Khaimah joined the federation soon after on the 10th of February 1972.⁴⁴

2.3 The Federal Structure and Legislative System of the UAE

Iliya Harik's classification of Arab states in accordance to their established authority, identifies UAE as a secular State within a traditional hierarchical organisational structure in which 'the chieftain principle is paramount, implying that the ascendancy of the ruling dynasty has been continuously on the increase to the present. Nowhere did religious power manifest itself, nor was it associated with the ruler...'⁴⁵

Herb⁴⁶ understands the modern bureaucratic structure of the UAE to be defined by the dynastic monarchies or ruling families, which have in turn become the governments. This, he argues, implies that the tribal and family lineages have become formalised to uphold the most high-profile postings in the national government. The federal constitution establishes that the

⁴⁴ Hudson (n 43) ch 1.

⁴⁵ I Harik, 'The Origins of the Arab State System' (1990) 24 *The Arab State* 1 in; Luciani (n 26).

⁴⁶ M Herb, *The Wages of Oil: Parliaments and Economic Development in Kuwait and the UAE* (Cornell University Press 2014) 107-144.

President of the UAE holds the position of Sheikh of Abu Dhabi, whilst the Ruler of Dubai also holds the office of Prime Minister of the UAE.

Herb⁴⁷ argues that before a sheikh passes away, he recommends a family member or son to succeed him. However, the 'family as a whole retains the consensual power to remove a ruler and replace him with another member of the family, if he does not adopt policies that are in the interests of the family'⁴⁸. Al-Suwaidi⁴⁹ summarises the nature of the political system in the UAE as being:

Predicated upon the old Lockean principle of the explicit and implicit consent of the governed... in which the government's legitimacy rests upon a universal acceptance of both its form and those who lead it. Whether it is at the local or the federal level, UAE leaders boast a sense of legitimacy that no one, even those on the fringes of the political process, doubts or disputes⁵⁰.

2.3.1 The UAE Constitution 1971

The objectives of the UAE Federation state that:

The Federation aims to maintain its independence and sovereignty, safeguard its security and stability, defend its existence or the existence of its member emirates from any act of aggression, and protect the rights and responsibilities of the people of the Federation. It aims to work in close co-operation with each of the emirates for their common benefit in realising these objectives and promoting their prosperity and progress in all fields to provide a better life for all citizens, ensuring mutual respect by each emirate for the independence and sovereignty of the other emirates in matters related to their internal affairs within the framework of the Constitution... Each emirate of the UAE shall handle all authorities that are not assigned by the Constitution to the Federation. Moreover, each emirate shall contribute to building and protecting the Constitution as well

⁴⁷ Herb (n 46).

⁴⁸ AL Aartun, 'The Political Economy of the United Arab Emirates: An Analysis of the UAE as an Oil Rentier State' (PhD Thesis, University of Oslo 2002).

⁴⁹ A Al-Suwaidi, 'The United Arab Emirates at 40: A Balance Sheet' (2011) 18 Middle East Policy 44.

⁵⁰ *ibid* 45.

as benefiting from its services. All member emirates of the Federation will strive to coordinate their legislatures in all areas to achieve standardization⁵¹.

The provisional constitution, enacted on the 2nd of December 1971 for a proposed period of five years, was eventually succeeded by a permanent constitution comprising 152 articles⁵² in 1996.⁵³

In order to facilitate the unification of the Emirates and establish a national identity through the legal, political and social channels, federal legislation effectively superseded the local or tribal laws. Consequently, Articles 150 and 151 of the constitution were utilised as tools for national identity formation. This is evident from an analysis of Articles 120 and 121 of the Constitution, which permit the federal government to maintain full jurisdiction and responsibility for areas ranging from: aviation, banking, citizenship, currency, defence and security, education, foreign affairs, immigration, labour, licensing, postal service, public health, telecommunications, territorial waters and major legislation relating to penal, civil, commercial and company law alongside the extradition of criminals. The terms of the new permanent constitution allude to the emergence of a more inclusive society, whereby each individual emirate is in control of ‘developments in civil aviation, oil, internal security, finance and investment, and economic policy’⁵⁴.

⁵¹ UAE GOV, ‘Federal System’ (*GOV Online Portal*) <<https://uaecabinet.ae/en/federal-system>> accessed 17 December 2017.

⁵² The Constitution is divided into ten sections: *The federation, its constituencies and principal aims; The fundamental social and economic basis of the federation; Public freedom, rights and duties; The federal authorities; Federal legislations, decrees and authorities in charge; The emirates; Allocation of legislative, executive and international jurisdiction between the federation and the emirates; Financial affairs of the federation; Armed forces and security forces; Final and transitional provisions*

⁵³ In 1996, the Federal Supreme Council approved two amendments to the provisional Constitution, making it permanent and naming Abu Dhabi as the capital of State ‘Government and Political System @ Emirates.Org’ (2012) <<https://www.emirates.org/gov.html>> accessed 15 April 2017.

⁵⁴ The Economist, ‘United Arab Emirates’ (Country Fact File)’ <<http://country.eiu.com/united-arab-emirates>> accessed 16 April 2017.

2.3.2 Federal Structure

Under Article 45 of the Constitution the federal structure is organised according to the federal authorities outlined in the following table 2.1⁵⁵

FEDERAL STRUCTURE OF THE UAE⁵⁶	
Federal Authorities	Description of Role/Function
The Supreme Council	<p>This is the highest federal authority in the UAE. It consists of the leaders of the seven emirates. The head of this council is the President of the UAE.</p> <p>Article 47 of the Federal Constitution states that the Supreme Council has the power to decide the general policy of the federation, keep control over the affairs of the Union and ratify treaties and international agreements.</p> <p>The Council elects the President and the Vice President of the UAE (both for a five-year term) and approves the appointment of the Council of Ministers.⁵⁷</p> <p>The President of the Union presides over the Supreme Council and directs its discussions (Article 54, paragraph 1), terminate its sessions, sign Union laws and supervise the implementation of Union laws.</p> <p>The President appoints the Prime Minister and diplomatic representatives of the Union</p> <p>The President represents the Union and exercises the right of pardon and commutation of sentences (Article 54).</p>
The Council of Ministers	<p>This is the executive authority of the Union.</p> <p>Chaired by the Prime Minister of the UAE and each Emirate has at least one minister.</p> <p>Article 60 of the Federal Constitution defines the responsibilities of the Council:</p> <ul style="list-style-type: none"> ○ The power to implement the general policy of Supreme Council ○ Initiate drafts of federal laws ○ Administer the treasury and budget of the Union
The Federal National Council (Parliamentary Body)	<p>The Council has a consultative role in reviewing the national legislature (<i>Majlis Al Ittihad Al Watani</i>)</p> <p>Reviews draft federal laws before they are submitted to the President and the Supreme Council.</p> <p>It consists of 40 members from each Emirate with seats assigned as follows:</p>

⁵⁵ UAE Constitution 1971, art 45

⁵⁶ All Articles and information are taken from UAE Constitution, 1971

⁵⁷ 'UAE Yearbook 2009' (Printable PDF Brochure)

<http://www.uaeinteract.com/uaeint_misc/pdf_2009/> accessed 17 April 2017.

	<p>Abu Dhabi: 8; Dubai: 8; Sharjah: 6; Ras al-Khaimah: 6; Ajman: 4; Umm al-Qaiwain: 4 and Fujairah: 4</p> <p>Under Article 77 the members represent national as opposed to local interests.</p>
<p>The Federal Supreme Court (Judiciary Body)</p>	<p>The Supreme Court is responsible for upholding the constitution.</p> <p>It consists of a president and up to five judges.</p> <p>Articles 94-109 of the Federal Constitution address the role of the Judiciary body.</p> <p>The federal law supersedes local laws in a conflict of legislature.</p> <p>Article 99 stipulates that the Supreme Court has jurisdiction over the interrelationship between the emirates and between the individual emirates and the Union.</p>
<p>Local Government (Emirate)</p>	<p>Under articles 116 and 122 the Constitution allows local governments to pass local laws</p> <p>There are two restrictions:</p> <ul style="list-style-type: none"> ○ These local authorities shall not enact laws within the federal legislature grounds, ○ Local law cannot conflict with federal law. <p>In this occurrence, the local law is invalidated.</p>

Table 2-1 Federal Structure of the UAE

2.3.3 Reform of the Federal Structure

The political system of the UAE government according to the official perspective⁵⁸ is a reflection of the pre-federation heritage of the region. The principle of *Shura* or consultation implied that the individual leaders of tribes and the emirates worked together to reach mutually acceptable decisions. This ensured relative peace, prosperity and the eventual formation of the UAE federation in 1971. The government argues that the same principle of consultation is found at the very nexus of the UAE's Constitution and within the federal authorities vested with the power and influence to implement its articles.

The Federal National Council or *Majlis Al Ittihad Al Watani* was formed specifically to represent the broad concerns of the Emirati citizenship. Articles 89-92⁵⁹ of the UAE Constitution state that the Federal National Council has both a legislative and supervisory role and is responsible for examining, and amending all proposed federal legislation, and may summon for questioning any federal minister regarding their performance.⁶⁰

After considerable reformation, the first public election of the Federal National Council members in December 2006 represented the first steps towards the political liberalisation of the federal structure. The UAE cabinet approved the President's proposal to establish an electoral college of notables (selected by both the rulers and advisers) in each emirate to elect half and appoint the other half of the members to the Federal National Council. Under Article 69 of the Constitution, the eligibility for Federal National Council membership is the responsibility of

⁵⁸ UAE GOV, 'Federal National Council Structure and Info' <<https://government.ae/en/about-the-uae/the-uae-government/the-federal-national-council-%20%E2%80%8E>> accessed 17 December 2017.

⁵⁹ UAE Constitution, art 89-92

⁶⁰ The official government website of the FNC states that its responsibilities include: Passing, amending or rejecting federal draft laws including financial bills; Examining the Annual General Budget draft law and the draft law of the final accounts; Discussing international treaties and agreements; Discussing general subject pertaining to the FNC offering recommendations; The FNC is a member of the International Parliamentary Union (IPU) as well as the Arab Parliamentary Union (APU).

‘Each emirate... to determine the method of selecting the citizens representing it in the Federal National Council’⁶¹.

Furthermore, there are specific rulings that are applicable to potential and active Federal National Council members. Articles 70 and 71 stipulate that Federal National Council members must be Emirati citizens and permanent residents of the emirate which they represent in the Federal National Council. There are also age restrictions such as being not less than 25 years of age; possessing a reputable civil record; being literate and not an incumbent of a current post or office in another ministry. Although candidates have the right to run for elections in their respective emirates, the discretion as to eligibility is afforded to the rulers. They effectively dictate the representative demographics of the members and the terms and conditions of the voters (e.g. gender). Firstly, the voters must be registered in the ‘family book’, *Khulasat Al Qaid*, which verifies the candidates’ heritage and establishment in the emirate; the voters must present valid Emirati ID and under the Single Vote system each individual voter is granted one vote to cast for one candidate. The twenty candidates with the highest votes are automatically elected to become members of the Federal National Council.

However, despite the authority delegated to individual emirates and their rulers, the actual planning and supervision of the election process is conducted by the National Election Committee. This was created as a result of a resolution by H. H. Sheikh Khalifa bin Zayed Al Nahyan in 2006 and oversees the regulations and assigns the dates for elections. The National Election Committee is responsible for the polling stations inside the UAE and the polling stations in UAE embassies and consulates worldwide. Three elections have been held since 2006. The first elections of Federal National Council were conducted in December 2006 with the authority of Resolution No. 3 of 2006, issued by the President of the UAE. Notably, Emirati women demonstrated a strong presence in these elections by taking twenty-two percent of the

⁶¹ UAE Constitution, art 69

total seats, alongside the election of the first woman ‘to the Federal National Council and the appointment of nine female members’⁶².

However, Davidson observes that despite these efforts ‘...the steps that have been taken to reform the Federal National Council have thus far backfired and, if anything, have made the ruling establishment warier of future adjustments...’⁶³ Firstly, the rulers of the emirates chose only 6,689 UAE citizens from a population of roughly 900,000 citizens and 4.7 million foreigners to vote or stand for the 20 elected seats in the 40-seat Federal National Council. Out of these there were only 1,189 women and only 60 percent of the voters actually cast their ballots. Al-Suwaidi described the elections as ‘a setback that showed clear tendencies towards tribalism’⁶⁴. Davidson in agreement notes ‘...By the time the elections were held in late 2006... the human rights progress was scant... with authorities censoring and harassing human rights activists...’⁶⁵ In response to this criticism, the President of the UAE introduced the adoption of amendment number 1 in 2009.⁶⁶ This was created with the intention to increase the Federal National Council’s powers and establish a fixed duration ‘for the Council members from two to four years under the constitutional amendments to Article 72.’⁶⁷

There was also an increase in the duration of the annual sessions to more than seven months under Article 78. Under Article 6868 of the Federal Constitution, the members were to be proportionally represented from each Emirate in accordance with their population. The government conducted a second Federal National Council election on 24 September 2011 and

⁶² ‘UAE Yearbook 2009’ (Printable PDF Brochure)’ (n 57).

⁶³ Davidson (n 22) 120.

⁶⁴ Al-Suwaidi (n 49) 45.

⁶⁵ Davidson (n 22) 120.

⁶⁶ United Nations Human Rights Council (UNCHR), ‘Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21’ (2013) UN Doc A/HRC/WG.6/15/ARE/3.

⁶⁷ UAE Constitution, art. 72

⁶⁸ UAE Constitution, art 68

claimed that the size of Electoral College grew to 135,308 voters with 85 women contesting the elections. The ‘third and most recent election took place in October 2015 and according to official governmental figures the Electoral College increased to 224,279 voters, with women representing forty-eight percent of total voters’⁶⁹.

The reformed Federal National Council has also addressed many diverse issues such as: the restrictions on use of internet services; mixed marriages; protection of environment; licences for dog owners and banning private ownership of wild and exotic animals; raising pensions for police and military personnel who retired before 2008; providing housing allowances instead of housing loans to Emiratis above 60 who earn less than 15,000 AED per month; the rising number of deaths from drug use; the lack of rehabilitation centre beds; specialist educational programmes in schools; and the concern about Emiratis marrying foreign women.

However, Al-Suwaidi⁷⁰ states that there has been increasing discontent and criticism of the Federal National Council with many of its members and citizens claiming it to be largely ineffective.⁷¹ It is contended, as per Davidson’s⁷² perspective, that despite the Federal National Council being incapable of making more substantive interventions (such as diverging from a certain minister’s opinion; price of petrol or the cultural content of terrestrial television) the introduction of the election process provided the Emirati citizens with the opportunity to engage with the decision making vehicle of government and establish an election-based, democratic culture for the first time, ahead of its more established regional neighbours.

⁶⁹ UAE GOV, ‘Federal National Council Structure and Info’ (n 58).

⁷⁰ Dr. Jamal Sanad Al-Suwaidi is a UAE intellectual and strategic expert, and is the Director General of the Emirates Center for Strategic Studies and Research (ECSSR).

⁷¹ Al-Suwaidi (n 49) 45.

⁷² Davidson (n 22) 120.

2.4 Contemporary Human Rights Challenges

Human Rights Watch affirms that activists campaigning for human rights in the UAE and critics of the government are liable to be charged with harassment, and subjected to criminal prosecution resulting in custodial sentences.⁷³ Moreover, contrary to international principles, Human Rights Watch claims that UAE's penal code allows the government to criminalise speech based on broad content restrictions.⁷⁴ This is further supported by the recent annual Amnesty International Report which focused on UAE's poor record and the government's restrictive approach to 'freedom of speech and assembly'.⁷⁵ The reports by Human Rights Watch and Amnesty International note that the UAE is in violation of the Universal Declaration of Human Rights, Article 19 and 20 which state that all signatories are bound to acknowledge the freedom of expression, assembly and association⁷⁶. World Press Freedom Index placed the UAE at 119th in 2016 for the freedom afforded to the Press.⁷⁷

The Amnesty International annual report⁷⁸ also drew attention to the fact that the authorities used provisions of the Penal Code, the 2012 cybercrime law and the 2014 anti-terrorism law to arrest, prosecute and imprison critics. In July of the same year, the enactment of a new law on combating discrimination and hatred further eroded rights to freedom of expression and

⁷³ Human Rights Watch, 'World Report 2012: Rights Trends in World Report 2012: United Arab Emirates' (*Human Rights Watch*, 2012) <<https://www.hrw.org/world-report/2012/country-chapters/united-arab-emirates>> accessed 16 April 2017.

⁷⁴ *ibid.*

⁷⁵ 'Amnesty International Report 2016/17' [2017] Amnesty International Ltd 379, 379-381.

⁷⁶ Universal Declaration of Human Rights (UDHR): Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Article 20: Universal Declaration of Human Rights. 1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association. UDHR (adopted 10 December 1948) UNGA Res 217 A (III) (UDHR) art 19-20

⁷⁷ Reporters Without Borders, 'United Arab Emirates' (2016) <<https://rsf.org/en/united-arab-emirates>> accessed 29 May 2019.

⁷⁸ 'Amnesty International Report 2016/17' (n 75).

association. The new law defines hate speech as ‘any speech or conduct, which may incite sedition, prejudicial action or discrimination among individuals or groups’⁷⁹ which is punishable by a minimum of five years imprisonment. It also empowers the courts to order the disbandment of associations deemed to provoke such speech and imprison their founders for a minimum of 10 years⁸⁰.

The United Nations Special Rapporteur observes that ‘the right to freedom of speech and of peaceful assembly’⁸¹ is part of human nature. The organisation advises that the most viable methods for this is through the election process, where citizens have a right to express their opinions, join trade unions, elect leaders to represent their interests and hold them accountable at national governmental elections. Furthermore, it advises that assembly and association rights are a prerequisite not only for a legitimate democracy, but also for a just society. The right to freedom of peaceful assembly is the right to gather publicly or privately and collectively express, promote, pursue and defend common interests. Nation States must refrain from unduly obstructing their citizens’ right to freedom of association and respect the privacy of associations.⁸²

However, it would appear that the Federal Constitution of the UAE actually supports these recommendations as can be deciphered from Articles 30 and 33,⁸³ which state: ‘Freedom to hold opinions and express them orally, in writing or by other means of expression shall be guaranteed within the limits of the law’⁸⁴ (Article 30) and ‘The freedom of assembly and the

⁷⁹ *ibid.*

⁸⁰ *ibid.*

⁸¹ UNHRC, ‘The Rights to Freedom of Peaceful Assembly and Association’ (2016) UN Doc A/HRC/RES/32/32 .

⁸² *ibid.*

⁸³ UAE Constitution, Art. 30 and 33

⁸⁴ UAE Constitution Art 30

freedom to hold meetings shall be guaranteed within the limits of the law'⁸⁵ (Article 33)

The Amnesty International report on Human Rights 2008⁸⁶ argues that although the Federal Constitution vouchsafes the freedoms due to individual citizens and groups, the current legislative norms and practices deems such freedoms an anathema to the nation's very existence. This is evident from the joint report submitted to the UN Universal Periodic Review⁸⁷ by nine stakeholders. ⁸⁸The stakeholders observe that Islamists and political dissenters criticising the political structure or human rights record of the UAE are often arrested, arbitrarily detained, face ambiguous charges and/or receive partial trials. Human Rights Watch, in particular, notes that political parties are prohibited in the UAE and that rights of assembly and association are limited. They note further that although the government has granted Non-Governmental Organisations representatives permission to visit, it is extremely controlled and limited in its scope⁸⁹ leading the stakeholders to argue that despite the stipulations made in the Federal Constitution, independent Non-Governmental Organisations and trade unions are not tolerated. A major aim of the joint report submitted to the United Nations Human Rights Council by the nine stakeholders⁹⁰ was to request the UAE to respect

⁸⁵ UAE Constitution Art 33

⁸⁶ Amnesty International, *Challenging Repression: Human Rights Defenders in the Middle East and North Africa*. (Amnesty International Ltd 2008)

<<http://www.amnesty.org/en/library/asset/MDE01/001/2009/en/3fe5c240-d77d-4e15-8957-5928387d1093/mde010012009eng.pdf>> accessed 29 May 2019.

⁸⁷ Amnesty International, 'UAE: Crackdown on Fundamental Freedoms Contradicts Human Rights Commitments' [2013] UN Universal Periodic Review.

⁸⁸ These stakeholders included: *Amnesty International (AI)*; *Alkarama (Geneva, Switzerland)*; *Front Line Defenders (FLD: The International Foundation for the Protection of Human Rights Defenders) (Dublin, Ireland)*; *Global Initiative to End All Corporal Punishment of Children (GIEACPC)*; *The International Centre for Supporting Rights and Freedoms (ICSRF) (Cairo)*; *Islamic Human Rights Commission (IHRC) (London, United Kingdom)*; *JS1 Joint Submission 1 (Human Rights Watch (HRW))*; *Network for Human Rights Information (NHRI)*; *Gulf Centre for Human Rights (GCHR)*; *Index on Censorship (IC)*; *Organization for Defending Victims of Violence (ODVV) (Tehran)*; *Reporters without Borders (RWB) (France)*.

⁸⁹ Human Rights Watch (n 73).

⁹⁰ Amnesty International, 'UAE: Crackdown on Fundamental Freedoms Contradicts Human Rights Commitments' (n 87).

the international human rights laws governing Non-Governmental Organisations. Amnesty International and Alkarama called upon the UAE to amend the 2008 Law on Associations, including its Article 16 to ensure that Non-Governmental Organisations can function free from State interference. Alkarama further lobbied the UAE government to reinstate the boards of associations, which had been removed under this law. Whilst the International Centre for Supporting Rights and Freedoms (Cairo) requested that the legislation is amended to allow for the freedom to establish associations outside of the official state sanctioned bodies. This should also be supported by adopting the appropriate legislation to ensure the protection of human rights proponents in the conduct of their work.⁹¹ However, some international observers such as the US Department of State on Human Rights claims that UAE's judiciary and court system provides for a substantial obstacle in the reformation process.

By tradition the... diwans, have maintained the practice of reviewing... criminal and civil offenses before they are referred to the prosecutors... Further still they also review the adjudicated sentences... and approve the release of every prisoner after the completion of their sentenced terms...if they did not approve of the verdicts, they return the case to the court on appeal... The diwans involvement leads to lengthy delays prior to and following the judicial process... and lengthens the time defendants spend in prison⁹².

Doherty⁹³ states that the government controls the UAE judicial system, which constitutes a direct violation of the independence of this authority. She further argues that the notion of human rights is directly related to the independence of the judiciary system as Article 94 of the Federal Constitution of the UAE states that, 'Justice is the basis of authority. Judges shall be independent and subordinate to no authority but the law and their own conscience in the

⁹¹ United Nations Human Rights Council (UNCHR) (n 66).

⁹² US State Department, 'UAE 2013 Human Rights Report' (2013) 8
<<https://www.state.gov/documents/organization/220592.pdf>> accessed 19 April 2016.

⁹³ R Doherty, 'UN Expert Says UAE Judiciary System Controlled by the Executive'
<<https://www.reuters.com/article/us-emirates-justice-un/u-n-expert-says-uae-judicial-system-controlled-by-executive-idUSBREA141PN20140205>>.

performance of their duties'⁹⁴. Alkarama⁹⁵ argues that, as the UAE President is also the head of the Federal Judicial Council, this constitutes a direct violation of the principle of separation of powers. They assert that there is great inconsistency in the UAE judiciary and the manner in which they apply the laws⁹⁶.

The UN Human Rights Office of the High Commissioner notes that the functioning of the UAE judicial system directly impacts upon The delivery of justice, the enforcement of peoples' human rights and the public's confidence in the judiciary and 'such challenges should not be ignored; they should be addressed as a matter of urgency in order to bring the administration of justice in the UAE in line with international human rights standards'⁹⁷

The UN Special Rapporteur has even requested the UAE to review their legislation and to ensure that the right of appeal exists within their legislation.

It should take measures to ensure the independence of the judiciary, and in particular adopt legislation to separate the functions of the Ministry of Justice from those of the judiciary and the courts... The public's awareness needs to be raised with regards to the content of legislation, its application, the differences that exist across the individual Emirates, and the applicability of the federal laws⁹⁸.

Davidson asserts that a significant factor impacting the current situation is the general weakness of 'civil society'⁹⁹ in the UAE due to its 'severe lack of civic space'¹⁰⁰.

⁹⁴ UAE Constitution, art 94

⁹⁵ United Nations Human Rights Council (UNCHR) (n 66).

⁹⁶ *ibid.*

⁹⁷ Office of the High Commissioner on Human Rights (OHCHR), 'Preliminary Observations on the Official Visit to the United Arab Emirates by the United Nations Special Rapporteur on the Independence of Judges and Lawyers' (28 February 2014) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14223&LangID=E>> accessed 16 April 2016.

⁹⁸ *ibid.*

⁹⁹ CM Davidson, *The United Arab Emirates: A Study in Survival*, vol 16 (Lynne Rienner 2005).

¹⁰⁰ *ibid* 33.

Heard-Bey argues that this ‘lack of civic space’¹⁰¹ is due to the restrictive nature of UAE law with regards to the establishment of associations of any nature:

Considering that the vast majority of inhabitants is foreign and come from countries where political and social strife is not uncommon, the authorities wanted to avoid as much as possible the importation of such festering problems... In consequence, even foreign charitable groups... such as environmental initiatives, art societies, and trade-based groupings... such as national business associations... are currently still rare and have to observe circuitous measures to function legally...¹⁰²

2.5 Safeguarding Human Rights

Although the UAE government has been criticised for its failures to uphold the internationally accepted norms of human rights¹⁰³, there exists both an informal and formal political process for actively instituting changes based upon the will of the public.

2.5.1 Informal Safeguards

Hudson observes that the original tribal tradition of consultation inherently ‘includes the notion of human rights’¹⁰⁴ and still defines the style of politics in the UAE: ‘The Sheikh of a tribe leads by virtue of his personal qualities as recognised by a council of elders... the heads of the main families’¹⁰⁵. Thorleifsson¹⁰⁶, in support, adds that this council of elders is collectively referred to as the *Majlis*. The term *Majlis* is literally translated to *sitting room* and refers to the quarter of the house in which the predominantly male head of the family welcomes male

¹⁰¹ FH Bey, ‘The United Arab Emirates: Statehood and Nation-Building in a Traditional Society’ (2005) 59 *The Middle East Journal* 357.

¹⁰² *ibid.*

¹⁰³ *See reports from Amnesty International and Human Rights Watch*

¹⁰⁴ M Hudson, *Arab Politics: The Search for Legitimacy*, vol 89 (Yale University Press 1977).

¹⁰⁵ *ibid.*

¹⁰⁶ B Thorleifsson, ‘Political Stability and Changes after the Gulf Crisis (1990-91) in the United Arab Emirates’ (PhD Thesis, University of Oslo 1993).

guests to the premises. Contextualised to a tribal setting, tribal members of the tribe were permitted to visit the Sheikh's *Majlis* to discuss any issue that was pertinent to them. The practice of the *Majlis* within a national socio-political context entails the granting of an audience to the citizens of the UAE by the rulers of the State. The petitioners (citizens of the UAE) to the President, Crown Prince, Prime Minister or other members of the ruling dynasty are able to present their concerns and issues directly and often receive instant responses or mandated actions. This practice has traditionally facilitated an open dialogue between the rulers and their subjects and raised the rulers' awareness of the socio-economic situation and reality of the citizens.

This informal yet traditional method of personal interactions between the public and their leaders was historically conducted in tents in the desert or the living space of the tribal elders.

Naoom¹⁰⁷ observes that the modern *Majlis* is usually held in the royal palace of the President, Crown Prince and Vice President or in the offices of a Minister, reception halls of the governors or mayors. The President and Prime Minister of the UAE hold the *Majlis* at least once a week with dinner being served for the public. The Crown Prince meet with the public at least twice a week with meetings taking place both in the morning and evening. Ministers usually hold open meetings at least once a day with regards to the specific remit of their portfolios.

Al Yassini,¹⁰⁸ in his analysis on the practice of the *Majlis* in the Gulf region, observes that traditionally any person could attend the gathering despite their race, creed or nationality. He identifies the types of issues that are typically discussed in *the Majlis*. These have historically encompassed tribal conflicts, distribution or access to water resources, security, personal property, real estate or title deeds along with seeking financial and medical assistance.

¹⁰⁷ S Naoom, 'The Implications of Legal Change and Political Reform for the Workings of the *Majlis A'Shura* and *Majlis A'Dawlah* in Oman (1981-2003)' (PhD Thesis, Durham University 2007).

¹⁰⁸ A Al-Yassini, *Religion and State in the Kingdom of Saudi Arabia* (Westview press Boulder, CO 1985).

Furthermore, Misha 'al¹⁰⁹ notes that although *the Majlis* is an informal part of the political process it is conducted within the traditionally accepted norms of Arab society. The public is seated and awaits the arrival of the dignitary or ruler to *the Majlis*. On his arrival, he greets the present public and then proceeds to hear each individual petitioner, with priority given to the sick and elderly. If possible, the ruler or his deputy will attempt to remedy the situation instantly through a decree. However, if further evidence or paperwork is required it is duly noted and the petitioners are given a date and time to resubmit their request. If the President or his deputies are presented with a problem that has already been adjudicated upon by an Islamic court, then the traditional practice has been for the rulers to respect that decision and not contradict the religious edict or ruling. *The Majlis* is traditionally a part of the Islamic heritage of the region and imbued into the tribal traditions.

Islamic scholars consider *the Majlis* to be an overt manifestation of the concept of consultation (*Shura*) as ordained by the Qur'an. Allah (sbt) advises Prophet Mohammad (s), through the Quran, that he is to 'consult his followers in taking decisions'¹¹⁰ and has equated it to 'acts of devotional worship, such as prayer (*salaat*) and charity (*zakat*)'¹¹¹. Misha 'al¹¹² argues that even before the coming of Islam to the region, the custom of the Arabs in Mecca had led to the establishment of an assembly of influential economic and spiritual leaders referred to as the *Dar A' Nadawh*. This literally translates to the *house of consultation*, where important issues were publicly discussed.

Al-Ansari¹¹³ argues that it was only when Islam had cemented itself as the dominant socio-

¹⁰⁹ FBM Al Saud, 'Political Development in the Kingdom of Saudi Arabia: An Assessment of the *Majlis Ash-Shura*' (PhD Thesis, Durham University 2000).

¹¹⁰ *The Noble Quran*, ch 3, v3

¹¹¹ *The Noble Quran*, ch 42,v38

¹¹² Al Saud (n 109).

¹¹³ Al-Ansari and Abd al-Hamid, *Al-Shura Wa Athraha Wa Al-Dimuqratiyya* , vol 11 (1981).

political ideology in the region that the first criterion for human rights were established. He argues that this was embodied in the leadership of Prophet Mohammed (s), and the Quranic guidance: ‘O mankind, we created you from a single pair of a male and a female and made you into nations and tribes, that you may know each other’¹¹⁴.

This implies that the Prophet (s) treated everyone equally and afforded full rights to the citizens of Madinah without recourse to their faith or class identities. Furthermore, the Islamic tradition as captured in the Prophetic narrations and the hadith material demonstrates Muhammad (s) seeking the counsel of his companions and acting upon it. This includes the influence of women as exemplified by the Prophet terminating his state of Ihram in front of his dejected companions after signing the Agreement of Hudaibiyyah (1st year H, 628 CE) based upon his consultation with his wife.

Moten¹¹⁵ argues that the earliest leaders in the nascent Muslim community did not consider themselves princes but *merely primus interpres*. A Hadith from the Prophet’s (S) companion Muadh b. Jabal (d. 640), demonstrates this attitude:

Our leader is one of us; if he implements among us the teachings ... of the Quran and the Sunnah, we shall have him over us. If he goes against it, we shall depose him. If he commits theft, we shall amputate his hand; if he commits adultery, we shall flog him ... He will not hide himself from us, nor will he be self-conceited ... He is a person as good as we are¹¹⁶.

Shura is a tradition that is a mutual process allowing leaders to seek counsel and judgment from followers whilst at the same time providing counsel and leadership to their followers in accordance with the Quran and Sunnah. This concept is most accurately immortalised by the words of Abu Bakr (d.643) as he made his inaugural speech as the first of the Rashidun

¹¹⁴ *The Noble Quran*, ch 49,v13

¹¹⁵ AR Moten, ‘Leadership in the West and the Islamic World: A Comparative Analysis’ (2011) 15 *World Applied Sciences Journal*, 339-349.

¹¹⁶ *ibid* 345.

Khaliphs. He proclaimed, ‘Obey me as long as I obey God and His messenger, if I disobey God and His messenger, then you owe me no obedience’¹¹⁷. Muslim scholars have often used this narration as proof of the empowerment of the followers to assess and audit their leaders.¹¹⁸

This is further reinforced through the Quranic notion of *bayaat* (oath of allegiance)¹¹⁹ whereby individuals willingly select and pledge individual allegiance to their leaders. The most famous example of this is in the election of the first of the *Rashidun Khaliphs* (rightly guided), Abu Bakr (d. 643). Prophet Mohammad (s) did not appoint an heir to lead the Muslim community before he passed and instead left the decision to the community itself, demonstrating that the Arab Muslim tradition has always valued the role of the followers in judging the adequacy, competency and proficiency of their leaders by electing them directly and then maintaining a direct contact with them. Hudson¹²⁰ contends that in theory, tribal politics was extremely democratic. He notes however that although *the Majlis* is still utilised, ‘with the onset of the modern bureaucratic structure of the state’¹²¹, it has increased efficiency for the educated and well-informed members of the general populace to contact the relevant state offices, then to meet directly with the sheikhs.

It is argued that the spirit of *the Majlis* has remained in the contemporary era of its place in UAE society. The launch of the *Smart Majlis* by Sheikh Rashid Al Maktoum¹²² demonstrates the commitment by the leaders to hear from their people directly. The communality of the socio-political system is, as shall be argued throughout the thesis, the glue which holds the

¹¹⁷ Y Khan, ‘Caliph Abu Baker’ (2014) <<http://radianceweekly.in/portal/issue/governance-in-early-islamic-period/article/caliph> > accessed 15 May 2017.

¹¹⁸ M Al-Merdawi and Al-Khilafa, *Theory and Practice [Political Leadership]* (1983).

¹¹⁹ *The Noble Quran*, ch 48; *ibid* 60,v12

¹²⁰ Hudson (n 104) 90.

¹²¹ *ibid*.

¹²² Arabian Business , ‘Dubai Ruler Launches Mohammed Bin Rashid Smart *Majlis*’ <<http://www.arabianbusiness.com/dubai-ruler-launches-mohammed-bin-rashid-smart-Majlis-609915.html> > accessed 17 December 2017.

society together. *The Majlis* in its overt form may only represent a symbolic gesture, whereby the tribal leader hosts their subjects in a traditional manner. Nevertheless, it is a consultative meeting and gathering, which offers the people to meet with their leaders directly and to hear and get a feel for their personalities and characters in a social setting. This personal aspect of *the Majlis* may be changing due to the emergence of new technologies, which although they offer direct access to the leaders, also eliminate the humanness of personal meetings and physical presence. So, the very concept of *the Majlis* is changing but it retains its essential functionality to connect the people with the leaders.

The question that has to be posed is to what extent the leaders can extend their personal space and time to foreign residents and migrant workers. If the directives of the Paris Principles are to be adhered to and respected, then the UAE leaders must naturally and prudently open their communication channels. This includes *the Majlis*, wherein the foreign non-citizens can openly share their grievances with the leaders in charge. This will only serve to act as a clear demonstration of the sincerity and openness of the leaders to implement the requisite changes. *The Majlis* has the potential to become a developmental tool to gauge and connect with the foreign migrants and to further benefit from their experiences through this informal mode of socio-political gathering.

2.5.2 Formal Safeguards

Khalaf and Luciani¹²³ argue that building a democratic society is best for the ongoing protection of human rights. They suggest it consists of two core components:

1. A formal constituent of constitutional reform, including the creation of institutions, the establishment of procedural rules, and a division and attribution of powers

¹²³ A Khalaf and G Luciani, *Constitutional Reform and Political Participation in the Gulf*, vol 12 (Gulf Research Center Dubai 2006).

2. Political participation, namely the culture of political debate in society, which includes the expression of ideas, enhanced access to information, and the articulation of proposals for the conduct of the state.

In analysing the UAE Constitution, it is evident that it already has inbuilt measures to guarantee the freedoms and rights of all citizens. Chapter 3 of the UAE ‘Constitution is devoted to public freedoms, rights and duties, and contains a number of provisions guaranteeing protection to these freedoms and rights’¹²⁴. This includes such measures as the freedom of speech and press, peaceful assembly and association and the practice of religious beliefs. It also forbids torture, subjective arrest and detention. Moreover, the UAE has incorporated into their Constitution the laws and fundamental principles included in the Charter of the United Nations and the Universal Declaration of Human Rights. The UAE have also agreed to ‘fundamental international human right treaties, further helping to promote the human rights principles to which the international community is committed’¹²⁵.

According to Article 125 of the UAE Constitution:

The Governments of the Emirates shall undertake the appropriate measures to implement the laws promulgated and the treaties and international agreements concluded by the Federation, including the promulgation of the local laws, regulations, decisions and orders necessary for such implementation. The Federal government shall supervise such implementation¹²⁶

On both the federal and local levels, the authorities have initiated awareness through policies and mechanisms designed to bring awareness to and protect the rights of all individuals within

¹²⁴ UAE Constitution, arts 25-44

¹²⁵ UNGA, ‘National Report Submitted in Accordance with Paragraph 15(a) of the Annex to HRC Resolution 5/1 United Arab Emirates’ 12
<https://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/A_HRC_WG6_3_ARE_1_United_Arab_Emirates_E.pdf> accessed 2 November 2018.

¹²⁶ UAE Constitution, art. 125

their jurisdictions. In response to the United Nations Human Rights Council's mandate, which involves Universal Periodic Review of the human rights record of all United Nations member states, the Ministry of Foreign Affairs conceded that it must:¹²⁷

1. Provide the necessary 'mechanisms to protect human rights, while keeping up with national and international developments, and updating laws and systems as required'¹²⁸.
2. Meet the State's expectation with regards to developing the national potential through an increased focus upon the remit 'for education on human rights and basic freedoms through a national plan'.¹²⁹
3. Strive 'to regulate the relationship between employers and workers in a framework that preserves dignity and rights,'¹³⁰ particularly regarding domestic labour.
4. Increase the empowerment of women's role in society, increasing opportunities for involvement in a number of fields based on their skills and abilities.
5. Work to confront human trafficking crimes by reviewing the best international practices in the field, working to update and improve the State's legislature in accordance with international standards, working to establish institutions and agencies to confront human trafficking crimes, and working to support the foundations of international cooperation with international organisations and institutions.¹³¹

The UAE government is currently studying the establishment of a NHRI. Since the first UPR

¹²⁷ Ministry of Foreign Affairs (UAE), 'Annex: Actions and Measures Taken by the United Arab Emirates to Implement Accepted Recommendations and Voluntary Pledges Made during the (UPR) for the Period 2008-2012' <https://www.upr-info.org/sites/default/files/document/united_arab_emirates/session_15_-_january_2013/a_hrc_wg_6_15_are_1_e_annex.pdf>.

¹²⁸ *ibid*

¹²⁹ *ibid*

¹³⁰ *ibid*

¹³¹ *ibid*

that took place in 2009, the UAE has comprehensively reviewed its Constitution to facilitate the implementation of systems that effectively protect human rights. The revisions include among others, a provision for the Federal National Council to expand and include a role in debating international treaties and international conventions, a series of memoranda of understanding with major labour-exporting countries with a view to protect workers from exploitation and a new wage protection system, and a new law to protect domestic workers and women.¹³²

Although women now occupy around 30 per cent of the higher leadership and decision-making positions in the UAE, up until December 2012 it was not compulsory for corporations and government agencies to include women on their boards of directors. In governmental posts the situation was more in favour of women as they occupied two-thirds of the jobs, while nine women were serving as ministers in the Government. In 2016, two new ministries, the new Ministry of State for Happiness and the Ministry of State for Tolerance were established and women were appointed to both (ministerial) posts.¹³³

The progress made by the UAE has translated into a three-year membership of the UN Human Rights Council starting from early 2013. The country was elected in a secret ballot conducted by the UN General Assembly, in which 32 countries from 18 geographical groups competed for 18 vacant seats, starting from the beginning of 2016 and ending in late 2018. The UAE received 195 votes, the second highest number of votes garnered by any Asian countries.¹³⁴ Further evidence of the transformation and development of the UAE is the establishment of Emirates Human Rights Association under the Federal Public Interest Associations Act No. 6

¹³² United Nations Human Rights Council (UNCHR) (n 66).

¹³³ 'Meet Your New Ministers in UAE Cabinet' [2016] *The Khaleej Times* <<http://www.khaleejtimes.com/nation/government/shaikh-mohammed-to-announce-new-cabinet-today>> accessed 4 June 2016.

¹³⁴ Permanent Mission of the UAE to the UN, 'UAE Wins Human Rights Council Seat for Second Three Year Term' (29 October 2015) <<https://www.un.int/uae/news/uae-wins-human-rights-council-seat-second-three-year-term%20%E2%80%8E>> accessed 16 June 2016.

of 1974. It declares its role to be primarily concerned with raising the awareness of human rights issues in accordance to the Federal Constitution and international obligations. It acts primarily as an intermediary and interlocutor between detainees, prisoners and the authorities. Furthermore, it also attempts to provide support to victims of natural disasters and special needs. Another example of this reformist agenda was the introduction of human rights and societal awareness modules in primary (Grades 1-12) and tertiary (University) education by the Ministry of Education.¹³⁵

This includes tuition on:

1. ‘Civil and political rights (such as the right to life, the right to non-discrimination, the right to private life, the right to equality before the law, the right to freedom of thought, the right to freedom of expression, the right to political participation)’¹³⁶;
2. Social and economic rights;
3. ‘Environmental rights (such as the right to clean water resources, the right to breathe clean air, the right to equality between generations, the right to protection of the environment and public health)’.¹³⁷

The UAE Ministry of the Interior ran more than 121 human rights training courses between 2009 and 2012 in police academies and schools to familiarise students and personnel on the nature of the human rights concepts, the international and regional human rights organisations, collective rights, the rights of prisoners, human rights in domestic legislation, the role of the police force in safeguarding human rights and the teaching of international humanitarian law.¹³⁸

¹³⁵ United Nations Human Rights Council (UNCHR) (n 66).

¹³⁶ Ministry of Foreign Affairs (UAE) (n 127).

¹³⁷ *ibid.*

¹³⁸ UAE Interact, ‘Human Rights’ (2016) <http://www.uaeinteract.com/government/human_rights.asp> accessed 4 August 2016.

Furthermore, the Ministry of Interior also included courses on combating human trafficking.¹³⁹

Heard-Bey¹⁴⁰ contends that a significant reason for the UAE's underlining diffidence towards human rights issues has been due to the existence of an inherent social support system. These have traditionally been in the guise of strong extended families and the tribe. However, with the flux of economic migrants and corporations into the nation, the UAE is gearing itself for a new changing reality. Heard-Bey argues that at present:

There are almost no UAE nationals who are manual labourers in the UAE... however; a well-publicized initial draft for legislation to allow trade unions and labour associations is currently being discussed because the establishment of such organizations is mandated by the International Labour Organizations for countries that want to join the World Trade Organization¹⁴¹

Some significant examples of this change have already translated into practice. The capturing of under-aged foreign children being used as camel jockeys in 2004 by a foreign documentary crew, brought immediate universal condemnation but also an instant response from the UAE leadership. The government sought to eradicate this practice and punished local and foreign agents involved in the exploitation of the children from disadvantaged Pakistani and Somali communities. Legislation was also created to prevent the illegal immigration of children through preventative measures prompting enhanced investigation of parents travelling into the UAE with their supposed children, especially from third world nations.¹⁴²

Furthermore, the UAE government adopted Act No. 15 of 2005, which prohibits the employment of persons under the age of 18 in camel racing; with the Ministry of the Interior establishing relevant committees to ensure the application of the Act. It also signed an

¹³⁹ United Nations Human Rights Council (UNCHR) (n 66).

¹⁴⁰ Bey (n 101).

¹⁴¹ *ibid.*

¹⁴² *ibid.*

agreement with UNICEF on rehabilitating child jockeys in their communities and raising their living standards. A budget of US\$30 million was allocated for this purpose in 2007 to compensate each child who had participated in camel racing. On 6th of June 2012, according to a 2013 national report submitted 'in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 paragraphs 23 and 24, the committee responsible for following up on compensation payments held its final meeting, marking the closure of the dossier on child jockeys in the UAE'¹⁴³.

Another major example includes the Ministry of Labour's decision to levy heavy fines of 'up to Dh 30,000 (£6,500) and refusal of new work permits for a period of up to one year'¹⁴⁴ for any corporation that fails to protect its workers. This came as a response to the labourers' demands of not having to work in direct sunlight during the hours of 1230- 1500.¹⁴⁵

2.6 Evaluating the Current Social, Political and Legislative Milieu

The formation of UAE's socio-political climate is a reflection of its tribal heritage, whilst its legislative and constitutional developments can be attributed to both its religious tradition and the direct influence of European colonialism. Although the UAE is governed by a codified civil law, its penal system is derived from the *Sharia* (Islamic law). It has also been demonstrated that the UAE federal government has a fully ratified permanent constitution and has established a parliamentary body, which is in theory and practice a representative body of the people. This

¹⁴³ United Nations Human Rights Council (UNCHR) (n 66).

¹⁴⁴ 'Midday Break for UAE Labourers Set to Start on June 15' (31 May 2015) <<http://www.thenational.ae/uae/midday-break-for-uae-labourers-set-to-begin-on-june-15>> accessed 16 April 2017.

¹⁴⁵ *ibid.*

penultimate section of the chapter provides the personal analysis of the researcher on the identified factors which could support the establishment of the NHRI.

The conclusions drawn from the review of literature suggest that the UAE ruling elite, in the form of formal feudal tribal chieftains and clans have created a political structure, which is a direct correlation of their historical custom and practice. This aspect of the historical form of tribal governance has it is argued, ensured the stability and consistency required to establish a new unifying structure and the emergence of the contemporary notion of a UAE society. This aspect of the socio-political provisions and the general consensus of the public is discussed and explored through the series of interviews with study participants in chapter four. Here it suffices to note that the public in the UAE perceive the role and place of the government to be encapsulated within a traditional understanding that it exists to protect them.

This argument is however either ignored or marginalised by its complexity as the review of literature attempts to highlight the issue of governmental protection of its citizens at the expense of foreigners, without ever referring to this initiating factor. Conversely, this line of reasoning does not imply that the researcher perceives the criticism aimed at the UAE legislative and consultative functions to be similarly oblivious. The fact that the constitution was only officially made permanent in 1995 is symbolic of the attitude taken towards this aspect of governance. It is asserted that the form of governance, which entails codified secular rules and regulations and is derived from foreign inspiration, did not initially translate into a viable form of practice on the inception of the UAE state in 1971. However, with time the UAE rulers and society has started to become more assured of their own identity and legitimacy to their social and political roles. In theory, the permanence of the Constitution was a demonstration of the government's will to codify and act upon the articles that were designed to protect society as a whole. The results of the practice are however, questionable, even contradictory as can be discerned after a brief examination of freedom of speech and equality issues.

The constitution of the UAE vouchsafes freedom of speech. However, the UAE Federal Law No. 15 of 1980 for Printed Matter and Publications strictly regulates the majority of media outlets. The State actively censors all domestic and foreign publications prior to their distribution. Furthermore, there is zero tolerance for ‘criticism of the government, UAE rulers and ruling families, and friendly foreign governments’¹⁴⁶; this is deemed a case of slander and denigration. Any deemed violations of this law can lead to financial penalties or even prison sentences. Journalists also now face the threat of prosecution for their online content, through the cybercrime law of 2012. This new legislation criminalises using the Internet to violate or speak/write against political, social, and religious norms. This is further supported by Article 24, which appropriates a crime through the misuse of the computer network. Article 28 of the law states that the publication or dissemination of information, news, or images deemed:

...liable to endanger security and its higher interests or infringe on the public order can be punished with imprisonment and a fine of up to 1 million dirhams (\$270,000). Under Article 29, deriding or harming the reputation, stature, or status of the state, any of its institutions, its president or vice president, the rulers of the emirates, their crown princes or their deputies, as well as a number of national symbols, is also punishable with imprisonment and a fine of the same amount. Article 41 allows the government to close websites related to the commission of these crimes¹⁴⁷.

Other prominent examples of this discrepancy between the constitutional rights and federal laws alongside governmental practice includes a three-year prison sentence to Osama al-Najjar for using social media (Twitter) to broadcast the abuse and violation of his father’s human rights. He was further convicted under the cybercrime law for ‘insulting the state, inciting hatred and violence, and being a member of the banned party Al-Islah’ as well as being fined

¹⁴⁶ Freedom House, ‘UAE Articles’ <<https://freedomhouse.org/country/united-arab-emirates>> accessed 17 December 2017.

¹⁴⁷ *ibid.*

\$136,000¹⁴⁸. Another online activist Obaid Yousef al-Zaabi was arrested by the ‘security forces and charged under the cybercrime law with offending the Supreme Court, offending the state security apparatus, and instigating people against the rulers and the security of the state’¹⁴⁹. Obaid had demonstrated his active frustration at the lack of free speech and justice with a US based cable news network.

The antiterrorism law passed in 2014 has been described as being dangerous to human liberties as it seeks to prevent any form of dissent, protest or critical speech. The penalties proscribed for this act include, but are not limited to, a death sentence, life imprisonment, and fines in excess of 100 million dirhams¹⁵⁰. Some findings from the Interviews conducted in chapter four reveal that any commentary deemed inappropriate is censored when articles or broadcast reports are prepared with regards to religion, politics or UAE allies. The reason for this is exemplified in the case of the Ugandan journalist, Yasin Kakande, who was working for the National newspaper. He was fired from his job in 2014 because he failed to gain prior permission for the publication of his book on self-censorship in the UAE. He was accused of defaming the organisation and the government.¹⁵¹ In his book, Kakande claims that public-relations executives from the state ministries and corporations effectively shaped and influenced the media on behalf of the ruling elites. Furthermore, he claims that journalists tend to ignore the exploitation of foreign workers as it is an often censored subject and they fear the

¹⁴⁸ ICJHR, ‘Osama Al Najjar Transferred to Al Rezin Prison without Reasonable Grounds’ (January 2017) <<http://ic4jhr.org/en/component/content/article.html?id=608:uae-osama-al-najjar-transferred-to-%E2%80%8Eal-rezin-prison-without-reasonable-grounds%20%E2%80%8E>> accessed 21 December 2017.

¹⁴⁹ OMCT, ‘United Arab Emirates: Continued Incommunicado Detention of Mr. Obaid Yousef Al-Zaabi, a Twitter Activist’ (2014) <<http://www.omct.org/human-rights-defenders/urgent-interventions/united-arab-emirates/2014/08/d22779/>> accessed 21 December 2017.

¹⁵⁰ ‘UAE: Terrorism Law Threatens Lives, Liberty’ (2014) <<https://www.hrw.org/news/2014/12/03/uae-terrorism-law-threatens-lives-liberty>> accessed 21 December 2017.

¹⁵¹ RWB, ‘Ugandan Journalist’s Damning Account of UAE Media Censorship’ (*RSF*, 19 June 2014) <<https://rsf.org/en/news/ugandan-journalists-damning-account-uae-media-censorship>> accessed 17 December 2017.

repercussions from the security forces and so do not report on their activities.¹⁵²

Although it can be argued that these governmental federal laws have been, by design, established to undermine the constitution, the other argument presented suggests that the government is reacting to the contemporary security situations in the region. This implies that the guarantees provided by the Constitution are in reality not guarantees but possibilities and aspirations. This is still a young nation, which is seeking to act quickly and aggressively without always considering the impact its actions will have on the validity and credibility of the national constitution. However, it is argued that over a longer period of time, the national rulers alongside society will appreciate the normative worth and value of the Constitution and this will require further amendments and additions.

For instance, Article 25 of the constitution calls for equality among Emirati citizens, ‘...Without distinction between citizens of the Union in regard to race, nationality, religious belief, or social status...’¹⁵³. However, rather strikingly, the constitution fails to recognise the issue of gender equality. It can be argued by analysing Articles 15 (family is basis of society) and 16 (protection of childhood and motherhood) that the fundamental aim of the constitution is to reinforce certain roles in society such as the traditional role of women in home making. Further examples of these contradictory practices include Article 26 of the constitution, which guarantees personal liberty to UAE citizens and which also forbids arbitrary searches, detention, torture and degrading inhumane treatment. Additionally, Article 28 seeks to provide defendants the status of innocence until proven guilty. However, in practice, Federal Penal Code (No. 3 of 1987) is often applied in a discriminatory fashion against immigrant foreign

¹⁵² Y Kakande, *The Ambitious Struggle: An African Journalist's Journey of Hope and Identity in a Land of Migrants* (Florida Academic Press 2013).

¹⁵³ UAE Constitution, 1971 art 25

workers.¹⁵⁴

The point of this discussion is not to highlight every single case of discrepancy and violation of the constitution by the government itself; rather it is to identify the existence of this discrepancy. It is suggested that the flagrant abuses of human rights by the governmental agencies are conducted as a result of the traditional attitude towards outsiders, women and any factor deemed to be a threat to the overarching socio-political system.

Although the UAE government has faced consistent criticism from such organisations as Amnesty International,¹⁵⁵ it has attempted to address this issue with positive changes and strict enforcement. Some significant examples, all funded and created by the authorities, include the Administration of Human Rights Care at Dubai Police Department. Established on the 30th of September 1995, it aims to train policemen in human rights legislation and practice¹⁵⁶. It aims to achieve excellence in five dimensions:¹⁵⁷ Complaints; Humanitarian and Social Services; Social Solidarity; Research and Development; and Human Rights. The Dubai Foundation for Women and Children, the first licensed non-profit shelter in the UAE for women and children suffering from domestic violence, child abuse, and human trafficking opened in July 2007¹⁵⁸. Currently, the Dubai Foundation for Women and Children operates only in Dubai and has focused mainly on cases from Dubai's official agencies¹⁵⁹. Other Emirates, namely Abu Dhabi,

¹⁵⁴ F Ali, 'Fujairah Court Rules in Cannabis Case' (2005) 1 *Gulf News*.

¹⁵⁵ Amnesty International, 'There Is No Freedom Here: Silencing Dissent in the UAE' (2014) <https://www.amnesty.org.uk/files/mde_25.018.2014_-_there_is_no_freedom_here_-_silencing_dissent_in_the_united_arab_emirates_uae.pdf> accessed 16 April 2017.

¹⁵⁶ 'About Dubai Police' Operations Report <<http://www.ipes.info/docs/About%20Dubai%20Police.pdf>> accessed 4 August 2016.

¹⁵⁷ UAE Ministry of Labour, 'The UAE National Report 2009' <http://www.uae-embassy.org/sites/default/files/pdf/UAE_MinistryofLabour_National_Report_to_UN.pdf> accessed 4 June 2016.

¹⁵⁸ 'Who Are We' (*Dubai Foundation For Women & Children*, 23 May 2016) <<https://www.dfvac.ae/who-are-we>> accessed 14 April 2016.

¹⁵⁹ DFWAC, 'Annual Report 2011' Annual Report 2011 52 & 79 <<http://lib.ohchr.org/HRBodies/UPR/Documents/Session15/AE/FinalMainReport2011.pdf>> accessed 14 April 2016.

Sharjah and Ras Al Khaimah have the EWA'A (meaning to shelter) for victims of Human Trafficking, which began their activities in 2008.¹⁶⁰ On the International stage the UAE has demonstrated its commitment to championing and protecting Human Rights issues by becoming a signatory to and ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (1974); the Convention on the Rights of the Child (1997); the Universal Declaration of Human Rights, Convention on the Elimination of Discrimination against Women (2004)¹⁶¹; Committee on the Elimination of Racial Discrimination (2004); Convention against Transnational Organised Crime (2007); the Convention against Corruption (2006); the Convention on the Rights of Persons with Disabilities and its Optional Protocol (2010)¹⁶².

Furthermore, the UAE has signed nine International Labour Organisation conventions on the subjects of working hours, forced labour, labour inspections, night work for women, equal pay, the minimum age for employment and the worst forms of child labour. The UAE have ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime. Recently, the UAE has signed on to the Optional Protocol of the Convention on the Rights of the Child regarding the sale of children, child prostitution and child pornography since 2016 and Federal Decree No. 08 of 2016, concerning the country's accession to the UN's 'Optional Protocol to the Convention on the Rights of the Child on the sale of

¹⁶⁰ EWA'A, 'Are You a Victim?' (2010) <<http://www.shwc.ae/portal/are.you.a.victim.aspx>> accessed 16 April 2016.

¹⁶¹ UAE, Committee on the Elimination of Discrimination against Women, 'Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women' (2008) CEDAW/C/ARE/1 at 15/16.

¹⁶² More information about 'UAE and the UN HR Treaty Bodies, Including the UAE's Periodic Reports and the Concluding Observations of the Treaty Bodies' <www.ohchr.org/EN/Countries/MENARRegion/Pages/AEIndex.aspx > accessed 16 May 2016.

children, child prostitution and child pornography'¹⁶³.

In addition, the UAE has increased its involvement within specialised agencies such as The World Health Organisation (WHO); The International Labour Organisation (ILO); The Food and Agriculture Organisation (FAO); The United Nations Educational, Scientific and Cultural Organisation (UNESCO) and The United Nations Children's Fund (UNICEF)¹⁶⁴ Moreover, the UAE has signed memorandums of understanding with over twenty-eight UN funds, while they have asked for consultancies in order to assist ministries, federal and local authorities to modernise.¹⁶⁵

In an earlier article, Heard-Bey¹⁶⁶ had already begun to acknowledge the efforts of the UAE government. He argued that with time more local individuals would join these formal organisations, so as to share their common interests and discuss the reformation of their society and to influence the way the country is governed not just on a local but global stage.

It is asserted that the UAE is moving towards a more open and pluralistic society with the creation of the Federal National Council, combined with the new election and voting processes. This, it is contended, presents us with the intentions and pathway the UAE government is attempting to forge.

Human Rights norms through the far-reaching education of society, including its leaders, will ensure a period of reflection and conciliation, which will eventually

foster the necessary conditions for the constitution to become the human rights document for the UAE. It is the researcher's personal belief, that the establishment of the NHRI will help

¹⁶³ UNCHR, 'Optional Protocol to the Convention on the Rights of the Child, the Sale of Children, Child Prostitution and Child pornography' (2002) Volume 2171,A-27531
<<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>> accessed 2 June 2019.

¹⁶⁴ UNGA (n 125).

¹⁶⁵ *ibid.*

¹⁶⁶ Bey (n 101).

UAE society as a whole appreciate the role of the constitution in guiding the destiny and image of the nation.

2.7 Conclusion

This chapter sought to examine the question What aspects of the existing social, political and legislative milieu facilitate the establishment of an NHRI in the UAE? The chapter served to demonstrate that the traditional political systems that were dedicated exclusively to serve native tribal interests in the UAE are transforming.

It is recognised that the phenomenal socio-economic growth experienced by the UAE was initially attained and developed upon the discovery of substantial oil reserves within its jurisdictions, which has subsequently led to the mass influx of economic migrants, investors, entrepreneurs, and an increasing number of stakeholders to the UAE. This in turn has presented the UAE administration with unprecedented circumstances and challenges with regards to human rights issues and provisions. The once rural and native tribes of the region have managed despite their own internal tribal conflicts and resistance to the expanding British Empire, to establish a nation state, under a federal structure with a constitution that reflects its heritage. Although it can be argued that it has taken a long time for the initial draft Constitution to be ratified and became permanent in 1996, this represents both the rate of progression and the time it takes to undertake political change in that region. Therefore, it was inevitable that in forming and organising the UAE nation state, the emirate rulers maintained their hereditary tribal and patrimonial structure. They have always belonged to localised tribes with undefined physical borders and territories, which naturally infers that there existed significant differences in family, tribal status and wealth distribution. This also implies that the privileges enjoyed by the UAE citizens are not available to non-citizens. Hence, the UAE has been severely criticised and chastised for its seemingly poor human rights record and practice by global organisations

such as Amnesty International and Human Rights Watch. They claim that the UAE utilises its penal code to criminalise speech based on broad content restrictions and is in violation of the Universal Declaration of Human Rights. The joint report submitted to the UN Universal Periodic Review¹⁶⁷ by nine stakeholders requested the UAE to respect the international human rights laws governing Non-Governmental Organisations and called upon the UAE to amend the 2008 Law on Associations, including its Article 16 to ensure that Non-Governmental Organisations can function free from State interference. Other international governmental observers such as the United States Department of State on Human Rights claims that UAE's judiciary and court system constitutes a substantial obstacle in the reform process. However, without seeking to deflect the criticism aimed at the UAE it can also be argued that the introduction of social and legislative infrastructure to safeguard the rights of all UAE citizens and immigrants has begun to address issues of inclusivity such as labour laws, rights of migrant workers, citizenship and democratic processes. The steps taken to hold the first inaugural election of the Federal National Council members in December 2006 broadly represented a movement towards the political liberalisation of the federal structure. Although the UAE government was heavily criticised for its selection of candidates and their remits, it was the President of the UAE who introduced the adoption of amendments, which included increasing the powers of the Federal National Council, establishing a fixed duration for the Council's members from two to four years and an increase in the duration of the annual sessions to more than seven months. This demonstrated the Government's commitment to not only introducing the election process but to provide Emirati citizens with the opportunity to engage with the decision-making vehicle of government. Furthermore, this also allowed the UAE to establish an election-based, democratic culture for the first time, ahead of its more established regional neighbours. A close examination of the reforms instituted by the UAE government

¹⁶⁷ Amnesty International, 'UAE: Crackdown on Fundamental Freedoms Contradicts Human Rights Commitments' (n 87).

demonstrates that it has relied on both an informal and formal political process for actively instituting changes in the UAE. The informal method entails the original tribal tradition of consultation, which inherently considers human rights to be a factor in all decisions, thus effectively defining the style of politics in the UAE. The council of elders collectively referred to as *the Majlis*, which in the contemporary national socio-political context entails the granting of an audience to the public by the rulers of the State. This means that petitioners to the President, Crown Prince, Prime Minister or other members of the ruling dynasty are able to present their concerns and issues directly and often receive instant responses or mandated actions. This practice has traditionally facilitated an open dialogue between the rulers and their subjects and raised the awareness of the rulers to the socio-economic situation and reality of their followers. It is however recognised that this process is not open to the non-citizens in the UAE and thus they are openly discriminated against in this process. However, as argued this is an indigenous practice intended for those who are deemed to be part of the internal dialogue and process of the region. Therefore, it will take time and political changes to take place before non-citizens are afforded the space and opportunity to directly petition the leaders of the State. The formal methods of the political process that are being developed to address and safeguard the provisions for human right are being built upon the UAE Constitution. This inherently contains the measures to guarantee the freedoms and rights to all citizens. Moreover, the UAE social policy makers have now begun the process of incorporating laws and fundamental human rights principles included in the Charter of the United Nations and the Universal Declaration of Human Rights into their Constitution. The UAE have also agreed to fundamental international human right treaties, thereby helping to promote human rights principles as demanded by the international community.

However, it must be acknowledged that this intention to safeguard human rights is not a new initiative for the UAE as the establishment of Emirates Human Rights Association under the Federal Public Interest Associations Act No.6 from 1974, had already declared its role to be

primarily concerned with raising the awareness of human rights issues in accordance to the Federal Constitution and international obligations. This now includes changes in the education system to reform the cultural tribal mind set by introducing topics on human rights and societal awareness modules in primary (Grades 1-12) and tertiary (University) stages.

Consequently, the commitment to preserving and protecting human rights norms is reflected by the UAE government efforts in establishing its own NHRI. It has begun to review the provisions afforded to the Federal National Council by debating upon the issues of international treaties, conventions, series of memoranda of understanding with major labour-exporting countries to protect workers from exploitation, wage protection system and laws to protect domestic workers and the developing role of women.

The government of the UAE cannot be absolved for its negligence and violations of human rights abuses. However, it is a young state, in transition and on the path towards addressing its shortcomings at the pace that is viable for its society, the socio-political context of the environment alongside the development of the expertise required to make this a permanent and inherent part of UAE's culture and society.

The next chapter will seek to understand the theoretical purpose of NHRIs in accordance to the Paris Principles and their place in the Arabian Gulf region.

Chapter 3

The Theoretical Purpose of NHRIs in Accordance to the Paris Principles and their Place in the Arabian Gulf Region

The conception of the NHRI as a government initiative in accordance to the Paris Principles, has become synonymous with internationally mandated requirements to promote and protect human rights. They are expected to function by adhering to expected principles. However, the jurisdiction and investigatory powers afforded to the NHRIs in conducting their investigations has been questioned. Critics suggest that the broad nature of the Paris Principles implies that an NHRI's role is to educate a very broad segment of civil society and to demonstrate human rights norms into their practice rather than simply replicating the role of the national judiciary. One can argue that for the appropriate decipherment and implementation of the Paris Principles there is a prerequisite for a democratic set of processes within a liberal orientated society. In focusing on the context of the non-democratic Arab world, the role of the NHRIs are almost unattainable as authoritarian leaders utilise the formation of NHRIs to enhance their personal international human rights credibility whilst suppressing any opposition to their rule under the guise of national security. This chapter seeks to address one of the core questions identified in the introductory chapter: *What is the theoretical purpose of NHRIs in accordance to the Paris Principles and their place in the Arabian Gulf Region?*

3.1 The Purpose, Objectives and Role of NHRIs

The concept of the National Human Rights Institute (NHRI) as conceived and defined by the United Nations (UN) is a 'body which is established by a government under the constitution or by law or decree, the functions of which are specifically defined in terms of the promotion and

protection of human rights'¹⁶⁸. The UN states that 'national human rights institutions, at least those that are in compliance with the Paris Principles, are the cornerstone of national human rights protection systems and, increasingly, serve as relay mechanisms between international human rights norms and the State'¹⁶⁹.

Corkery¹⁷⁰ notes that the argument for the establishment of NHRIs stems from the notion that domestic courts and parliaments are limited in their abilities to focus upon specific cases due to constraints on resources and the prevailing social norms. Dam¹⁷¹ argues the underlining purpose of the NHRIs is to provide sincere advice and guidance to governmental bodies on the compliance with legislation on international human rights policies and their implementation.

He advocates that NHRIs should:

Resolve human rights complaints brought by citizens; Make policy recommendations to government; Promote national laws and practices that conform to international standards; Conduct inquiries into significant allegations of abuse and violations of rights by the state's authorities; finally, Promote and educating norms and values of human rights in the society as a whole.¹⁷²

Moreover, NHRIs can also suggest:

... amendments to the existing legislation or initiate new draft legislation, prepare reports on the national situation with regards to human rights, draw the attention of the government to situations in any part of the country where human rights are being violated and make proposals to put an end to such situations¹⁷³

¹⁶⁸ United Nations, *NHR Institutions Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of HR Professional Training Series No 4* (1995) para 39.

¹⁶⁹ United Nations, *National Human Rights Institution, History, Principles, Roles and Responsibilities*, vol 20 (2010).

¹⁷⁰ A Corkery, 'National Human Rights Institutions as Monitors of Economic, Social and Cultural Rights' [2010] Center for Economic and Social Rights Briefing Paper 473-496.

¹⁷¹ S Dam, 'Lessons from National Human Rights Institutions around the World for State and Local Human Rights Commissions in the United States' [2007] HR Commissions and Criminal Justice Executive Session Paper 1.

¹⁷² *ibid.*

¹⁷³ M Qafisheh, 'Defining the Role of National Human Rights Institutes with Regard to the UN' (PhD Thesis, Graduate Institute of International Studies 2004) 16.

Smith suggests that NHRIs are, in theory, statutory bodies, established as an act of parliament, the constitution, or by ‘decree with specific powers and a mandate to promote and protect human rights’¹⁷⁴. Whilst De Beco, notes that the primary function of NHRIs is to oversee the establishment of institutions that promote and protect human rights by ‘narrowing the gap between international human rights treaty norms and their application in practice’¹⁷⁵. Remarkably, NHRIs have visibly attained a measure of success within nation states who have ‘yet to ratify major international treaties or conventions and have subsequently failed to meet the international human rights obligations they have adopted’¹⁷⁶. In accordance to the Paris Principles, NHRIs can facilitate ratification, or accession to these obligations by ensuring their implementation at the national level.¹⁷⁷

The Paris Principles seek to establish the ‘responsibilities and working methods of NHRIs and stress the importance of these institutions being pluralistic and independent’¹⁷⁸. Their typical functions entail:

Resolving human rights complaints lodged by citizens, making policy recommendations to government, promoting national laws and practices that conform to international standard, conducting inquiries into significant allegations of abuses, and promoting human rights in the community.¹⁷⁹

While the Paris Principles lay down a number of responsibilities to be fulfilled by an NHRI,¹⁸⁰ these are not exhaustive. The founding state is free to entrust the institution with additional

¹⁷⁴ A Smith, ‘The Unique Position of National Human Rights Institutions: A Mixed Blessing’ (2006) 28 Hum. Rts. Q. 904, 909.

¹⁷⁵ G De Beco, ‘National Human Rights Institutions in Europe’ [2007] HRLR 331, 331.

¹⁷⁶ Commonwealth Secretariat, *Comparative Study on Mandates of National Human Rights Institutions in the Commonwealth*, vol 9 (Commonwealth Secretariat 2007).

¹⁷⁷ UNGA Res 48/134 (20 December 1993)

¹⁷⁸ De Beco (n 175) and see; J Mertus, *Human Rights Matters: Local Politics and National Human Rights Institutions* (Stanford Univ Press 2009).

¹⁷⁹ LB Marea, ‘Lessons from NHR Institutions Around the World for State & Local H.R Commissions in the United States’ [2007] Executive Session Papers (Prepared for Executive Session on Human Rights Commissions & Criminal Justice, Kennedy School of Government, Harvard University).

¹⁸⁰ UNGA, ‘Res 48/134’ s 1, para 3.

tasks that augment the promotion and protection of human rights. An NHRI's responsibilities must include:

Reporting to the Government on Human Rights Issues; Promoting and Ensuring Harmonisation of National Law with the International Human Rights Treaties to which the State is Party; Encouraging Ratification of International Human Rights Instruments; Contributing to Reports to Treaty Bodies; To Express an Opinion on the Subject (whilst maintaining an impartial stance); Cooperating with International, Regional and Other National Human Rights Institutions; Assisting in Human Rights Education; and lastly, Publicise the concept of Human Rights and under take the effort to Combat All Forms of Discrimination¹⁸¹.

In accordance with the Paris Principles, NHRIs are expected to be primarily responsible for the protection and promotion of human rights. This responsibility may encompass the seeking of amicable settlements, recommendation, addressing and referring complaints to the competent authorities, investigation of abuses, visiting field and prisons (detention facilities) and to provide the appropriate legal advice and support as required.¹⁸² The Paris Principles stipulates that NHRIs define their objectives,¹⁸³ which shall 'freely consider any questions falling within its competence, whether they are submitted by the Government or taken by it without referral to a higher authority, on the proposal of its members or of any petitioner'¹⁸⁴.

In line with the defining purpose and role of the NHRIs in investigating human rights violations, Amnesty International recommends that NHRIs should be equipped with definitive powers to investigate and establish the parameters for their work in relation to the severity of the violations.¹⁸⁵ Amnesty International further argues that it is incumbent upon NHRIs to

¹⁸¹ R Carver, *Performance & Legitimacy: National Human Rights Institutions*, vol 23 (2nd edn, ICHR 2004).

¹⁸² *ibid*, Principles 3 (a,b,c,d,e,f,g).

¹⁸³ R Carver, *Performance & Legitimacy: National Human Rights Institutions*, vol 23 (2nd edn, ICHR 2004) s 1, para1.

¹⁸⁴ UNGA, 'Res 48/134 Section 1' (n 180) (a) under the heading of its 'Methods of Operations' .

¹⁸⁵ Amnesty International, 'Amnesty International's Recommendations on National Human Rights Institutions' 12 <<http://www.nhri.net/pdf/IOR4000701.pdf> > accessed 10 July 2016.

identify systematic patterns and root causes of consistent human rights violations. They should be able to identify patterns with past cases, expose failures of existing institutions and the judiciary whilst always seeking to uphold and assess human rights. In addition, they should identify specific reforms within the legal and institutional system to address the deemed and observed violations.¹⁸⁶

3.2 Functionality of NHRIs

As independent entities established by Governments to monitor their practices, NHRIs are uniquely envisioned to bridge civil society with its Governmental apparatus. They effectively act as the conduit through which dialogue and action can be facilitated. The Paris Principles, as adopted and agreed to by GANHRI members, identify several factors perceived to be crucial in the functionality and credibility of an NHRI¹⁸⁷ namely Independence, Accountability, Funding, Appointment of members, Pluralism of Composition and Accessibility.

3.2.1 Independence

‘A commission without strong and independent commissioners is voiceless and powerless’¹⁸⁸. The establishment of the NHRI should entail the explicit understanding that there is a binding legal basis for the government to refrain from interfering in the mandates, function, composition and competence of the NHRI.¹⁸⁹ This implies, as per the advice by the Paris

¹⁸⁶ Amnesty International, ‘Amnesty International’s Recommendations on National Human Rights Institutions’ (n 185).

¹⁸⁷ UNGA, ‘UNGA Res 48/134’ (20 December 1993) *See also*; South Asian Human Rights Documentation Centre, Institutions in the Asia Pacific Region, ‘Report of the Alternative Non-Governmental Organisation Consultation on the Second Asia-Pacific Regional Workshop on National Human Rights Institutions’ (1998) ch 1 <www.hrdc.net/nhris/AsiaPacNHRIs.pdf> accessed 23 July 2016.

¹⁸⁸ Human Rights Watch, ‘Nepal: Appoint Independent Rights Commissioners with Terms Expired, HR Protections in Limbo’ <<https://www.hrw.org/news/2013/09/19/nepal-appoint-independent-rights-commissioners>> accessed 23 July 2016.

¹⁸⁹ UNGA, ‘UNGA Res 48/134’ (n 187) Section 1, 2, para. 2., 2.23 and 3. The principle of independence is mentioned in the heading of Chapter 2 of the Principles which is about ‘guarantees for independence’. Further regulations literally refer to ‘institutional independence’.

Principles, that government officials should not be members of the advisory or supervisory boards of NHRIs.

Any members deemed to be in breach of this condition could face a suspension of their voting rights. Murray, in reflecting upon this discussion, states that:

The notion of independence is a difficult one to define. Dictionary definitions suggest ‘freedom from the influence or control of others, namely not depending on another for financial support. While the Paris Principles capture certain elements of this, they do not reflect the subtleties of the relationship that an NHRI should have with government¹⁹⁰

For these reasons, Amnesty International has suggested that the preferred method of NHRI establishment should be through legislative and constitutional amendment as the issuing of presidential decrees or special executive decisions are usually short-term measures utilised to satiate a particular segment of society or International obligation.¹⁹¹

While many national institutions work under the executive branch of government, the NHRIs are theoretically independent of the direct authority of the executive, legislature or judiciary.¹⁹²

Spencer notes that although the NHRIs are accountable to the legislature, ‘It is of paramount importance to these bodies that they operate as freely as possible from government control’¹⁹³.

Similarly, Burdekin and Naum argue that NHRIs that are not independent of governmental influence cannot be a credible human rights actor, protector and promoter.¹⁹⁴ In support,

¹⁹⁰ R Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Bloomsbury Publishing 2007) 5-6.

¹⁹¹ Amnesty International, ‘Amnesty International’s Recommendations on National Human Rights Institutions ’ (n 185).

¹⁹² UN, *National Human Rights Institution, History, Principles, Roles and Responsibilities* (United Nations 2010) 20.

¹⁹³ S Spencer and I Bynoe, *A Human Rights Commission: The Options for Britain and Northern Ireland*, (Institute for Public Policy Research 1998).

¹⁹⁴ B Burdekin, *National Human Rights Institutions in the Asia-Pacific Region*, (Martinus Nijhoff Publishers 2006) See also ; R Goodman and T Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, (Cambridge University Press 2011).

Renshaw notes that NHRIs cannot turn into a robust critic of government action, policy and legislation unless they are free from governmental influence.¹⁹⁵

However, it must also be recognised that the NHRIs are inherently susceptible to executive influence, as they are, by definition, designed to operate in complete independence of the very governments that implement them. Murray contends that ‘...This requires not only that the NHRI maintain its independence and not be subject to government pressure but, conversely, work closely enough with government that it is able to influence and by whom it will be taken seriously’¹⁹⁶.

In practice, the official mandate and formal powers afforded to the NHRIs is through the State authorities. This presents the NHRIs with an opportunity to engage with all tiers of government and form strong functional and institutional relationships with their respective governments.

De Beco discusses the initiatives of NHRIs in periodically inviting government officials to working group meetings with reciprocal arrangements from the government.¹⁹⁷ He argues that ‘in order for NHRIs to act as platforms where both state and civil society actors can interact, it is essential that they become rapidly acquainted with the government’s preoccupations, initiatives and difficulties regarding the promotion and protection of human rights’¹⁹⁸.

Furthermore, NHRIs are not only liable to be influenced by governments but external non-governmental actors. Although the NHRIs are neither a governmental authority nor a non-governmental organisation, they occupy a unique central space between government and non-

¹⁹⁵ CS Renshaw, ‘National Human Rights Institutions and Civil Society Organizations: New Dynamics of Engagement at Domestic, Regional, and International Levels’ (2012) 18 *Global Governance* 299, *See also*; R Goodman and T Pegram, *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, vol 80 (Cambridge University Press 2011).

¹⁹⁶ R Murray, ‘National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness’ (2007) 25 *Netherlands Quarterly of Human Rights* 189, 191.

¹⁹⁷ De Beco (n 175) 139.

¹⁹⁸ De Beco (n 175).

governmental organisations¹⁹⁹. However, as Smith notes:

...this same idiosyncrasy creates difficulties... NHRIs have to grapple with the uncomfortable dilemma of how to be independent from both government and Non-Governmental Organisations, while at the same time establishing working relationships with both actors²⁰⁰.

Carver perceives the inter-relationship between these institutions and independent human rights groups to be mutually suspicious, especially on matters relating to civil rights, political reform, and constitutional amendment.²⁰¹ Although both the NHRIs and Non-Governmental Organisations are primarily focused on the redress of human rights and fundamental freedoms, there exists a vast difference between their functionality and purpose.²⁰²

‘NHRIs are established by an act of the government through constitutional amendment and as a result have an official mandate, and a formal relationship with the State (the executive branch in particular)’²⁰³. The converse impact of this association with the government is that NHRIs are perceived to be instruments and agents of the governments by Non-Governmental Organisations and civil society, thus damaging their credibility.²⁰⁴ Collingsworth believes that ‘there is no doubt that the greater the independence and functional autonomy of the NHRI, the better their performance regarding human rights protection’²⁰⁵.

In contrast, Non-Governmental Organisations or civil society organisations are not officially related to government or State agencies. They are independent and able to administer their own

¹⁹⁹ Smith (n 174) 40-46.

²⁰⁰ Smith (n 174).

²⁰¹ Carver (n 181) : The Ombudsman as Agent of International Law. Human Rights, State Compliance, and Social Change’, in; Goodman and Pegram (n 194).

²⁰² CR Kumar, ‘National Human Rights Institutions and Economic, Social, and Cultural Rights: Toward the Institutionalization and Developmentalization of Human Rights’ (2006) 28 Human Rights Quarterly 755.

²⁰³ UNGA, ‘UNGA Res 48/134’ (n 187) Principle 2, Competence and Responsibilities.

²⁰⁴ Smith (n 174).

²⁰⁵ T Collingsworth, ‘The Key Human Rights Challenge: Developing Enforcement Mechanisms’ (2002) 15 Harv. Hum. Rts. J. 183, 183-185.

works schedule, create policies and roles whilst having no formal relationship or accountability with state authorities. This includes being financially more independent, all of which guarantee them total independence.

Notably, critics of NHRIs, such as Renshaw et al, contend that the independence of State affiliated institutions is questionable;²⁰⁶ they argue that NHRIs have become indicia of a progressive democratic liberal state. ‘If in the 1950s, the status symbol of a developing country was a steel mill, by the late 1990s it had turned into a human rights commission’²⁰⁷. NHRIs have begun to assume the role of providing legitimate evaluation of State compliance with human rights obligations and subsequently setting the precedence to replace civil society critiques. This will naturally lead to the establishment and practice of NHRIs without the necessary relationships, mutuality and input from civil society organisations.²⁰⁸

De Beco observes that NHRIs are dependent on civil society institutions such as Non-Governmental Organisations to gain the necessary knowledge, expertise and trust in the human rights arena.²⁰⁹ The 2006 Asian Forum for Human Rights and Development, consisting of an alliance numbering forty-eight Asian Pacific, Non-Governmental Organisations met for a Regional Consultation on Cooperation between NHRIs and Non-Governmental Organisations, where they concluded that strong, fair and sincere collaboration and cooperation will lead to more result oriented NHRIs.

It is put forth that by virtue of their constitutional statutes and powers, NHRIs are in a position

²⁰⁶ C Renshaw, A Byrnes and A Durbach, ‘Testing the Mettle of National Human Rights Institutions: A Case Study of the Human Rights Commission of Malaysia’ (2011) 1 *Asian Journal of International Law* 165.

²⁰⁷ S Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights* (University of Pennsylvania Press 2014) 193.

²⁰⁸ ACHPR, ‘Statement of the Network of African NHR Institutions by G. Sebihogo, Executive Director, 54th Ordinary Session The African Commission on Human and Peoples’ Rights, Banjul, Gambia 2013’ Opening Statement’ <www.achpr.org/sessions/54th/speeches/nhri_opening-_statement/>.

²⁰⁹ De Beco (n 175) 340.

to oblige the government to consider their recommendations and proposals, unlike the Non-Governmental Organisations. As a consequence, Non-Governmental Organisation demands ‘channelled through the NHRI may have more impact on the government than would be the case if they were channelled through the media or through unofficial means’²¹⁰. Murray asserts that ‘...While the educational and promotional role of NHRIs causes less controversy for Non-Governmental Organisations focused on human rights education; governments are not potential opponents, but necessary partners’²¹¹. NHRIs give civil organisations an institutionalised and in some cases direct channel of communication by which they can directly approach governmental bodies or even higher international authorities. De Beco suggests that the NHRI can become a common, impartial, independent platform to serve a common interest in protecting human rights by allowing these ‘...organisations to become cognisant of the government’s position regarding their human rights concerns... NHRIs that facilitate such a dialogue will gradually contribute to the effective implementation of human rights at national level’²¹².

3.2.2 Accountability

A central focus in the literature is the tension between independence and accountability.²¹³ Smith observes that there have to be mechanisms to appoint those in charge and call them to account without interfering with their operational independence. He notes that there exists an ambiguity as to whether the NHRI or the government is accountable for the actions of the NHRI.²¹⁴

²¹⁰ *ibid* 364.

²¹¹ R Murray, (n 196) 214.

²¹² De Beco (n 175) 349.

²¹³ Smith (n 174) 40-46.

²¹⁴ R Murray, (n 211).

Although the notion of accountability is broad, Schedler et al., stipulate that it must be acknowledged that ‘the attractiveness of the concept of accountability derives from its breadth...It implies subjecting a power to the threat of sanctions; obliging it to be exercised in transparent ways; and forcing it to justify its acts’²¹⁵.

Pegram construes this to be the process of horizontal accountability, whereby the ‘State agencies are legally enabled, empowered, willing and able to take actions...in relation to actions or omissions by other agents or agencies of the state that may, presumably, be qualified as unlawful’²¹⁶. Schedler et al., add that ‘while accountability forces power to enter into a dialogue, the notion of responsibility permits it to remain silent’²¹⁷. The idea of accountability introduces a dialogue between citizen and public official into the democratic discourse.

Lindsnaes and Lindholt propose that NHRIs should ‘be responsive to the expressed needs of the public’²¹⁸ and should be held accountable for their practices by independent civil society institutions or dedicated parliamentary bodies. De Beco suggests that an inherent part of the legislature should entail the representatives of NHRIs to determine their perspectives on human rights issues as identified by proposed legislation. Further still, the NHRIs should have full access to the government perspective on their recommendations, proposals and have the jurisdiction to directly address parliament.²¹⁹ The International Council on Human Rights recommends that ‘that all the findings and recommendations of the institution are publicly

²¹⁵ A Schedler, L Diamond and MF Plattner, ‘Restraining the State: Conflicts and Agents of Accountability: The Self-Restraining State: Power and Accountability in New Democracies’ 333 ’, *cited in* paper presented by T Pegram at the REPLA II Annual Workshop, (Nuffield College, 27 March 2008) 10.

²¹⁶ T Pegram, ‘The Politics of Accountability: The Institution of the Ombudsman in Comparative Perspective’, *II REPLA Annual Workshop, Nuffield College, University of Oxford* (2008).

²¹⁷ Schedler, Diamond and Plattner (n 215).

²¹⁸ B Lindsnaes and L Lindholt, ‘Input into the Discussions on the Establishment and Development of the Functions of NHRI ’ (2000) 50 NHRI. Articles and Working Papers: Danish Centre of HR.

²¹⁹ De Beco (n 175) 139.

available, whether through the annual report or some other mechanism'²²⁰. 'The institution should aim to publicise their exemplary recommendations'²²¹ via the media as well as other means of communication. As Murray argues, 'thus accountability can be ensured through reporting to the legislature and many institutions are required to submit annual reports to the parliament. This should be an opportunity to engage in-depth with Parliament'²²². Consequently, NHRIs become accountable to Parliament and the Public and not to governments or their agencies.²²³ Smith contends that NHRIs have both upward and downward accountabilities. NHRI are downwardly accountable to their staff, beneficiaries, and civil societies and are upwardly accountable to the Parliament.²²⁴ Smith maintains that being accountable to elected representatives may increase the autonomy and legitimacy of the institution through both public and governmental perception.²²⁵ Murray notes that a significant problem has been that 'in the past many members of Parliament were not aware, interested or understood what it did'²²⁶.

Using the Polish Commissioner for Civil Rights as an example, they are directly accountable to the legislative body. The Commission must submit its achievements, progress and reports on a yearly basis to the legislative body. The Commission is directly answerable and accountable to the people since the legislative body is the supreme representative body of the

²²⁰ Carver (n 181).

²²¹ *ibid.*

²²² Murray, 'National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness' (n 196) 213.

²²³ *ibid.*

²²⁴ Smith (n 174).

²²⁵ S Spencer and C Harvey, 'Context, Institution or Accountability? Exploring the Factors That Shape the Performance of National Human Rights and Equality Bodies' (2014) 42 *Policy & Politics* 89, 89-107.

²²⁶ Murray, 'National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness' (n 196) 213.

people.²²⁷ However, in accordance to the Paris Principles, the NHRI's only accountability is with regards to the process of appointments, financial accounts and reports.

3.2.3 Funding

Financial self-sustainability is a core recommendation of the Paris Principles.²²⁸ An NHRI's independence is subject to budgetary non-interference from any of the government branches. The UN has emphasised this principle in a number of reports, which 'states that a national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding'²²⁹.

However, a continuing paradoxical conundrum presents itself again, in that NHRIs are recipients of public funding and thus cannot be considered truly independent.

Aichele observes that studies from across the world demonstrate instances when some governments have influenced the NHRI strategy to adjust the NHRI's budget accordingly.²³⁰

In the case of Nepal for example, the government allocation of funds to the National Human Rights Commission was 'extremely small'²³¹ and insufficient to run the office and pay for the salaries of the executives and their staff members. Amnesty International reports that:

...restrictions in NHRI budgets are used as a punitive measure to control an NHRI which is deemed to be too critical of government. Amnesty has

²²⁷ ENNHRI, 'ENNHRI Renews Support for Poland's Commissioner for Human Rights' <<http://ombudsman.hr/en/component/content/article?id=974:ennhri-renews-support-for-poland-s-commissioner-for-human-rights> > accessed 14 May 2017.

²²⁸ UNGA, 'UNGA Res 48/134' (20 December 1993) Principle 2, under the heading of 'Composition and guarantees of Independence and Pluralism', which states that "*the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*".

²²⁹ *ibid* 27, B (2).

²³⁰ V Aichele, *National Human Rights Institutions*, vol 25 (Berlin 2010).

²³¹ NB Khatri, 'Foreword to NHRC Nepal Annual Report 2000-2001' <www.nhrcnepal.org/publication/doc/reports/NHRC-Annual%20Report%202001%20-%20en> accessed 3 July 2016.

received reports of many examples where once set up, NHRIs are underfunded to the extent that they cannot function effectively leading to reasonable doubts about how serious the government was in the first place about improving the implementation human rights through the NHRI²³².

A government's failure to provide sufficient financial support for an NHRI impedes the NHRI's operations; this, Burdekin and Naum believe shows the '...significance of funding cuts also lies in the message being sent by government to an institution: that power to define the NHRI's works rests with the government and that they will use this power to restrict an NHRI's autonomy'²³³. This practice is contrary to the requirement of the Paris Principles for governments to provide the provisions through which the NHRIs are adequately funded and conversely independent from governmental influence.²³⁴

Aichele argues 'that to ensure the financial independence of the NHRI, two aspects need to be considered'²³⁵. The first is the need to find ways of funding that secure the institution's existence and its long-term operation independent from political or economic fluctuations. Much discussion has been made to include the institution's funding as a separate item on the annual budget legislation. Furthermore, NHRI spokespeople are granted the right to consultation prior to any final decision being made on the annual funding in the legislature.²³⁶ This provides the NHRI with the opportunity to determine their objectives and as Carver, and Korotaev state '...Public funds should be provided through a mechanism that does not fall directly under governmental control, such as a vote in Parliament'²³⁷. Specifically, provision for the NHRI within a public budget should specify the allocated amount. NHRIs should be

²³² Amnesty International, 'Amnesty International's Recommendations on National Human Rights Institutions' (n 185).

²³³ Burdekin (n 194) See also; Goodman and Pegram (n 194).

²³⁴ UNGA, 'UNGA Res 48/134' (n 187) *Composition, Guarantees of Independence and Pluralism*.

²³⁵ Aichele (n 230).

²³⁶ *ibid*.

²³⁷ R Carver and A Korotaev, 'Assessing the Effectiveness of National Human Rights Institutions' (2007) UNDP.

‘entitled to determine their own spending within the allocated budget but financial probity should be ensured by regular public financial reporting and a regular (e.g., annual) independent audit’²³⁸.

Furthermore, it is argued that, with regards to establishing parameters to secure effective and alternative routes to receive funding, the mandate should include specific powers and establish process. The onus is on GANHRI to develop guidelines for fundraising that ensure that the independence and impartiality of NHRI is not compromised through the receiving of donations from private donors or international agencies.

3.2.4 Appointment of Members

The Paris Principles advocate that an appointment process for NHRI members must be pluralistic, democratic and representative of the broad spectrum of society. However, they are extremely vague in their guidance on the actual recruitment process, other than to suggest the complete exclusion of governmental representation. This ensures that representatives of the executive branch do not gain any voting rights to influence the NHRIs, which naturally implies that the designation of NHRI members to the executive body is also discouraged.

An Amnesty International report on ‘Recommendations on NHR Institutions’²³⁹ recommends that the ‘selection, appointment, and removal procedures of the members of the NHRI should not be handled by the executive branch of government’²⁴⁰.

Furthermore, as noted by Linos and Pegram, the Principles do not explicitly specify fixed terms for NHRI commissioners and even the possibility of reappointment is referred to as an optional

²³⁸ *ibid.*

²³⁹ Amnesty International, ‘Amnesty International’s Recommendations on National Human Rights Institutions’ (n 185).

²⁴⁰ *ibid.* 3.

feature.²⁴¹ Carver and Korotaev argue that:

...the members of the NHRI should have clearly defined terms of office in legislation (even if they are indefinite, as for judges, or renewable) and the terms should not be too short. Longer non-renewable terms are a better guarantee of independence than renewable shorter terms. Five years is a reasonable period within which members can be effective but not too influenced by concerns about future job prospects and Members should not fear dismissal (or non-reappointment) if they displease powerful interests²⁴².

For that reason, an independent, democratic appointment process is more likely to ensure the right calibre of leaders, which can maintain the independence of the institution. Furthermore, the processes of appointing the commissioner must be competitive, transparent, giving increased public confidence in the outcome²⁴³.

Furthermore, emphasis should be given to the social legitimacy of the NHRI management. As such, the executive members should be elected or appointed in a transparent process that guarantees the representation of all groups in society, which is concerned with the 'promotion and protection of human rights'²⁴⁴. The Paris Principles, do not however, identify a criterion for the internal structure of a NHRI, which leaves the founding state with a wide range of possibilities.

In Nepal, for instance, the NHRI composition constitutes a chairperson and four other members, all appointees are full time so to avoid any conflict of interest and are appointed by the Prime Minister should the Constitutional Council recommend action.²⁴⁵ The Secretary of

²⁴¹ K Linos and T Pegram, 'Architects of Their Own Making: National Human Rights Institutions and the United Nations' (2016) 38 Hum. Rts. Q. 1109.

²⁴² Carver and Korotaev (n 237).

²⁴³ R Carver, 'National Human Rights Institutions in Central and Eastern Europe: The Ombudsman as Agent of International Law' [2012] Human Rights, State Compliance, and Social Change in; Goodman and Pegram (n 194).

²⁴⁴ UNGA, 'UNGA Res 48/134' (n 187) Section 2, para. 2 and 2a.

²⁴⁵ IDSN, 'The Report of the NHRI of Nepal on the UPR Processes, July 5, 2010, Submitted to Office of the High Commissioner for Human Rights, Geneva' <http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/Nepal/NHRI_Nepal_UPR_Report_2010.pdf> accessed 18 February 2018.

the Human Rights Commission of Nepal is the focal point for the administration as their appointment is made by the Prime Minister with the recommendation of the National Commission. The Commission has the power to ‘appoint employees as may be required to carry out its functions’²⁴⁶. Should the Commission requests assistance from ‘any government office in the performance of its functions, the office must comply’²⁴⁷ and that request for support needs to be backed by reports which demonstrate that this institution is politically influenced, underfunded, under-staffed and works to carry out the agenda of the government.²⁴⁸

Just as the Paris Principles emphasise independence from the executive branch for the NHRIs,²⁴⁹ they also recommend the independence of the procedure for constituting the membership of the NHRI.²⁵⁰

3.2.4.1 Membership and Staffing

Like the judiciary, the members of a NHRI should be immune from criminal or civil legal action for all tasks undertaken by them in the proper exercise of their official functions. However, decisions made by them in their official capacity should still be subject to judicial review by the courts²⁵¹.

A functioning and efficient secretariat must exist within the NHRI in order that tasks entrusted to members are carried out.

²⁴⁶ *ibid.*

²⁴⁷ *ibid.*

²⁴⁸ *ibid.*

²⁴⁹ UNGA, ‘UNGA Res 48/134’ (n 187) 3 under the heading of ‘Composition and guarantees of Independence and Pluralism’ *See also*; UNOHCHR, ‘Fact Sheet No. 19: National Institutions for the Promotion and Protection of Human Rights’ <www.unhchr.ch/html/menu6/2/fs19.htm> accessed 17 August 2016.

²⁵⁰ UNGA, ‘UNGA Res 48/134’ (n 187) 3 under the heading of ‘Composition and guarantees of Independence and Pluralism’, which states that “*in order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institutions’ membership is ensured.*”.

²⁵¹ Amnesty International, ‘NHRI: Amnesty International’s Recommendations for Effective Protection and Promotion of Human Rights’ <<https://www.amnesty.org/download/Documents/128000/ior400072001en.pdf>>.

Criteria should be clearly established, preferably by law, in advance of appointment. They must be objectively verifiable criteria against which the actual appointment can be assessed. A potential danger of membership criteria is that they may be chosen in order to exclude specific individuals or groups. This is a further reason to ensure that appointment criteria are made public and subject to discussion by all stakeholders, in particular civil society organisations, before adoption²⁵².

However, experience demonstrates that there are many actions and omissions that can be taken by governments to curtail the autonomy of the NHRI. For instance, if a government wishes to curtail the influence of an NHRI, it need not necessarily take politically difficult steps to do so, there are other methods that can be used, such as appointment of staff and commissioners who are closely affiliated to politicians, political parties and most importantly those individuals ‘who are believed to be sympathetic to government positions on human rights’²⁵³. Integrity and autonomy can best be maintained only through a democratic and transparent process of appointment and composition of an NHRI.²⁵⁴

One of the defects of the human rights ombudsman model is that candidates for the post of human rights ombudsman are generally nominated by either the Executive, the President of the republic, or by a group of Parliamentarians. In some countries, such as Georgia and Lithuania, Non-Governmental Organisations are able to informally recommend their preferred candidates to a group of parliamentarians or to comment on those already nominated.²⁵⁵ The group is usually headed by a single decision-making member, which distorts the requirement for pluralism as one member from a dominant group may diminish the NHRI’s credibility amongst other segments of society. Any NHRI, in general, is dependent on the quality and independence of their leadership in order to produce effective results. Should a single member be accountable for leadership within an ombudsman-type human rights institution, they are vulnerable to

²⁵² Carver and Korotaev (n 237) 14.

²⁵³ Renshaw, Byrnes and Durbach (n 206) in; Goodman and Pegram (n 194) 50–80.

²⁵⁴ Goodman and Pegram (n 194).

²⁵⁵ Carver (n 243) 181-210.

outside pressures and criticism of the inconsistencies in their performance. Independence should not be a mere formal fiction but should be based on the local legal model.²⁵⁶ In a presidential republic, the election of the human rights ombudsman by Parliament is not ideal and may lead to the human rights ombudsman being a media person who does not have the tools to really implement his recommendations. In addition, the argument put forward by Abedin in the case of Trinidad and Tobago, was that a ‘multi-racial society needs a multi-racial institution’²⁵⁷. Thus, concerns were raised about the ‘capacity of the Ombudsman to decide impartially if he should happen to belong to the same racial group as the complainant’²⁵⁸. The idea for the establishment of a ‘plural (i.e. a commission of three or more persons)’²⁵⁹ human rights ombudsman system was also considered. The support of a plural system, in this instance, was inseparable from the issues of race and ethnicity; therefore, the outcome of this consideration was the acceptance of a rotating ‘office between an Afro-Trinidadian and an Indo-Trinidadian ombudsman’²⁶⁰.

This example demonstrates that a broad representation of society is vital to gain and maintain social credibility and trust. The Paris Principles emphasise the importance of pluralistic representation and call for engagement with non-governmental organisations and the private sector that work ‘on human rights issues, such as associations of lawyers, doctors, journalists and eminent scientists’²⁶¹, therefore, allowing representatives of civil society to nominate

²⁵⁶ *The study will explore, in detail, Independence in the next section.*

²⁵⁷ N Abedin, ‘The Ombudsman in Developing Democracies: The Commonwealth Caribbean Experience’ (2010) 23 *International Journal of Public Sector Management* 221, 230.

²⁵⁸ *ibid.*

²⁵⁹ *ibid.*

²⁶⁰ *ibid.*

²⁶¹ UNGA Res 48/134 (20 December 1993) 1 under the heading of ‘Composition and guarantees of Independence and Pluralism’, which states that ‘the composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representative of: (a) non-governmental organizations responsible for

potential applicants for NHRI membership and involving them in the selection and appointment process.

3.2.4.2 Pluralism of Composition

Human rights commissions are usually either composed of leading tech experts, which, at present, is often demonstrative of equality and anti-discrimination, or in accordance to the Paris Principles, the composite NHRI structure, should be constituted by a pluralist representation of society. This also implies pluralistic thought in the design, outreach, implementation and conduct of its programming.²⁶² Aichele argues that the institutional staff and executives should reflect the cultural and social diversity of their particular societies. They should be representative of the different ideological and political standpoints, ethnic and social minorities, and professions and academic disciplines. Staff pluralism enhances the expertise of the institution, facilitates the access of socially disadvantaged groups, and strengthens people's trust in its impartiality²⁶³.

NHRIs should be multi-member bodies that can place people from divergent professional and social backgrounds on a single platform. As NHRIs are often more resourced than Non-Governmental Organisations they have the opportunity to undertake a pluralistic representation of their society.²⁶⁴ Carver and Korotaev, suggest that diversity can be attained through

human rights and efforts to combat racial discrimination, trade union, concerned social and professional organizations, for example, associations for lawyers, doctors, journalists and eminent scientists; (b) trends in philosophical or religious thoughts; (c) universities and qualified experts; (d) parliament (e) government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity.)

²⁶² Compare for instance the composition of the Greek Human Rights Commission, consisting inter alia of representatives of government, Non-Governmental Organisations, trade unions, political parties, judiciary, human rights experts and the 28 ombudsman, and that of the New Zealand Human Rights Commission composed of three full-time and five-part time Commissioners selected on the basis of their personal attributes and their knowledge and/or experience of matters likely to come before the Commission. Information Note on the Greek National Commission for Human Rights; website of the New Zealand Human Rights Commission at <www.hrc.co.nz> accessed 17 August 2016.

²⁶³ Aichele (n 230) 23.

²⁶⁴ For instance, the French human rights commission consists of over hundred human rights experts and representatives of the government and civil society. On the other hand, the Moroccan institution has over forty members chosen by the King and on the proposal associations working in the field of human rights,

considered allocation of seats on the governing board and staff. They warn against ‘large and unwieldy memberships as they often paralyse decision-making and note that even multi-member institutions tend to be more effective when they have a small number of members’²⁶⁵. They recommend that ‘members and staff of NHRIs should always be selected on expertise and abilities’²⁶⁶. The Amnesty International Report Recommendations on NHR Institutions (2011) observes that ‘for the effective promotion and protection of human rights, NHRIs require experienced, trained and skilled staff that are coordinated by independent thinkers and leaders of the institution’²⁶⁷. Carver and Korotaev maintain that an effective NHRI is run and managed by staff and members that are professional and have a depth of human rights expertise. At the same time, ‘induction and training for both will be necessary, in particular to ensure that members and staff are equipped to deal with issues that are sensitive, outside their experience, or clash with their personal beliefs’²⁶⁸.

From the above, it could be argued that the NHRI member composition and selection criterion is a major factor in determining its independence and functionality. The appointment of members should take into account the geographical diversity of the state as well as the system of government. Some NHRIs have difficulties in addressing human rights violations across federal states. For this reason, ‘in some federal countries, NHRIs have been established with mandates that only permit them to consider cases where federal personnel commit human rights

trade unions and political parties and by various professional groups, and the Greek Human Rights Commission consists of some thirty members representing inter alia Non-Governmental Organisations, human rights experts, professional associations, political parties and various sectors of the government. Information note on Greek National Commission for Human Rights at www.nhri.net

²⁶⁵ R Carver and A Korotaev, ‘Assessing the Effectiveness of National Human Rights Institutions’ (2007) UNDP.

²⁶⁶ *ibid.*

²⁶⁷ Amnesty International, ‘Amnesty International’s Recommendations on NHR Institutions’ 3 <[www.nhri.net/pdf/IOR4000701 .pdf](http://www.nhri.net/pdf/IOR4000701.pdf)> accessed 10 July 2016.

²⁶⁸ Carver and Korotaev (n 265) 15.

violations, or where human rights violations take place during the enforcement of federal law²⁶⁹.

However, an NHRI can only be considered national if it has authority over the entire national territory of the founding state.²⁷⁰ Amnesty International summarises this point by noting that:

Any legislation in federal systems setting up an NHRI is made explicitly applicable to all parts of the federal system so that there are no de facto gaps in jurisdiction. Any NHRI should be able to examine all human rights violations, as defined by international human rights law, throughout the country's territory and regardless of the identity of the perpetrator²⁷¹.

3.2.5 Accessibility

The International Council on Human Rights observes that the very nature of human rights violations in most cases involves the most vulnerable members of society (e.g. prisoners). Due to the constrained availability of resources most NHRIs cannot establish a national or even regional presence in their respective nations let alone 'acquire powers to make themselves accessible to those in custody'²⁷². Murray argues

that 'it is important, therefore, that more attention should be paid in evaluating NHRIs to the extent in which they pay attention to the most vulnerable'²⁷³.

A significant challenge presented to the NHRI is one of accessibility to individuals at significant risk of human rights violations. In nations with federal political structures it is usual for the judiciary to establish state commissions to work alongside the federal organisation

²⁶⁹ Amnesty International, 'NHRI: Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights' (n 251) 5.

²⁷⁰ Aichele (n 230).

²⁷¹ Amnesty International, 'Amnesty International's Recommendations on NHR Institutions' (n 267).

²⁷² Carver (n 181).

²⁷³ Murray, 'National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness' (n 196) 217.

without diluting the power and difference of jurisdiction between state and federal structures. This is the case, for example, in ‘Mexico, which has a federal/state division both in political and in the human rights institutional structure’²⁷⁴. Unfortunately, Amnesty International reports that:

NHRI offices are located near military installations or police stations. In such cases, potential complainants may fear being noticed or monitored by the security forces if they bring their complaints. Amnesty International has received other reports of offices being intimidatingly smart or located in very up-market areas, so that the poor and other disadvantaged groups feel too uncomfortable and conspicuous to be seen going there. Other reports indicate that some offices are located in inaccessible areas where it is difficult for complainants to visit²⁷⁵.

In South Africa, the Human Rights Commission has made strides in making ‘itself accessible to vulnerable segments of society by opening offices in the regional provinces’²⁷⁶. As Murray observes ‘...Having regional offices may of course be an expensive option, but it would appear to increase the institution's profile and accessibility across all areas of the jurisdiction, particularly if they are located in rural areas that may not be served by other institutions’²⁷⁷.

Murray further adds that:

The institution itself must operate in a manner that is fair, open and transparent. Other factors include the extent to which a NHRI hold regular and open meetings with organizations and public and ensure that the minutes of its internal meetings are available in detail to the public. The use of a website and the availability of email can also help²⁷⁸.

²⁷⁴ Carver (n 181) 83.

²⁷⁵ Amnesty International, ‘NHRI Recommendations for Effective Protection and Promotion of HR’ 22 <<https://www.amnesty.org/en/documents/ior40/007/2001/en/>> accessed 5 October 2016.

²⁷⁶ Carver (n 181) 85.

²⁷⁷ Murray, ‘National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness’ (n 196) 217.

²⁷⁸ *ibid* 216.

3.3 Jurisdiction of the NHRI

In terms of the jurisdiction and investigatory powers afforded to NHRIs, the Paris Principles are equivocal as to whether an NHRI should have the power to participate in court proceedings.²⁷⁹ Amnesty International advocates that, even if they are not officially mandated with this type of privilege, the NHRI is encouraged to have authority to call witnesses to appear before their monitors and subpoena evidence with a consequence of sanctions for refusal to comply. In addition, Amnesty International recommends that ‘State officials should be legally obliged to cooperate with the NHRI’s investigations’²⁸⁰. A NHRI should have the power ‘to compel the attendance of witnesses and the disclosure and production of documents and any other evidence’²⁸¹. Sanctions are useful to have in place as a repercussion to any refusal or interference in these situations; yet, it is imperative that NHRIs make their own judgement on any case that is brought to their attention.²⁸² Moreover, NHRIs should be capable of bringing superior officers to justice in case they observe any violation.

Even further, if the NHRI observes ‘short-comings in the law, whereby it is not possible to hold such officers accountable, the NHRI should make recommendations for appropriate legal reforms’²⁸³.

For example, the Indian National Human Rights Commission has the quasi-judicial power and mandate to confer powers to civil court and it is also ‘empowered to grant compensation and may direct disciplinary action against public servants responsible for violation of human

²⁷⁹ K Linos and T Pegram, ‘Architects of Their Own Making: National Human Rights Institutions and the United Nations’ (2016) 38 Hum. Rts. Q. 1109.

²⁸⁰ Amnesty International, ‘Amnesty International’s Recommendations on NHR Institutions’ (n 267) 12–15.

²⁸¹ *ibid.*

²⁸² *ibid.*

²⁸³ *ibid.*

rights'.²⁸⁴ In Sri Lanka, the mandate of the Commission is structured in broad terms. It provides for complaint-based jurisdiction (power to dispose complaints regarding alleged violations of human rights) caused by executive and administrative action and review of legal procedures to ensure compliance with the constitutional guarantees of fundamental rights.

Furthermore, it guides the government in formulating legislation and administrative procedures for the protection of fundamental rights. It also ensures that existing international human rights treaties and norms guide the legislation around human rights.²⁸⁵

The International Council on Human Rights observes that:

There seems to be a fundamental divide between those institutions that investigate complaints and those that do not. It is in their handling of complaints that national human rights institutions stand or fall in terms of public legitimacy. However valuable their other work may be education, training, scrutiny of laws, study of international instruments the public judges them in terms of their willingness to tackle violations of human rights. They may do so by resolving individual complaints or by publicly exposing and challenging wrongdoing by the government or other powerful institutions.²⁸⁶

However, it is interesting to observe that the Paris Principles perceive the complaints procedure to be optional, alongside the possibility of NHRIs issuing binding decisions and their subsequent frequency or content.²⁸⁷ It is suggested by the articles of the Principles that NHRIs may 'seek to settle disputes through consultation or mediation between the individual and the governmental body; to inform the alleged victim(s) of their rights; and of the hearing of their complaints, or alternatively to transmit them to another competent authority'²⁸⁸. El Fegier

²⁸⁴ Government of India, Protection of Human Rights Act 1993, s13. Primarily the Indian Commission on Human Rights has the powers to order discovery and production of documents, examine witness and a referral power, whereby certain criminal offences under the Indian Penal Code may be determined by the Commission and forwarded to a magistrate for hearing. See also Commonwealth Secretariat (n 176) 9.

²⁸⁵ Government of Sri Lanka, Human Rights Commission Act 1996

²⁸⁶ Carver (n 181) 110.

²⁸⁷ Linos and Pegram (n 279) 13.

²⁸⁸ UNGA (n 180) s 4.

argues that an NHRI without a clear investigative mandate to pursue complaints requires the assistance of an official authority to gather the necessary information. ‘Authorities against whom complaints are made should be required to make an initial response within a certain time period’²⁸⁹.

An alternative perspective argues that the reasons the Paris Principles do not compel NHRIs to possess formal powers of investigation and adjudication is that they would become specialised human rights courts, and would lose their distinctiveness. They would abandon or seriously compromise their promotional, educational, advisory, and investigative roles. Yet the performance of these non-court-like roles are, in most places, arguably more critical to the long-term success of the human rights struggle than schemes for ex post facto enforcement that are based on complaints-oriented mechanisms.²⁹⁰

Okafor and Agbakwa argue that:

National Human Rights Commissions have certain additional features, and granted that courts already serve the function of hearing complaints and ordering enforcement, the additional features that National Human Rights Commissions possess ought to receive much more attention and emphasis in the conception and operation of National Human Rights Commissions. These additional features (such as promotion, education, policy advice, and investigations) ought to receive priority, and achieve centrality, both in the design and operation of these bodies²⁹¹.

There is an evident, inherent paradox whereby major functions of the State sponsored NHRI necessitate scrutinising State action, educating State actors, and advising State entities.²⁹² As Gomez has argued, since its inception, NHRIs have attracted much suspicion because of their

²⁸⁹ M El Fegriery, ‘The Effectiveness of Human Rights Commissions in the Arab World’ [2008] Arab Reform Bulletin/Carnegie Endowment for Peace <<http://carnegie-mec.org/sada/20521>> accessed 17 June 2016.

²⁹⁰ *ibid.*

²⁹¹ OC Okafor and SC Agbakwa, ‘On Legalism, Popular Agency and "Voices of Suffering": The Nigerian National Human Rights Commission in Context’ (2002) 24 Human Rights Quarterly 662, 686.

²⁹² M Gomez, ‘Sri Lanka’s New Human Rights Commission’ (1998) 20 Hum. Rts. Q. 281, 281-302.

status as government institution.²⁹³ El Fegiery advises that ultimately it is the political will, sincerity, support and commitment of the governments that determine the role and jurisdiction of NHRIs in their societies.²⁹⁴

However, Aichele²⁹⁵ argues that in most cases, the authorities disregard international human rights norms and treaties even if those have been integrated into the legal system of the country. Additionally, the government authorities responsible may have little will to clarify such cases, leaving the investigation of cases not thoroughly scrutinised for institutional safeguarding failures. The theoretical jurisdiction of the NHRI in accordance to the broad mandate of the Paris Principles suggests that that it should be able to gain legal access to all factual information or data with regards to the case under investigation and have the authority to claim reparations for the victim.

Aichele observes that there are a significant number of cases entailing a NHRI supporting the accused perpetrators of human rights violations in the investigations into their own practices rather than the NHRI.²⁹⁶ This is supported by Amnesty International, which claim that NHRIs in some developing nations systematically compromise the sensitive nature of personal data. This may entail passing on the complainant's initial complaint and its communication to the alleged perpetrators that may include the victim's personal details. This clearly introduces a significant degree of partiality into the investigation and most importantly fails to safeguard the complainant, as this puts them at risk for reprisals and discourages the exposition of similar cases (e.g. involving the police or security forces).²⁹⁷ It can be deduced that NHRI failure to investigate individual violations at the outset effectively reduces the opportunity to understand

²⁹³ *ibid.*

²⁹⁴ El Fegiery (n 289).

²⁹⁵ Aichele (n 230) 20.

²⁹⁶ *ibid.*

²⁹⁷ Amnesty International, 'Amnesty International's Recommendations on NHR Institutions' (n 267).

the context, the ensuing factors and the identification of the remedy process required to bring about ultimate change of practice.²⁹⁸ It is argued that strong, independent NHRIs are essential in combating the inherently, engrained cultures of impunity and to ensure justice for victims. Amnesty International has recommended that NHRIs should be empowered ‘to ensure effective non-judicial remedies, including interim measures to protect the life and safety of an individual and offer adequate medical treatment if needed; this should ensure that measures of redress and rehabilitation are taken’²⁹⁹ when needed.

3.3.1 Compliance and Accreditation

Due to the broad generalist guidelines and standards put forth by the Paris Principles, it can be argued that ‘virtually all national institutions can claim to abide by them to a certain extent’³⁰⁰. Moreover, the original Paris Principles are ambiguous with regards to the required strategies to attain these objectives. Murray argues that the powers of the NHRI should be “defined precisely” and should be clearly set out in order to ensure that the NHRI is free to do its work ...³⁰¹

Dam notes that just adopting the norms and values of the Paris Principles alone ‘cannot always be an effective test for judging the independence and efficacy of national commissions’³⁰². It is argued that the Paris Principles are just instruments for structural evaluation, not for performance-based or impact-based evaluation. They do not purport to evaluate effectiveness

²⁹⁸ *ibid* 21.

²⁹⁹ *ibid* 17.

³⁰⁰ CHR Res. 9 (XVIII) of 27 March 1962, which was endorsed later by ECOSOC Res. 888 F (XXXIV) of 24 July 1962

³⁰¹ Murray, ‘National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness’ (n 196) 202.

³⁰² S Dam, ‘Lessons from National Human Rights Institutions around the World for State and Local Human Rights Commissions in the United States’ [2007] John F Kennedy School of Government, Cambridge, MA <www.hrccj.org> accessed 29 July 2017.

or impact but ‘merely to set some benchmark by which national institution can be assessed for its formal compliance with these minimum standards’³⁰³.

The formation of the Global Alliance of NHRIs (GANHRI), in 1993, was supposed to address this implementation issue. Previously referred to as the International Coordinating Committee of National Institutions (ICC), GANHRI promotes the importance of NHRIs worldwide by providing a forum for its members to interact and exchange, as well as facilitating their engagement with international organisations.³⁰⁴

3.3.1.1 GANHRI

GANHRI operates as a gatekeeper and is responsible for:³⁰⁵

1. Liaising with institutions at the global level and with the UN
2. Accrediting national institutions that abide by the Paris Principles
3. Organising biennial conferences

Institutions wishing to be accredited must delegate a member of their organisation to represent them on the GANHRI.³⁰⁶ Working through a peer-review process, the Sub Committee on

³⁰³ International Council on Human Rights Policy, “Performance and Legitimacy: National Human Rights Institutions” (2010) *See also* J Mertus, ‘Evaluating NHRIs: Considering Structure, Mandate, and Impact’ [2011] *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* 74 in; R Goodman and T Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, vol 80 (Cambridge University Press 2011).

³⁰⁴ GANHRI, ‘Press Release: International Coordinating Committee of National Human Rights Institutions Changes its Name to the Global Alliance of National Human Rights Institutions’ <<http://nhri.ohchr.org/EN/News/Lists/News/DispForm.aspx?ID=213&RootFolder=%2FEN%2FNews%2FLists%2FNews&Source=%3A%2F%2Fnhri.ohchr.org%2FEN%2FPages%2Fdefault.aspx> > accessed 25 April 2016.

³⁰⁵ M Kjaerum, *National Human Rights Institutions Implementing Human Rights*, vol 17 (Danish Institute for Human Rights 2005).

³⁰⁶ C Sidoti, ‘National Human Rights Institutions and the International Human Rights System’, *Human Rights, State Compliance, and Social Change* (Cambridge University Press 2012) 93–123.

Accreditation issue certain General Observations with regards to the State’s compliance with the Paris Principles.³⁰⁷

Compliance	Accreditation Classification
Full	A
Partial	B
Non-Compliant	C

Table 3-1 GANHRI Compliance and Accreditation (Adapted from Beco³⁰⁸)

Table 3.1 lists the Compliance Status of the Institution alongside its Accreditation Classification. An Institution attaining *Full Compliance* is labelled with ‘A’ status whilst becoming an accredited ICC member.³⁰⁹ This entails them to participate, contribute and influence the agendas and topics of discussion at such events as the Human Rights Council meetings.³¹⁰ Institutions in *Partial Compliance* and awarded ‘B’ status are not granted the same level of access or participation to GANHRI and United Nations Human Rights Commission meetings as they are mostly limited to observer status. Institutions in *Non-Compliance* and awarded ‘C’ status may face temporary or even permanent suspension of their status, if their operations no longer conform to the Paris Principles.³¹¹ As of 2014, the GANHRI has recognised 106 national institutions with ‘A’ status classifications, while it has refused granting a status to several NHRIs and has withdrawn the ‘A’ status on some occasions.³¹² Hence,

³⁰⁷ Goodman and Pegram (n 194) 1-25.

³⁰⁸ G De Beco, ‘National Human Rights Institutions in Europe’ (2007) 7 HRLR 331.

³⁰⁹ *ibid.*

³¹⁰ Goodman and Pegram (n 194) 1-25.

³¹¹ Mertus (n 303) in; Goodman and Pegram (n 194).

³¹² GANHRI, ‘Chart of the Status of National Institutions’
 <http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf> accessed 16 June 2017.

conforming to the Paris Principles guidelines is of paramount importance for an NHRI to retain its accreditation.³¹³

Despite these measures it is reasoned that a substantial fallibility of the accreditation process is in its symbolic rather than legal implications. The criticism of the original frameworks produced in the early 1990s until the current period is that there has been no serious effort to enhance and amend the broad principles with concrete guidelines. A significant criticism of the Paris Principles is that the stated provisions are far too vague, unworkable and confusing. The ‘guarantees of independence and pluralism, even though mentioned in the sub-heading of the Paris Principles, offer very little guidance to the states as to how to achieve this independence’³¹⁴.

Alternatively, it is also recognised that the stubborn resistance to expand and define the principles in detail are related to the reluctance of the involved actors, which entails a broad section of private and governmental agencies and individuals opting for *guidelines* instead of laws. A main critique is that GANHRI is not an independent organisation with policies and programmes of its own; but is rather a mechanism for coordination and liaison among national institutions.³¹⁵ However, this perspective has not factored that attempting to enforce universal laws upon global governments is not only an onerous task but highly paradoxical. With consideration to the heterogeneous nature of nations and their cultural, ideological and

³¹³ De Beco (n 308) See further, another body, the International Council on Human Rights and Policy, suggest its own indices for measuring the effectiveness of NHRIs. Accordingly, the national institutes are effective, the Council suggests in a recent paper, if they; enjoy public legitimacy; are accessible; treat human rights issues systematically; consult civil society; have open organizational culture; ensure the integrity and quality of their members; consult civil society; and have power to monitor compliance with their recommendations etc..

³¹⁴ CR Kumar, ‘National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights’ (2003) 19 Am. U. Int’l L. Rev. 259 *also*; J Mertus, ‘Evaluating NHRIs: Considering Structure, Mandate, and Impact’ [2011] Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions 74 in; R Goodman and T Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, vol 80 (Cambridge University Press 2011).

³¹⁵ Kjaerum (n 305).

historical contexts the enforcement of universal law could constitute a major human rights violation.

Furthermore, as noted by Gallagher, despite the differences, all national institutions in accordance to the Paris Principles and part of GANHRI share the explicit purpose of working independently from the government as administrative or *quasi-judicial* entities without any judicial or law-making capability.³¹⁶ This implies that the members of GANHRI are utilising the Paris Principles to develop NHRIs to become responsible for instituting human rights norms through alternative channels. Analysing the Paris Principles from a constricted literal sense leads us to conclude that they are neither sufficient for the institution to promote and protect neither human rights nor do they enable us to gauge the effectiveness of an institution. However, in examining the principles from a developmental perspective they become an identified set of prerequisites that must be attained for the NHRI to function with its designated purpose. Once an NHRI has been established, the onus is on it to identify its place in society and to build relationships with all actors at every level and place in society. The Paris Principles explicitly emphasise the role of education and the expectation of NHRIs to work with educational institutions such as schools, colleges and universities. They are expected to work with the sanctioned education providers to integrate human rights education into the syllabuses of their institutions. The aim is to deliver knowledge that will raise the awareness of the issue of human rights. Furthermore, the educational programs are perceived to be a viable route by which the personal attitudes and opinions of future decision makers and the citizenry can be firstly gauged for its competency and then further informed with ‘real-world’³¹⁷ data and analysis. The status quo, as perpetuated by GANHRI, appears to suggest the development of an acceptance and gradual socialisation of the human rights debate. Murray reflects that ‘there

³¹⁶ A Gallagher, ‘Making Human Rights Treaty Obligations a Reality: Working with New Actors and Partners’ [2000] *The Future of UN Human Rights Treaty Monitoring* 203.

³¹⁷ Aichele (n 230) 20.

is a need for a deeper discussion on the underlying concepts such as the relationship with government and the meaning of independence'³¹⁸.

3.4 Contextualising Human Rights Norms and NHRIs in the Arabian Gulf Region

The United Nations regards the increasing adaptation and emergence of NHRIs by nation states to reflect a conscious recognition of the political and social benefits of promoting human rights issues and values.³¹⁹ El-Fegriery reasons however, that not all governments are willing participants in the establishment of an independent organisation designed to monitor their activities. He argues that the establishment of an NHRI in itself does not automatically imply greater 'respect for human rights and fundamental freedoms'³²⁰. NHRI credibility is dependent upon the political will, the social environment and the sincerity of the commitment on the part of governments to develop a human rights culture, which will ultimately determine the role and place of NHRIs in their societies.³²¹ O'Sullivan contends that despite the importance placed upon the role of NHRIs there is a dearth in studies which examine the context in which they are to be established and their expected operability, especially in places where democratic processes may not be fully in place.³²² Sidoti,³²³ in support of this contention, observes that the creation of an NHRI is based upon domestic laws, constitution and processes, whilst the Paris Principles take for granted the existence of a functioning democratic system prior to the

³¹⁸ Murray, 'National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness' (n 196) 219.

³¹⁹ UN (n 192) 148.

³²⁰ El Fegriery (n 289).

³²¹ *ibid.*

³²² M O'Sullivan, 'National Human Rights Institutions: Effectively Protecting Human Rights?' (2000) 25 *Alternative Law Journal* 236.

³²³ Sidoti (n 306) in; Goodman and Pegram (n 194).

establishment of a NHRI. The NHRIs are designed by purpose to operate within a pre-existing democratic system such as independent courts, judiciary and fully functional and independent legislative bodies alongside non-government organisations.³²⁴ Consequently, States without a minimum level of democratic governance, political liberty, independent media and freedom of expression cannot assist nor further the work of NHRIs. Reif states that ‘The NHRI will find it extremely difficult to function in a state without a democratic system of checks on the exercise of power, where real independence from the ruling power is possible and where human rights are not respected in law and practice’³²⁵. This is extremely prevalent in non-democratic countries, where Abedin notes that the executive branch controls all other branches, naturally subjugating the NHRI under their authority and command.³²⁶ He observes that as a consequence, many ombudsman offices in the developing world that started with a classical model have now come under total control of the executive authority (e.g., Guyana). Some countries have adopted or retained the classical ombudsman system only as a symbolic gesture or as a showpiece for favourable publicity or even propaganda purposes.³²⁷

Accordingly, O’Sullivan maintains that a democratic environment is a prerequisite for the efficient functioning of an NHRI.³²⁸ She suggests that nations without the necessary democratic reforms in place but seeking to establish an NHRI should be presented with two options. Firstly, they should either be allowed to establish their NHRI with full support of the international community but with a caveat in place that presses them to undertake the necessary democratic reforms at the same time. Secondly, they may only establish an NHRI on the condition that

³²⁴ LC Reif, ‘Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection’ (2000) 13 *Harv. Hum. Rts. J.* 1.

³²⁵ *ibid* 23.

³²⁶ N Abedin, ‘Conceptual and Functional Diversity of the Ombudsman Institution: A Classification’ (2011) 43 *Administration & Society* 896, 916.

³²⁷ *ibid*.

³²⁸ O’Sullivan (n 322) 238.

democratic reform has already taken place or is in the process.³²⁹

Abedin's contentions upon the NHRI experiences across the world appear to suggest a middle ground between the two options presented by O'Sullivan. She stipulates that the success of the NHRI is dependent upon the prevailing social order and historical experience.³³⁰ Significantly, human rights are reinforced and prioritised within a democratic process as the culture fosters the appropriate attitudes and approaches towards upholding the liberty of the people.³³¹ Abedin argues that the Commonwealth nations formerly under the British rule or mandate have inherited, to a degree, a stable bureaucratic structure, which has allowed for the general development of freedom of speech, political activity, the recognition of labour and trade unions alongside an independent judiciary.³³² He states that these nations have a distinct advantage over many other developing nations, as they already possess the fertile socio-political environment to nurture a comprehensive ingrained attitude towards human rights and the establishment of NHRIs to further them.³³³ By contrast, in non-democratic nations, the executive branch enjoys complete authority over all extensions of government, including the legislative and judiciary branches. Abedin notes that in 'these countries, NHRIs cannot flourish or even survive'³³⁴. The Fijian National Human Rights Commission (established October 1999) according to Abedin, became rather defunct after the Military coup.³³⁵ Of specific interest to

³²⁹ *ibid.*

³³⁰ N Abedin, 'The Ombudsman in Developing Democracies: The Commonwealth Caribbean Experience' (2010) 23 *International Journal of Public Sector Management* 221, 243.

³³¹ *ibid* 245.

³³² *ibid.*

³³³ *ibid* 244.

³³⁴ Abedin, 'Conceptual and Functional Diversity of the Ombudsman Institution' (n 326) 918.

³³⁵ *ibid* 918.

this study, the 2014 report on ‘human rights in the UAE’ by Amnesty International³³⁶ identifies the UAE authorities to have been responsible for:

Unprecedented... arrests and detentions; enforced disappearances; torture and other ill-treatment of detainees; grossly unfair trials and the imposition of long prison sentences on government critics, and continuing harassment and persecution of their families. In some cases, depriving them of the rights and privileges associated with that status in the UAE and rendering them stateless³³⁷.

The report adds that ‘at least two activists’³³⁸ have been exiled, the order to deport a number of foreign journalists has been issued and individuals barred from travelling overseas or harassed via the cancellation of personal bank accounts, termination of employment and university studies. Some individuals have been placed under ‘oppressive surveillance, or publicly denigrated... as in smear campaigns in the local media and on social media platforms that aim to delegitimise their calls for political accountability and reform’³³⁹. Amnesty claimed, as of November 2014, that at least 67 activists, including prisoners of conscience were still imprisoned. Furthermore, the action taken by the UAE authorities to clampdown on Non-Governmental Organisations that had voiced calls for change is a cause for some concern with regards to the eventual establishment of an independent NHRI in the UAE. Amnesty observes that in 2011, the Independent Jurists Association and Teachers Association boards were dissolved by the authorities after they had requested on behalf of a number of Non-Governmental Organisations discussions on reforms on governance.

An Amnesty International report states that:

By summarily dismissing their executive boards and appointing government nominees to replace them, the authorities compromised the independence of the two organizations and effectively sent a warning to other Non-Governmental

³³⁶ Amnesty International, ‘Silencing Dissent in the United Arab Emirates (UAE)’ (<
https://www.amnesty.org.uk/files/mde_25.018.2014_-_there_is_no_freedom_here_-_silencing_dissent_in_the_united_arab_emirates_uae.pdf> accessed 17 August 2016.

³³⁷ *ibid* 5.

³³⁸ *ibid*.

³³⁹ *ibid*.

Organisations to toe the line or risk opening themselves to similar government intervention.³⁴⁰

Significantly, the specific case of UAE will be further examined in detail in chapter five, the objective here is to identify broadly both the workings of the NHRI and how it has been adjusted and received within the regional context. As can be gleaned from Amnesty International's damning indictment of the human rights record of the UAE, it is notable that the rest of the Arabian nations fare little better.

El Fegjery observes that NHRIs in the Arab world were established in two waves:

The first during the 1990s (Algeria, Morocco, Palestine, Sudan, Tunisia, and Yemen) establishing such institutions as part of policy package that would shore up wavering political legitimacy at home and absorb social tension. The second wave came in the context of the international and regional debate over political reform during 2001, which pushed countries such as Egypt, Jordan, Qatar and Saudi Arabia to establish these institutions³⁴¹.

However, despite the establishment of the NHRIs, there appears to be a universal crackdown on human rights activists in many of the Middle Eastern and North African nations. Amnesty International has reported that in Egypt:

Well-known activists were usually released within hours, although some were beaten or harassed. Some detainees were prosecuted after being tortured and otherwise ill treatment in detention, including sexual and gender-based violence³⁴².

They note that the Egyptian 'National Council for Human Rights did not intervene in any serious way'³⁴³ when authorities arbitrarily shut down many Non-Governmental Organisations, and 'investigations have not led to those responsible for violations being held to account nor to

³⁴⁰ *ibid* 7.

³⁴¹ El Fegjery (n 289).

³⁴² Amnesty International, *Brutally Unpunished and Unchecked: Egypt's Military Kill and Torture Protesters with Impunity*, vol 21 (Amnesty International Int'l 2012).

³⁴³ *ibid*.

the victims receiving an effective remedy...³⁴⁴ for individuals and Non-Governmental Organisations, including those working on torture cases and labour rights.

The attitude and approach of these officials is rather well encapsulated in another

Amnesty International report:

In a region where governments persistently fail to respect human rights, the role of human rights defenders is all the more crucial. Their courage, tenacity and commitment are a constant reminder to the authorities of their profound failure to meet their obligations under international law, and are fundamental for the introduction of long-lasting changes. It is when states endeavour to silence human rights defenders that their voice is most crucially needed³⁴⁵

It can be argued that just by establishing NHRIs alone, human rights issues will not naturally disappear in the Arab world. While some nations have developed their NHRI in compliance with the Paris Principles, the institutions have been inoperable due to the socio-political climate (e.g. Palestine, Iraq, Sudan); the government is unwilling to follow their recommendations; Underfunded and Perceived to be part of the government.³⁴⁶ El Fegierly observes that ‘the relationship between these institutions and independent human rights groups is often tense, especially when it comes to subjects such as civil rights, political reform, and constitutional reform’³⁴⁷.

Furthermore, he notes that the people do have any inherent sense of ownership or trust in an institution that they have not been consulted upon.

As nations emerge from protracted civil wars and regional conflicts, national human rights commissions are increasingly becoming significant players in the implementation and

³⁴⁴ *ibid* 43.

³⁴⁵ Amnesty International, *Challenging Repression* (n 86) 86-87.

³⁴⁶ UNDP, ‘Study in the Link between Economic, Social Rights and Legal Empowerment in the Arab World, Arab Organization for Human Rights UNDP Regional Centre in Cairo’ <http://aohr.net/en/wp-content/uploads/2015/07/ESC-and-LEP_63.pdf> accessed 14 August 2016.

³⁴⁷ El Fegierly (n 289).

monitoring of peace agreements alongside post-conflict transitional arrangements. Durbach suggests that the creation of NHRI should become a pre-condition to the execution of such agreements.³⁴⁸

For example, Morocco's Consultative Council has 'played a major role in forming the Justice and Reconciliation Commission through which the country has come to terms with its past human rights violations'³⁴⁹. Additionally, the international regional debates at the start of the millennium also instituted some human rights reform and change in places such as Jordan, Saudi Arabia, Egypt, and Qatar.³⁵⁰

However, it has to be recognised that 'it will be much more difficult for an institution to win public legitimacy'³⁵¹ because of the:

Sudden rush of national institutions... created through peace agreements... that too little attention is being paid to the difficult questions of consulting civil society in the creation of NHRIs and considering where they fit into the overall framework of new democratic structures in transitional societies³⁵²

Good governance and practice from the Arabian Gulf region is exemplified by the Qatar National Human Rights Committee since they were awarded the highest status for compliance, 'A' from GANHRI.³⁵³ The Qatar National Human Rights Committee often displays their promotion and support of a positive human rights culture through its organisation of conferences, seminars, lectures and training courses addressing different human rights themes. These 'have entailed such topics as human rights culture, incorporation of human rights norms

³⁴⁸ A Durbach, 'Human Rights Commissions in Times of Trouble and Transition: The Case of the National Human Rights Commission of Nepal' [2010] UNSW Law Research Paper in; H Nasu and B Saul (Eds), *Human Rights in the Asia-Pacific Region: Towards Institution Building* (Routledge 2011) 209-234.

³⁴⁹ El Fegiery (n 289).

³⁵⁰ *ibid.*

³⁵¹ *ibid.*

³⁵² Carver (n 181).

³⁵³ GANHRI (n 312).

in school curriculum, norms and mechanisms of international human rights law, and its mandate and responsibilities³⁵⁴. These promotional activities, training courses and outreach work were targeted specifically to reach all segments of the society including law enforcement, teachers, journalists, students and medical personnel. In addition, the Qatar National Human Rights Committee has established a program for field visits every year to the Deportation Centre, the Qatari House for Shelter and Human Care, and Central Prison.³⁵⁵ Qatar National Human Rights Committee, also undertakes periodic visits to the provisional detention section; ‘Search and Follow-up Department of the Ministry of Interior to identify the status of female detainees’³⁵⁶; psychiatric clinics in order to identify the status of patients and the problems they encounter alongside the quality of services provided to them; the Criminal Investigation Department, General Administration of Public Security, of the Ministry of Interior, ‘to identify the status of detainees’³⁵⁷. These field visits are a pioneering development in the drive to educate and protect the public on human rights in the region. The consideration of this particular experience is very pertinent to the establishment of a NHRI in the UAE due to it being derived from a nation with similar traditions, cultures and socio-political development.

It is argued that ultimately the success of any NHRI will depend on the existence of a vibrant civil society that encourages or tolerates as a minimum, social and political activism. However, as Karajah observes, the establishment of civil society is not an inevitable outcome of the development of the state. It is an autonomous structure independent of the state. ‘It encourages

³⁵⁴ M Eltayeb, ‘The Qatari National Human Rights Committee: A Search for Evaluation’ (2007) <<https://www.hurights.or.jp/archives/focus/section2/2007/03/the-qatari-national-human-rights-committee-a-search-for-evaluation.html>> accessed 17 June 2017.

³⁵⁵ *ibid.*

³⁵⁶ ‘Annual Report Human Rights Status in Qatar 2010’ (NHRC 2010) <<http://www.nhrc-qa.org/wp-content/uploads/2014/01/%D8%AA%D9%82%D8%B1%D9%8A%D8%B12010-%D8%A8%D8%A7%D9%84%D8%BA%D8%A9-%D8%A7%D9%84%D8%A5%D9%86%D8%AC%D9%84%D9%8A%D8%B2%D9%8A%D8%A9.pdf>> accessed 16 July 2016.

³⁵⁷ *ibid.*

good governance in the modern state and mobilizes the power of democracy, namely public participation in decision making... It is, in sum, a measure of democratisation'³⁵⁸.

If these conditions are absent, there is little to 'prevent national institutions from becoming mere mouthpieces of the government'³⁵⁹. El Fegiery contends that in an era of shrinking state capacity and increasing pressures for democratisation, the resilient authoritarian leaders in the Arab world have used NHRIs as a political mechanism to respond to domestic and international criticism by Non-Governmental Organisations and regime critics.³⁶⁰

In attempting to legitimise the purpose and existence of NHRIs, especially in the Arabian Gulf region, Risse suggests that the *pull* of compliance with regards to international human rights norms may have more impact than the *push* of norm violations.³⁶¹ In identifying the notion of compliance by the State, Risse is implying the actions taken by the State that conform to international norms, whereas when State actions deviate from international norms this implies non-compliance.³⁶² Moravcsik argues that, 'while realists stress power politics and assume that states do what they are forced to do, liberals believe that what states want is the primary determinant of what they do'³⁶³. Moravcsik observes that, states are not obliged to adopt humanitarian norms since human rights regimes are infrequently enforced by interstate action. Rather, he notes, governments involve themselves in international commitments as it serves them to avoid future domestic political alternatives; that human rights treaties are adopted

³⁵⁸ S Karajah, 'Civil Society in the Arab World: The Missing Concept' (2006) 9 Int'l J. Not-for-Profit L. 25, 20.

³⁵⁹ El Fegiery (n 289).

³⁶⁰ *ibid.*

³⁶¹ T Risse, 'Transnational Actors and World Politics', *Corporate ethics and corporate governance* (Springer 2007) in; W Carlsnaes, T Risse and BA Simmons (eds), *Handbook of International Relations* (Sage 2002) 255-274 cited in ; S Cardenas, 'Norm Collision: Explaining the Effects of International Human Rights Pressure on State Behavior' (2004) 6 International Studies Review 213.

³⁶² Risse (n 361).

³⁶³ A Moravcsik, 'Taking Preferences Seriously: A Liberal Theory of International Politics' (1997) 51 International organization 513, 521.

primarily for domestic political survival.³⁶⁴ Shor explicates that ‘...both realist and liberal approaches are actor-oriented; they take actors (states) as the ontological givens and assume that their actions are guided by rational motivations and interests’³⁶⁵. This is further explained by Cortell and Davis who recognise that international pressure is only influential when a ‘cultural match or normative fit’³⁶⁶ exists. This means that the States themselves in which human rights reform is called for actually accept the treaties and need for their implementation. Cardenas suggests that international pressure is likely to succeed when members of the domestic society support international norms and join transnational networks of activists. Transnational networks can then use ways of influence and moral entrepreneurship to place human rights issues on national plans, including lobbying by powerful governments.³⁶⁷ Shor agrees that States are compelled to comply due to the pressures from States with superior economic, military and political powers.³⁶⁸

Cardenas argues that the pressure is higher if applied by a hegemonic state (e.g. United States in the contemporary era), which compels weaker nations to adopt their own moral standards.³⁶⁹ However, international relations and public policy scholars and commentators criticise this approach, which suggest that States are compelled to comply due to the pressures from States with superior economic, military and political power. For example, the Kingdom of Saudi

³⁶⁴ *ibid* 521.

³⁶⁵ E Shor, ‘Conflict, Terrorism, and the Socialization of Human Rights Norms: The Spiral Model Revisited’ (2008) 55 *Social Problems* 117, 120 *See also*; SD Krasner, ‘Sovereignty’ [2007] *The Blackwell Encyclopedia of Sociology*.

³⁶⁶ AP Cortell and JW Davis, ‘How Do International Institutions Matter? The Domestic Impact of International Rules and Norms.’ *International Studies Quarterly* 451-478 *Cited in*; Cardenas, ‘Norm Collision’ (n 361) 214.

³⁶⁷ Cardenas, ‘Norm Collision’ (n 361) 216.

³⁶⁸ E Shor, ‘Conflict, Terrorism, and the Socialization of Human Rights Norms: The Spiral Model Revisited’ (2008) 55 *Social Problems* 117, 119 *See also*; GJ Ikenberry and CA Kupchan, ‘Socialization and Hegemonic Power’ (1990) 44 *International organization* 283, 283–315.

³⁶⁹ Goodman and Pegrum (n 194) *See also*; S Cardenas, *Conflict and Compliance: State Responses to International Human Rights Pressure* (University of Pennsylvania Press 2010).

Arabia is a leading oil producer and not in receipt of any international donations or assistance but still faces constant criticism of its human rights record.³⁷⁰ Schwarz argues that, even though pressure from more powerful and superior States is vital:

Certain states are partially immune to moral pressure from non-state actors. Such states are considered to be geo-strategically important or politically or economically vital for major Western powers. According to these interests, they condone the pressure to improve human rights record. (E.g. China, Israel, Pakistan, Saudi Arabia, Turkey)³⁷¹.

Cardenas reflects that a principal incentive for States to breach international human rights norms is usually a threat to their national security. The usual response from the States entails some measures which may violate personal integrity despite international or domestic human rights pressures.³⁷² Cardenas believes that in such circumstances, the survival of a privileged group's interests may be at stake. State elites who embark upon the violation of rights do so to hold on to power, regardless of the incentives or threats to comply.³⁷³ They then justify those violations by legitimising their actions in terms of the greater national good by claiming that personal liberty must be sacrificed for national security.³⁷⁴ What is significant, however, is not that the definition of national security is manipulated to suit the authorities, but the continuous threat perceived from other social groups to their status and power.

It is argued from the Arabian Gulf context that the State authorities have already demonstrated their intent and commitments to human rights norms with the establishment of certain institutions to monitor these norms. However, the question being posed by this study is the

³⁷⁰ RA Alhargan, 'The Impact of the UN Human Rights System and Human Rights INGOs on the Saudi Government with Special Reference to the Spiral Model' (2012) 16 *The International Journal of Human Rights* 598, 602.

³⁷¹ R Schwarz, 'The Paradox of Sovereignty, Regime Type and Human Rights Compliance' (2004) 8 *The International Journal of Human Rights* 199, 208.

³⁷² Cardenas, 'Norm Collision' (n 361) 221.

³⁷³ *ibid.*

³⁷⁴ *ibid.*

degree to which both the authorities and society at large wish these to be implemented and adhered to. In chapter five, the discussion will focus specifically upon the UAE context and the social constructivist model outlined in Risse and Sikink.³⁷⁵ The spiral model seeks to explain the phases a State may progress through as it brings about domestic human rights improvements in response to pressures from a network of domestic and international actors.

3.5 Conclusion

The purpose of this chapter has been to identify core objectives and to question the theoretical purpose of the NHRI, its operation within the guidelines of the Paris Principles and its place in the Arabian Gulf Region.

In accordance to the UN, the NHRI as an institutional body must be established by the government within the mandates of its national constitution to promote and protect human rights. Thereby, its underlining purpose is to provide sincere advice and guidance to governmental bodies on the compliance with legislation and implementation of international human rights policies.

However, it must be acknowledged that the broad generalist guidelines and standards of the Paris Principles imply a universal adherence, which as will be explored in chapter five contradicts the culturally specific norms of the UAE and the region. The literature in the first instance demonstrates that some nations are not willing participants in the establishment of an independent organisation designed to monitor their activities. It must be recognised that the credibility of the NHRIs is dependent upon the political will and the social environment. The established argument stipulates that in accordance to the Paris Principles the NHRIs cannot

³⁷⁵ T Risse-Kappen and others (eds), *The Power of Human Rights: International Norms and Domestic Change*, vol 66 (Cambridge University Press 1999) 5.

function appropriately without the minimum level of democratic governance and socio-political liberty. This could naturally prove to be an impediment to the eventual establishment of an independent NHRI in the UAE. Although from the perspective of the broader Arab world, NHRIs have been established in the region through two phases, there appears to be a universal crackdown on human rights activists in many of the Middle Eastern and North African nations. NHRIs have, in several situations, failed to intervene or condemn State authorised human rights violations. Thus, it is argued that the creation of NHRIs in itself does not promise to eradicate issues of human rights violations. Institutions in the region have been inefficient and inoperable due to such factors as the socio-political climate (e.g. Palestine, Iraq, Sudan); Governmental influence; lack of funding and being perceived to be part of the government.

Therefore, it is essential to concede on the initial point that in order to establish a successful NHRI, there is a prerequisite for a democratic civil society that understands the place of social and political activism. The literature suggests that to prevent the mockery of the concept, these States should be subjected to the *pull* of compliance rather than the *push* of norm violations. This entails progressive social change through education and communication of these ideals through the media, international pressures through members of domestic societies collaborating with transnational networks of activists, lobbying governments of more powerful nation States, which can apply pressure for compliance with human rights policies without the use of claw back clauses designed in other articles to suspend human rights under the pretence of national security.

The method by which this can be attained is also noted within the body of the Paris Principles, which explicitly highlight the role of education and the expectation of NHRIs to work with educational institutions such as schools, colleges and universities and other sanctioned education providers to integrate human rights education into the syllabuses of their institutions. Therefore, the overarching aim of the NHRIs should be to deliver knowledge to and educate the broad spectrum of civil society. There is ample evidence to demonstrate that exclusive

representation by and through elite minorities distorts and diminishes the integrity and value of the human rights organisation.

In order for the NHRI to achieve this objective it should be established on the principles of 'Independence' and 'Accountability', which entail that the UAE government, NGOs and other external parties refrain from interfering in the mandates, function, composition and competence of the NHRI. Although it is an accepted point that this will pose significant challenges as the NHRI is to be established under an act of government. The process should be transparent, with active dialogue between citizen and public official within the confines of a democratic process. In order to ensure the independence and accountability of the NHRI, its role should not be constrained or impeded due to funding issues. However, the paradoxical issue of the NHRI as a recipient of public funding indicates that it cannot be considered truly independent. The literature demonstrates that in many instances governments have systematically impaired their NHRIs' operations by restricting their budgets. It is suggested that to ensure financial independence, NHRIs must have the means to ensure that their future operations remain independent from political decision makers and economic fluctuations. The first measure that the NHRI must ensure that its Membership and Staffing alongside its Appointment of Members, is conducted through an open and fair process, which encompasses perspectives from the broad segment of society. This will increase and enhance the credibility of the NHRI, as the institution should become a de-facto model for diversity, plurality and accessibility. Thus, NHRIs must not only be representative of the broad segments of society but be actively working to highlight the divergent issues and bring to justice those responsible for violations and abuses within its remit, as well as being available for consultation for the broad section of society in the UAE.

However, remarkably as per the recommendations of the Paris Principles, there are no adjudication and investigatory powers given to NHRIs. The thinking here appears to be based upon the notion that the Paris Principles did not seek to endow NHRIs with

such formal powers of investigation and adjudication because it would turn them into specialised human rights courts, and that would naturally undermine their *raison d'être*. Their intrusions into the judiciary and legislative practices may cast suspicion and doubts into their allegiances and loyalty to civil society as they may be taken to be governmental agents. Therefore, as will be evident from the findings of this thesis, the NHRIs are perceived to be a promotional, educational, advisory, and investigative body.

The next chapter discusses the results of the field work interviews conducted with individuals representing a segment of UAE society and the findings derived from the gathered data.

Chapter 4

The Perspectives of the Emirati population and Human Rights activists on Human Rights Issues and on the Need for an NHRI in the UAE

4.1 Introduction

The review of literature has revealed a significant gap in the study and exploration of the opinions and perspectives of the native Emirati population on human rights and the creation of a NHRI in the UAE. To date, there exists no study that has specifically sought to capture and analyze primary first-hand data from those involved in the process of developing, sustaining, maintain or ensuring human rights provisions in a professional capacity in the UAE. The requirement for an initial qualitative, exploratory study was deemed a necessity at this stage in order to directly uncover the perspectives of those involved in the human rights movement and provide the impetus for further research into previously unidentified areas. The sample of those selected must therefore be purposive, as those who possess the knowledge, experience and understanding of human rights issues can provide informed and constructive perspectives. Through a dialogical process, conducted through semi-structured interviews as the main data collection instrument, a rich quality of soft data can be captured. This can be analysed and categorised so as to address directly the themes and issues derived from the review of literature and the Semi-Structured Interviews (SSIs). The study, conducted within the bounds of the acceptable standards for academic and scientific research, ensures complete anonymity and confidentiality to the participants and provides the study with credence and credibility.

The primary aim of this chapter is to present and discuss the findings of the ‘exploratory qualitative’ research with regard to the following central thesis question, namely:

What are the perspectives of the Emirati population and Human Rights activists on Human Rights Issues and on the need for an NHRI in the UAE?

4.2 Methodology

The practical structure within which research is undertaken is referred to as the research methodology. This defines an approach to a problem that can be put into practice in a research process.³⁷⁶ Banakar and Tavers (2005) observe that:

Many socio-legal researchers would argue that their undertaking requires no special methods besides those already used in social sciences. Law is, after all, only a social institution, in the same way as religion, medicine or education, and can be studied using the same methods and techniques.³⁷⁷

Therefore, *methodology* is understood to describe the rational and logic utilised by a researcher, which includes the fundamental knowledge with regards to the subject and research methods in question and the framework employed in a particular context.

The objective of this study is to explore the establishment of a National Human Rights Institution (NHRI) in the United Arab Emirates. Therefore, it has been decided to directly engage with both those who are affected by the implementation of human rights laws and those who are responsible for its execution and legitimacy. 'The research strategy (methodology) is based upon a qualitative methodology. This implies the simultaneous collection and analysis of data, development of theory and a continuous reformulation of the research question'³⁷⁸. The

³⁷⁶ C Seaman, 'Real World Research-A Resource for Social Scientists and Practitioner-Researchers' (1995) 97 *British Food Journal* 44; D Remenyi and others, *Doing Research in Business and Management: An Introduction to Process and Method* (1st edn, Sage 1998).

³⁷⁷ R Banakar and M Travers, *Theory and Method in Socio-Legal Research* (Bloomsbury Publishing 2005).

³⁷⁸ SB Merriam, 'Introduction to Qualitative Research' (2002) 1 *Qualitative research in practice: Examples for discussion and analysis* 1; JA Maxwell and DM Loomis, 'Mixed Methods Design: An Alternative Approach' (2003) 1 *Handbook of mixed methods in social and behavioral research* 241, 241-272.

qualitative method provides the opportunity to explore the participant's experience in a greater depth of detail and analysis, which provides the researcher with the opportunity to further investigate the participant's perspectives from grassroots activists to those responsible for human rights provisions in the UAE. Sample groups are limited and focused upon a specific demographic of society and do not purport to present the views of the entire Emirati society.

4.2.1 Research Design

The research design provides a roadmap for how the study is to be conducted. This involves identifying the phenomenon to be investigated, the criteria for selecting a sample, the instruments being used to gather and analyse the data. This section presents the selection of the sample population, the instruments used, analysis of data before concluding with the ethical considerations and issues entailed in the collection of data.

4.2.1.1 Sampling

The participants were potential participants that were responsible for the preservation of human rights provisions, experienced violation of their human rights, or were commentators, jurists or activists in the UAE. The participants were engaged indirectly through acquaintances (3), directly (2), and through recommendations (1). The potential participants were provided with a study outline and the methodological discourse, research questions and then time was allocated to thoroughly explain the purpose of the entire project. The confirmation of participation was established and arranged via telephone and email services. Two of the interviews were conducted at a hotel in Dubai, a further two interviews were conducted at a university in the UAE and the remaining interviews were conducted at a private residence in the UAE.

The data collected during the interviews was secured and utilised in various ways. Firstly, all interviews were recorded and fully authorised for use in this study as a declaration was signed before the interview began. Secondly, an audio copy was sent to the participant to review and

confirm that they were content with the views they had expressed. After transcription of the interviews, it was sent to participant; only once the interviewee signed off the transcript was authorisation and consent for use acquired. Next, each interview was analysed by the researcher and once again the analysis was sent to the interviewee for authorisation and approval before it was used as evidential data for this study. Finally, only six participants completed this process due to the enormous sensitivity and suspicion surrounding the issue of human rights in the UAE and the difficulties encountered in gaining the cooperation of professionals and experts to the SSI process to discuss human rights issues and the establishment of NHRI in the UAE in such a public and formal manner. The interviewed participants consisted of one senior member of government, one human rights academic, one human rights lawyer, an international NGO representative, a victim of human rights violation by the UAE State and a foreign national working as a professional accountant in Dubai.

4.2.2 Data Collection

The research method adopted for data collection was the Semi-Structured Interviews (SSI), which were used in conjunction with the review of literature to further inform the study.

4.2.2.1 Interviews

Semi-Structured Interviews (SSI) are an important data collection method as the information they provide is often instinctual and informative and unique. Hutter³⁷⁹ asserts that interviews are in fact essential for data collection in the legal field as they give an opportunity for interpretation of the legislation to be discussed and changes to institutions suggested. This is a sentiment supported by Yin³⁸⁰ who further suggests that SSIs enable both parties to further explore the subject and delve into details often limited by a fully structured interview, because

³⁷⁹ Monique Hennink, I Hutter and A Bailey, *Qualitative Research Methods* (Sage 2010) 438.

³⁸⁰ R Yin, *Applications of Case Study Research* (sage 2011).

the interviewer has the option to probe the interviewee to elaborate or to investigate any concerns that may have been raised by the interviewee. Besides, if the interviewee has difficulty answering a question or provides only a brief response, the interviewer can use cues or prompts to encourage the interviewee to consider the question further. An acknowledged detriment to the SSI format is the dependency that arises when the researcher is left to vouchsafe the validity of the interviewee's sentiments. In order to verify the responses, the researcher must adhere to strict observation of the interviewee and references from professionals associated with the interviewee.

After reflection on the review of literature, the following questions were used as a general guideline to initiate discussion:

What is your understanding of human rights law in general?

Do you think the UAE has provisions within its constitution that guarantee the protection of human rights to all in the UAE?

What is your view on the Paris Principles and the scope of enforcing human rights laws upon the UAE?

Is the present monarchical system compatible with the establishment of a democratic system in the UAE?

What are your perspectives on the criticism of UAEs human rights record by International NGOs?

Is there a requirement for the establishment of an institution by the government that oversees human rights provisions in the UAE?

What are the barriers to its implementation? What are the risks, if any?

What are your suggestions and recommendations?

4.2.3 Data Analysis

The data analysis process will assist the study in making sense of the collected data from the review of literature, from the SSIs and from the secondary data sources such as the UAE

Constitution, the Paris Principles, the UNHRC documents and the human rights provisions and articles from the GCC, views of jurists and the case studies of human rights violations by international NGOS.

4.2.3.1 Deductive Analysis

Trochim observes that the deductive approach is akin to a waterfall, whereby the theory as identified through the review of literature, cascades into the hypothesis, which is presented as themes within the study. These hypotheses are then tested via the data collection instruments, in particular the SSI, the observation stage, which subsequently allows for the confirmation of the theory and hypothesis through the data analysis phase.

These four stages are identified below as a top down model.

Stages	Descriptions
Theory	Review of Literature
Hypothesis	Defining and Understanding the concept of Human Rights Discussing the Requirement for a Human Rights Institutions in the UAE Discussing the role of Democracy and Governance in establishing a UAE NHRI The Role of Education in promoting the value of Human Rights and Human Rights Institutions
Observation	SSI
Confirmation	Data Analysis and Discussion of Findings

Table 4-1 An Interpretation of the Deductive Approach

4.2.4 The British Educational Research Association (BERA 2018) Ethical Guidelines

The research and interviews were conducted in accordance to the recommendations mandated by the British Educational Research Association (BERA) which emphasise that:

...educational researchers should operate within an ethic of respect for any persons involved in the research they are undertaking. Individuals should be treated fairly, sensitively, with dignity, and within an ethic of respect and freedom from prejudice regardless of age, gender, sexuality, race, ethnicity, class, nationality, cultural identity, partnership status, faith, disability, political belief or any other significant difference.³⁸¹

The following table outlines the Guideline used and the incorporation of principle into this study.

Responsibility of Researcher	Essential Points for Consideration (taken Directly from BERA)
Voluntary Informed Consent	Educational research undertaken by UK researchers outside of the UK must adhere to the same ethical standards as research in the UK Researchers engaged in action research must consider the extent to which their own reflective research impinges on others, for example in the case of the dual role of teacher and researcher and the impact on students and colleagues. Dual roles may also introduce explicit tensions in areas such as confidentiality and must be addressed accordingly
Openness and Disclosure	The securing of participant’s voluntary informed consent, before research gets underway, is considered the norm for the conduct of research. Researchers must therefore avoid deception or subterfuge unless their

³⁸¹ BERA (n 15).

	<p>research design specifically requires it to ensure that the appropriate data is collected or that the welfare of the researchers is not put in jeopardy.</p>
Right to Withdraw	<p>Researchers must recognize the right of any participant to withdraw from the research for any or no reason, and at any time, and they must inform them of this right. In all such circumstances researchers must examine their own actions to assess whether they have contributed to the decision to withdraw and whether a change of approach might persuade the participants to re-engage.</p>
Incentives	<p>Researcher use of incentives to encourage participation must be commensurate with good sense and must avoid choices which in themselves have undesirable effects and must also acknowledge that the use of incentives in the design and reporting of the research may be problematic; for example, where their use has the potential to create a bias in sampling or in participant responses.</p>
Detriment Arising from Participation in Research	<p>Researchers must make known to the participants (or their guardians or responsible others) any predictable detriment arising from the process or findings of the research. Any unexpected detriment to participants, which arises during the research, must be brought immediately to their attention or to the attention of their guardians or responsible others as appropriate.</p>
Privacy	<p>The confidential and anonymous treatment of participants' data is considered the norm for the conduct of research. Researchers must recognise the participant's entitlement to privacy and must accord them</p>

	<p>their rights to confidentiality and anonymity, unless they or their guardians</p> <p>or responsible others, specifically and willingly waive that right.</p>
Disclosure	<p>At all times the decision to override agreements on confidentiality and anonymity must be taken after careful and thorough deliberation. In such</p> <p>circumstances, it is in the researcher's interests to make contemporaneous</p> <p>notes on decisions and the reasoning behind them, in case a misconduct</p> <p>complaint or other serious consequence arises.</p> <p>The Association considers it good practice for researchers to debrief participants at the conclusion of the research and to provide them with copies of any reports or other publications arising from their participation.</p>

Table 4-2 BERA Ethical Guidelines³⁸²

4.2.4.1 Insider Research

The researcher identifies and classifies himself to be an insider researcher as his heritage, traditions and association are all directly traceable to the UAE. This implies that the researcher has an intimate understanding and connection with the UAE and the potential study participants for the field study. Although the insider-researcher status is often perceived to entail an inherent bias due to the proximity of the researcher with the subject under examination, the researcher has in the course of this study adopted the principle of *reflexivity*. This indicates that the

³⁸² *ibid.*

researcher has consciously documented his biases and presumptions throughout the field work phase.³⁸³

4.2.4.2 Research Limitations

This study in seeking to investigate a relatively new area of research within the area of human rights and NHRI in the UAE, was hindered by several issues that comprised:

Participation: Due to the sensitive nature of this topic in the UAE, the number of people willing to take part in the study was limited. There was an inherent suspicion of a study being conducted on human rights and the UAE on behalf of a Western educational institution. Due to the negative international media publicity surrounding human rights issues in the UAE most people who refused to participate did so citing this issue.

Retraction of interviews: A number of participants rescinded upon their commitments to the study with two actual interviews being totally disregarded and annulled.

Validation: The viewpoint of the study participants has not been authenticated via supplementary data or further studies and fieldwork.

The next section discusses the analysis of the captured data.

4.3 Findings of Empirical Field Study

This segment discusses the data gathered from the study participants in relation to their perspectives on Human Rights and the formation of a NHRI in the UAE. The review of literature suggests that the manner in which the concept of human rights is understood is vital

³⁸³ M Patton, *Qualitative Evaluation and Research Methods* (SAGE Publications, inc 1990).

in ascertaining and appreciating native Emirati perspectives on the establishment of a NHRI in the UAE.

4.3.1 Participants

The study sample consisted of six individual case studies.

Name of Participant	Age	Status/Position/ Role in Society	Time Frame (Date) of Interview Schedule
<p>Abdul (Sheikh) Sheikh Abdul is a native Emirati and works within the Ministry of Justice as a senior advisor with over 15 years of experience in his department. Prior to working for the Ministry of Justice he worked within the UAE Ministry of Defence. Sheikh Abdul completed his undergraduate work in social policy in the UK and his post graduate studies within the area of International Law in the US. He has attended numerous courses globally that were focused on human rights and has attended many high-level international meetings and conferences on Human Rights. He has also been a participant in the evaluation and analysis of the current human rights provision in the UAE. He contributed his recommendations and amendments to existing documents and policies on human rights in the UAE.</p>	60	Senior Govt. Advisor in Ministry of Justice	April 2017

<p>Hassan Hassan is a qualified lawyer, who has been actively practising as a legal consultant for over 10 years within a firm based in Abu Dhabi. Hassan qualified as a solicitor from an educational institution in Paris. Hassan has decided to specialise in working within the field of human rights and has begun work with some government ministries to develop their human rights educational programs.</p>	35	Human Rights Lawyer	March 2017
<p>Noor (Dr) Dr Noor is by profession a university lecturer and researcher within the area of social policy and human rights. He has received and attained all his academic qualifications from several universities in the UAE. Dr Noor has actively campaigned for a change in the political structure of the country and supported the calls for democratic reform and abolishment of the current monarchical system. In turn, he claims that the UAE government has prevented him from travelling abroad, placed him under constant surveillance and with the arrest and harassment of his colleagues he actively fears for his safety and future prospects. He is currently unemployed as his employers terminated his contract without any warning. Although he has applied to several universities, colleges and even schools he is constantly rejected without any explanation.</p>	45	Victim of HR Abuse	April 2017

<p>Rashid (Professor) Professor Rashid is a native Emirati working within a university department in the UAE and has over 15 years of research and teaching experience on the subject of human rights. Professor Rashid, awarded his doctorate from a university in the UK, and specialist in the subject of international human rights, has conducted extensive research on human rights issues within the members of the Gulf Cooperation Council. Prior to his academic work he worked for an International consultancy firm based in Dubai. He has attended and addressed a number of high profile conferences especially in the Persian Gulf region.</p>	55	Academic at University in UAE	May 2017
<p>Sophia Sophia, based in the UK, is employed at an international NGO. She has visited the UAE on several occasions for the explicit purposes of (extensive) further research and consultations and meetings with victims of human rights violations.</p> <p>Sophia is originally from Egypt and has nearly 20 years of experience in the human rights field. Sophia graduated from a university in Egypt before moving to the UAE for work within an international law firm. However, she decided to further her understanding and knowledge of the field and moved to the UK to complete a post graduate program in human rights law. After completing her studies, she was offered a post within an International NGO to focus exclusively upon the Gulf Cooperation Council members.</p>	28	Activist (Non-Governmental Organisation)	June 2017

<p>Jamsheed Jamsheed is originally from Pakistan and arrived in the UAE around 15 years ago. Jamsheed is an accountant by profession and gained all his academic and professional qualifications in Pakistan. He had the opportunity to travel to the UAE for work after he spent two years unemployed after completing his post-graduation in accounts from a university in Lahore.</p>	<p>42</p>	<p>Accountant within an International Corporation based in Dubai</p>	<p>June 2017</p>
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Table 4-3 Individual Participants for Semi-Structured Interviews

4.3.2 Themes Overview

The Semi-Structured Interviews process was the fundamental basis for the empirical field research due to its freedom and flexibility with regards to exploration and identification of participant’s perspectives. As the focus of the Semi-Structured Interviews was exploratory, the interview contained no fixed questions; rather a theme was extracted from the literature and explored with the participant. The table below lists the identified themes alongside their purpose.

Theme	Purpose
<i>Defining and Understanding the concept of human rights</i>	Establishing participants’ definition and meaning of human rights. To explore the issue in the context of UAE.
<i>Discussing the Requirement for a Human Rights Institutions in the UAE</i>	To establish the viability and requirement of a UAE based NHRI and understand its effects on the safeguarding of human rights.
<i>Discussing the role of Democracy and Governance in establishing a UAE NHRI</i>	To understand participants’ perspectives on the significance of the system of governance and the place for democracy within that political structure.
<i>The Role of Education in promoting the value of Human Rights and Human Rights Institutions</i>	To decipher participants’ understanding of the place for education in promoting and understanding human rights issues within UAE society.

Table 4-4 Themes of Semi-Structured Interviews

In order to derive an understanding of each participant’s narrative and perspectives on each theme, data was gathered through this dialogical interview process.

Earlier, this study made clear that there is a dearth in contemporary scholarship on the UAE and the formation of NHRI. Therefore, no identifiable criteria for evaluating the participants’

perspectives has been firmly established, which underlines the value and importance of this exploratory study.

The chapter is organised to discuss the individual themes through the dialogue conducted with the six participants.

4.3.3 Theme One

*Defining and Understanding the concept of Human Rights Establish Participants’
understanding of human rights and explore the issue in the UAE context*

Defining and Understanding the concept of Human Rights Establish Participants’
understanding of human rights and explore the issue in the UAE context.

Well it depends on what you mean by human rights...? Whose human rights...? Where are these human rights...? There is a lot of talk about human rights this and human rights that... but we forget that often in legal terms the very concept of human is open to debate... So, I don’t want to go into that... but I will say that yes, I understand what you are asking but I think it’s a slightly contentious term... if left undefined... (Professor Rashid)

Professor Rashid rhetorically challenges the undefined notion of human rights by highlighting its rather ambiguous and broad understanding. He proceeds to demonstrate that the term can justifiably imply a plethora of definitions as taken within specific contexts and understandings.

He argues that for there to exist a platform upon, which a discussion can be conducted, there must exist a common framework or understanding of the core terms, ideas and constructs.

If for the sake of eliminating argument we take the concept of *Insan* as mentioned in the Quran to be the same as the Latin word *human* then what we can say is that the immutable, undeniable rights given to man by God Almighty are part of the nature ... the ancients called this the natural law... even in Persia, Greece and so on... so from the earliest days we believe that people have known about the rights of people and individuals... the Torah, the ten commandments given to Musa (a.s) freed the Bani Israel (children of Israel) from the Egyptian slavery... not just physical but mental... it was sent

by God Almighty to prevent the corruption in society... So human rights is really that thing we call the factors of relationship between people... society and the individual... the social responsibility the State has to protect the individual and in turn the individual has to uphold the values of that society... this what I can say is human rights... the right to mutually accept and respect each other's values and freedom... (Professor Rashid)

Professor Rashid perceives the entire notion of human rights to be encapsulated in the very purpose of the Abrahamic religious faith systems. He reflects that human ideals, morals and ethical norms were directly derived from these faiths based systems.

According to Professor Rashid, human rights are “the protection of the freedom of the individual by society and from society”. He contends that the measures through which this *freedom* is safeguarded in a civilised society is through the legislative process. This ensures that as society encounters new phenomenon, it maintains and upholds its fundamental human values.

Hassan appears to share Professor Rashid's approach to the issue of human rights by firstly questioning its definition, understanding and contextual relevance. He then proceeds to argue the weighted importance of these points:

...understanding of human rights these days is very much determined by the particular definitions that are used to define it... So, in some places it may mean one certain thing and in another it could mean something slightly different... but that slightly different thing is what means it has some other meaning under the legislative norms of a particular nation... (Hassan)

Hassan takes a legalistic approach to defining the notion of human rights and seeks to impress the pertinence of a clear, concise and consistent definition. He contends that this will ensure an honest dialogue and understanding between both society and the individual. He then proceeds to demonstrate that the entire Islamic tradition was founded upon the value of human rights:

The Sunna... The Hadith... The Fiqh and the entire *Sharia* as is all consistent with The Mother of the Books... Al Quran is all about what? People... arguing and looking here and there... and right in front of them is the answer... The whole Islamic tradition is one of human rights... full stop... (Hassan)

Hassan provides a rather broad and overarching understanding of human rights. He relates the entire corpus of the Muslim tradition as a mass treatise on the discourse of human rights from the ancient to the contemporary world. This he argues demonstrates that every legal, philosophical and religious system is geared towards the preservation of human life in some form or context.

This approach receives further credence and support from Sheikh Abdul. He assents and proceeds to support this perspective by linking it directly to the theological and philosophical heritage of his Islamic faith.

When we are talking about the Human Rights (HR), what we are essentially saying is the right that every human being has... this include the living and even the dead... So this is not really a new concept... When we study the Quran and Sunnah of Prophet Muhammad (s) what we see is that from that time of Adam (a.s) and his sons... the first provisions of HR were sent by Allah sbt... Qabeel kills Habeel and then when he feeling... very sorry... remorseful... he doesn't know what to do... Allah sbt shows him the crows and how it bury the dead... and so for Qabeel to make some amends... not great... not really too much... but something ... Qabeel bury his brother Habeel by watching the birds and so you see the first provision for human rights is already there in the first human act, which is violating the human right as given by Allah sbt... to the human... The value of life itself... (Sheikh Abdul)

He identifies his understanding of human rights to be directly equated to the preservation of life as commanded by the sacred Islamic text the Quran and through the Islamic tradition as exemplified by the prophet Muhammad (s).

He then moves on to further to explain that the notion of human rights is an inherent aspect of the very society that he represents.

So, when we are talking about the HR it is nothing new for us... it come with the Quran and Sunnah of Prophet (s) and it come to change the jahilia of society... which was the violation of the human right of the people... their dignity, their right to live in peace and worship and live their lives as they want to...but without corrupting the society... (Sheikh Abdul)

Sheikh Abdul elucidates the role of HR in the formation of contemporary Arab and Muslim societies. He parlays the role of Islamic values as espoused by the Quran and the tradition of the faith to have civilised society, which implies that every human being is allowed his freedom of being and expression.

Although Dr Noor, an alleged victim of human rights violation in the UAE, appears to agree with the Sheikh Abdul's sentiments, he argues that the reason for this debate demonstrates the inept understanding and appreciation for the basic acceptance and appreciation of human rights.

My understanding of human rights is that actually no one can give anyone a human right; this human right is being given by Allah (swt) God Almighty. He has sent every human being with His right to his life, his speech, right to his movement, to his earning. Everything Allah (swt) has guaranteed. (Dr Noor)

Dr Noor presents an extremely defiant contention on the notion of human rights. He argues that the very notion of sharing or promoting an idealistic or utopian perspective that seeks to liberate the minds of the people will become anathema to those in government. He equates his own struggle with that experienced by the early Muslim converts under the oppressive rule of the Meccan Quraysh tribe.

Now when somebody is taking that away from you or somebody is saying I am giving you this and calling it a human right, then I think there is something wrong with that. These are our inalienable immutable human rights which Allah (swt) God Almighty has given us and this is really something that is natural to us. Now what happens after that when people are trying to control you is a different matter that is when we get into the violations of human rights. But what is the human rights? It is the right of every individual to speak, to move, to think, to eat, to be as he pleases to be as long as he is not interfering or violating somebody else's right or space or freedom. (Dr Noor)

Dr Noor appears to be quite traumatised by his experience, although he did not suffer any physical abuse or torture of any nature, he feels as if his divine rights have been gravely violated. When he argues that the human rights provisions the International community is

enforcing upon the UAE is already preserved in the Islamic doctrines, this appears to be contrary to expectation.

Jamsheed, an expatriate from Pakistan, also shares Dr Noor's perspective and notes that his own understanding also stem from his Islamic faith ideology.

Human rights are ... the laws really that should guarantee me my freedom to live in some sort of dignity... these are guaranteed by the Quran and the Sunna of our Rasool... as long as I am not doing anything to anyone then I should be allowed to live my life...this is my right as a human being... (Jamsheed)

Jamsheed presents a rather simplistic and literalist interpretation of his faith and argues that his faith is completely based upon his reliance and trust in Allah. He feels that his Creator will vouchsafe his rights and although he is aware of the demands upon the UAE government to safeguard and protect human liberty and rights, he contends that his faith is in God Almighty.

So, I pray to my Allah that He is looking after me and that only really He is The One who can protect me and provide for me... (Jamsheed)

Jamsheed does not express any vindictiveness or resentment towards the UAE government at all and clarifies that no human being can protect another. Although he understands that it is an incumbency upon those in power to look after their subjects and citizens, growing up in Pakistan, he has lost all hope in the governmental and bureaucratic structures of national governments and perceives them all to be self-serving tools for the rich and powerful. He concedes however, that the UAE is already better in preserving his rights than his native Pakistani government was.

Sophia, a foreign representative of an International Non-Governmental Organisation also recognises the argument posed by the other participants. She identifies the role of religious ideology to be crucial to the assessing the current state of human rights protection in the region.

I think they are those rights and provisions which are given to the individual person by the mere fact that they are alive, so every individual is equal. Yes we know differences exist because of class, race, gender etc., but in theory, and when it is boiled down to the most basic facts, every individual is the same and so has the same right. Some of these rights man has recognised in their religious texts and

social laws and norms and we have also done that as a civilisation when, through the Geneva Conventions for example, we have a whole declaration of human rights, rights which are supposed to guarantee universal protection for every individual, just by the fact that they are a human being. That is what makes us special as a species and it is that right of every individual to be free, to move as they please to, to meet as they please to and to be who they are. That is what entails human rights, and I think that's something that we are working hard to ensure that everybody enjoys. (Sophia)

However, Sophia unlike the other participants does not explicitly associate her own understanding to be explicitly based upon the Islamic faith tradition. She describes her broad experience of the region and argues that although the Islamic and other Abrahamic faith ideologies are more prevalent and domineering, it is the ethnic cultural identities and the social norms and values espoused by them that are the real influencer.

I think because across the world, especially the Arab and Muslim World, they equate naturally the Islamic Teachings, the Christian teachings, the Jewish teachings, basically the teachings of the Abrahamic faiths, which are so heavily focused upon the relations in society and the law and order, that many people from this region especially assume that they have a grasp and understanding of those moral, ethical codes and conducts, but that is not usually the case, mostly these places are run by tribal groups, who's only motive is to protect themselves and members of their tribe and then they organised in a social hierarchy...(Sophia)

Sophia argues that the Arab societies are more informed by the Islamic faith then controlled by it. She identifies the tribal heritage of the region to be the real factor in dictating relationships and eventual social policy and governmental attitudes. She perceives the Gulf Arab societies to be to be dominated by an underlining paranoia and inherent suspicion of foreigners and outsiders. She maintains that although the Islamic faith ideology is a powerful driving force, it's the tribal affiliations and brethren networks that effectively govern the UAE.

So really it's one tribe looking after the interests of the other. That's pretty much what the entire Arabian region is built upon, all society is. So, we see a lot of issues with migrant workers coming into the Gulf States and suffering, having their human rights violated. This is because the entire ethos of the region is built upon a protection of each other and the factors which benefit each other, so they are protected and it comes down to economics and security. That is what is built into the mind-set of these people... (Sophia)

Sophia moves away from the argument related to the inherited Islamic faith culture of the region and instead identifies the cultural and traditional aspect of the Arab societies to be a significant factor in determining relationships and forming new social policies and legislations. Sophia goes as far as to suggest that an unchecked form of nepotism and acceptable bias is the prevalent norm.

Dr Noor further weighs into the debate by adding that the entire political structure has been established to protect the ruling elite, therefore, in discussing the notion of human rights and how they are perceived, Dr Noor observes that these rights are effectively designed to ensure that there is no threat from the citizenry, rather than protecting the citizens from the enormities of the government machinery against the public.

What we have really is a two-tiered system whereby the rules for the royalty, for those who rule above us are one and we the subjects, the citizens just have to go along with them while they usurp and take more and more of the wealth, the oil that belongs to all of us really. They take more and more control, they control more of the businesses, they invest abroad, they claim to be following the International conventions but really are violating many of them by suppressing our voice... our ability to express ourselves and to be who we want to be. That is a great problem at the moment... So, there is no recognition of that, most people are happy with the tribal system and we are not progressing as a nation... We are content; people are not being pushed to challenge themselves, so society is stagnant... (Dr Noor)

Dr Noor argues that this inverted approach to human rights has also had an impact on the development of the citizens as they are provided for and do not have the ability or desire to push themselves to improve or learn. This, he argues, is also a gross violation of the people's human rights because although they live comfortably, they are being kept in an artificial bubble, which shields the public from the reality of the world and their society.

Jamsheed, as a migrant worker, appears to have also noted this dichotomy in the Emirati culture and society. He shares his life experiences and compares his native Pakistan to his life in UAE.

We must also remember that because of this tribal nature and the fact that the nation has just become independent, most of the establishment, especially in the UAE region, allows us to see that the people themselves are not really open to change as much because they see their own way of life being threatened... This is just like Pakistan in many cases... the landlords and traditional ruling class also do not want change as they have it so good at the moment... We really see the other side of it here... where society is created to naturally create a complex where the Arabs are superior to the non-Arabs and therefore hold naturally positions of authority and are above the non-Arab population... This is a clear sense of legitimised discrimination, but this also fits in with the heritage of the region... the question really for us to ask is how well do those Arab masters look after the human rights of their subjects...? In my experience, I have been treated well here in UAE... better than what I could have had in Pakistan... I feel as if I have some purpose and worth here... In Pakistan, I would have had to pay someone to give me a job... even pay my bills or live a life where I am dependent upon some rich or powerful VIP... (Jamsheed)

Although Jamsheed identifies an open discriminatory policy against foreigners, which is prevalent in the Arab and Emirati society, he reveals rather surprisingly that he understands the need for it. He compares it to his native nation of Pakistan and contends that he still thinks the Emiratis treat him better than his own countrymen in Pakistan. Accordingly, it can be deciphered that the inherent discrimination actually protects his human rights as he knows his place in the cultural and traditional milieu of UAE, whereas in Pakistan he felt as if he had little value and belonging.

These sentiments are validated by Professor Rashid, who argues that the cultural heritage, innate values and norms of the Emirati society are peculiar in their design but still maintain the respect due to human life.

...There is within our cultural traditions and heritage a tremendous focus upon the human relationship and what it means to be from a certain tribe or region... this idea of identity is interwoven with what we have defined human rights to be... Self- govern-ship, which is consistent with the idea of man as a Khalifa' Allah or vicegerent of Allah upon the earth... like a manager... caretaker... so to respect each other's perspectives has to be the basis for the understanding of human rights in any culture... (Professor Rashid)

Professor Rashid argues that the influx of foreign migrant workers and their ever-increasing presence presents a credible threat to the future influence of the native Emirati population on

the governmental apparatus. He identifies this to have caused some initial suspicions amongst the conservative elements of Emirati society.

However, Professor Rashid contends that the tenets of the Islamic faith alongside the inherent respect afforded to the outsider by the Arab culture have, over time, generated a great level of appreciation for the migrant workers in the UAE. He cites many studies and figures to prove that greater efforts have and are being made to accommodate and safeguard the rights of these foreign UAE residents.

Here in the Emirates you have to remember that we have Islam as our cultural foundation and so from it comes the understanding of the rights of life and of course man... We have followed this custom for thousands of years and to a large degree even before the coming of Islam... it is a cultural heritage of the Arabs to respect one another and honour the guests... So here in the Emirates as we have developed we have sought to extend our custom and hospitality to the massive numbers of economic migrants... initially it cannot be denied there were some serious issues... but to give credit to the government it has acted... in the case of the child camel jockeys for example... so the nation is evolving and growing to adapt to its own position as a global hub and its societal infrastructure is already protective of the rights of all citizens and the global citizenry who reside and travel to and from the UAE... (Professor Rashid)

Professor Rashid states that he has no fundamental disagreements with the definition of human rights as presented by the international community. Furthermore, he says he acknowledges and applauds the UAE government's willingness to not only abide by but to also set itself the goal of becoming the leading proponent of human rights provisions not just in the region but globally.

Sheikh Abdul from a governmental perspective is in complete support of Professor Rashid's sentiment. He also argues that due to the immense growth and development experienced by the UAE in such a short period of time, which encompasses a significant influx of migrant labour force from all across the world, the UAE is adapting to the changes.

...Of course, when you talk about the human rights, it's not just about one Arab, Emirati, Muslim or what have you... every human being is a creation of Allah sbt and He says in the Quran that the protection of every life is like the protection of

all life... yes, we have had our problems, we will not deny that... but that is not what you call a flagrant abuse of human rights but the ignorance of individuals and the way they do their business... I mean the abused workers could be Pakistani, Indian, Bangladeshi or even other Emiratis it does not matter... what has happened is that a lot of international businesses have set up here and they were not made to uphold the rules and regulations but now we are more in control and as we develop so does our infrastructure, our policies, our rules, laws and regulations and now we are actively involved in ensuring that any human rights abuses are immediately noted and the perpetrators are instantly brought before the courts... we do not tolerate these kinds of things...(Sheikh Abdul)

Sheikh Abdul argues passionately to reinforce the understanding that there exists an axiomatic relationship between the Islamic faith, which is the foundation of Arab and UAE society and the notion that each individual human being has inalienable rights. However, he accepts that with the rapid expansive development of the UAE and the initial chaos of ...

...Our Industrialisation phase... where it has taken nations centuries to get to, we go there basically overnight... (Sheikh Abdul)

It appears hard to counter such a sentiment, which is from a socio-political and historical context, a remarkable feat. However, there are well documented cases of human rights violations in the UAE, by such International organisations as Amnesty International that document both high profile and publicised cases alongside those that have been seemingly covered up by the government. Sheikh Abdul does not seek to address the issue from just a purely factual perspective but seeks to engage the matter through a reflective lens.

...Mistakes will happen and we accept that mistakes have taken place... but we are only 40 odd years old... look at the United States... where slavery has only just been abolished in that time... Europe was wiping out the Jews and other non-white and unacceptable peoples less than a hundred years ago... in just 40 years' time with the growth we have experienced we have become a champion of not only strong economics but the people within that economic system... the citizens, the workers, the travellers... we have a long way to go but we are making progress... we are ensuring that each individual on the territory and sovereignty of the UAE is not only protected by our laws and regulations but enjoys his or her experience of being a part of our society... as long as the people living and working here respect the cultural and social etiquettes of our society we shall ensure with or without the UN mandated protocols on human rights that they are

safe, dignified and free to conduct their business... We must be doing something right... we have every nationality and business you can think of here... (Sheikh Abdul)

There exists an air of confidence and authority in the manner in which Sheikh Abdul describes UAE's ability to adapt and eventually uphold the mantle of standard bearer as he contends that the UAE, as an established trade capital of the world, has already moved to ensure a complete guarantee of human rights within its territory.

However, although Hassan recognises and acknowledges the immense growth and development experienced by the UAE, he questions the broad relevance and understanding of human rights within the Gulf Arab societies.

In this region and country, we have what I think is a natural understanding of the human rights... Because of the tribal structure and how it functions as an extended family there is natural expectation to make sure everyone is looked after...not just physically but emotionally and spiritually... however, the problem arises when this assumption is challenged by outsiders... who expect the same treatment and acceptance... but this is reserved for their own people and not outsiders and so begins the basis for the contemporary debate taking place in human rights in the UAE or the Arab Muslim world... (Hassan)

Hassan seeks to identify and provide an explanation for the underlining narrative that has shaped the course of human rights development in the UAE. He cites as per all the other participants, the great economic progress made by the UAE, which inevitably thrust the nation onto the world stage. He contends that even his own understanding of human rights and what they entail is evolving as he encounters new situations and phenomena. Further still he argues that this is probably the case for all those responsible for human rights provisions in the UAE from the President and Prime Minister to the local regional officials. He concludes by arguing that he believes that the UAE is experiencing a steep learning curve, which when attained will set the UAE apart as a legislative and bureaucratic model both in the region and globally.

Naturally at this stage there are a number of cases that are related directly to the aspect of human rights violation... In my experience, this means that the violators are usually guilty of misusing their power rather than any systematic program to abuse individuals... I have dealt with the government a lot and I can tell you that

in all truth they are more concerned with up keeping their human rights record... more than even the human rights organisation are campaigning for... they know that this will impact their image... their place in the global trading market and from what I have heard from both the President and Prime Minister they seriously believe that this constitutes a vital aspect of their faith and so is their duty... there are developmental issues and this has translated directly into the victimisation of certain people... but I think that is more political than a flagrant abuse of human rights... (Hassan)

4.3.4 Theme Two

*Discussing the Requirement for a Human Rights Institution in the UAE
Establish the viability and requirement of a UAE based NHRI and
understand its effects on the safeguarding of human rights provisions.*

Discussing the Requirement for a Human Rights Institution in the UAE Establish the viability and requirement of a UAE based NHRI and understand its effects on the safeguarding of human rights provisions.

Like I said, the institutions, or the notion of human rights being enshrined is, of course, part of our constitution, but its manifestation you can see into the results we have achieved... The progress made by the UAE... look at the three-year membership that we have on the UN Human Rights council from 2013... Thirty-two countries from eighteen geographical groups. They all went for these seats but eighteen were available... We achieved the second highest votes by an Asian country of the region... 195 votes! That says something already, the recognition of where we are... (Sheikh Abdul)

Sheikh Abdul appears to agree with the formation of a NHRI in the UAE in principle but then argues that the federal government has already taken the necessary steps to ensure that human rights provisions are not only maintained but implemented. He cites a number of initiatives taken by the government that has resulted in the UAE becoming a member of the UN Human Rights Council. He contends these counters the rather negative coverage and unfair criticism meted out to the UAE in terms of its human rights record.

You want to talk about institutions? You want to talk about enshrinement... Manifestation of these things... EHRA, which we created under the Federal

Public Interest Association Act number 6 of 1974... Already, from way back then we are raising awareness of the Human Right issues, which is what, according to our federal constitution and international obligations we have; we already working from our independence towards these issues! What these institutions that say the Paris Principles are calling for we are already on that same page since our independence! So, we are ahead of the game, we are not where we want to be, we recognise where we need to be, not where the people are telling us, okay that is a guideline, but we know where we need to be. (Sheikh Abdul)

Sheikh Abdul is forthright in defending what the UAE has achieved so far. He passionately shares the private view of UAE officials that although they (UAE government) are already working towards fulfilling all of their obligations by design.

This implies their Islamic heritage and traditional culture; they (UAE government) are going above and beyond by instituting within their existing institutions the recommendations and transparency demanded by the various international human rights charters and recommendations.

Hassan also agrees with Sheikh Abdul in principle by sharing his experience of working with the government and their clear objectives in ensuring that the UAE becomes a credible model of good governance within this area. Hassan seeks to dispel the belief that the government is against the creation of a NHRI by citing the conventions and treaties that the UAE has already become a party to. He shares his personal view that the creation of a NHRI will only enhance the UAEs stature within the International community.

Of course, we need the institution of Human rights to be established in the UAE. It is good for us in terms of our relations with the international world. It is good for us in terms of making sure our domestic policy of human rights is implemented and obviously it is good for us... because then we can champion something which we are already supporting in a lot of treaties and conferences and papers... We are already behind this and a lot of policies that we are developing will also allow us to negotiate better on the international level when we sit on the table because we are championing something with evidence and we must ensure that this institution is not only established as a showpiece, but is a fully functional institution... it is part of the structure of the UAE but not the government and is a functioning ombudsmen which can oversee the workings of the government and help them coordinate its policies on human rights and make sure those human rights violations which are

flagrant of the articles, especially as highlighted in the Geneva Conventions and the Paris Principles are instantly addressed. (Hassan)

Although Hassan observes crucially that the establishment of an NHRI in the UAE may be taken as a governmental institution by the public, he argues that it can survive and function independently.

We have this opportunity with the institution which is set up that it is operated and it has a big success especially in this region where it can just be seen as a tool for the government so its impartiality is very important. Important to make sure that the people are seeing it as independent, but this is very difficult thing to achieve as the government cannot win on this issue so it must do its best to uphold and then when there are violations for the institution to act. So, this is really the best possible way we can move forward on this issue. (Hassan)

Hassan perceives that the creation of a human rights institution will not only safeguard human rights in theory but will in practice institutionalise the practice and provisions of human rights. He contends that this will actually improve best practices and attract more of the global labour force in all sectors of the economy.

Professor Rashid concurs on this point and vociferously argues for the establishment of a UAE NHRI as it will add legitimacy to the UAE government's argument that they uphold and defend human rights.

Well in the Arab states we need to ensure that the human rights are protected by the Constitution and legislative system, which they are in the UAE. Great progress has been made and this is well documented as you can see from these cases but going forward we need to ensure that this is enshrined and protected through and institutional mechanism where the Institution recognises that these laws and provisions on human rights must be enforced from the executive level, government, from the top, all the way down to bottom and the corporations that are operating here, both foreign and domestic, we need to ensure that the Paris Principles, the Articles that have been written on this are implemented... we are willing to contribute and work on this and develop this and to be honest with you we think it has the potential to become something of a standard in the region... (Professor Rashid)

Professor Rashid believes that due to the broad and ambiguous nature of the Paris Principles, they must be implemented through an institutional mechanism funded by the government. He observes that although the independence of the institutions will be questioned, at the start the

government is the only mechanism that can establish and then sustain its functionality. So he perceives the argument centred upon the interference or control of the NHRI by the government to be a needless moot point. In his opinion, the government has actively sought the guidance and support of experts like him in the field, which has legitimised their sincerity and willingness to establish a (UAE) NHRI in the near future.

There have been other models which have been trailed and implemented by other governments, especially in the Gulf region but their effectiveness and working so far is questionable. Many, due to the pressure from the government, which is a problem, but again it is something we are working towards. We have very enlightened leadership in this country. Our President and Prime Minister are understanding of the problems... what is required on the international scene to make this work and what is required for a nation which has such global aspirations and is attracting many of the global corporations to work here and protection for their workers, protection for the migrants, it must now become an institutionalised process and we definitely support this... (Professor Rashid)

Professor Rashid reveals that he is already working on a project alongside many other academics to suggest the framework for a NHRI. He has been conducting studies and research into the possible structural mechanisms of the organisation. He states that the governmental people he has worked with have sought his advice without providing any explicit instructions. This he cites as evidence of the government's sincerity in allowing the policy makers to conduct robust research and design programs before initiating the development stages. However, a contrary perspective provided by Sophia, the representative of the International Non-Governmental Organisation representative, stipulates that the UAE should be coerced into forming a human rights institute. She concedes however, that due to the broad nature of the Paris Principles a UAE NHRI could become an instrument of the government.

We have seen already seen this occur in the region... NHRIs just become a government tool or used to pacify the international community... but I think there is a need for these institutions because at least, at a minimum we will have some form of accountability for the government or at least demonstrate its human rights pledges that it's made... There is a great need for these institutions to be established so that we have a direct relationship... (Sophia)

Sophia highlights a salient point in that, as an International Non-Governmental Organisation representative, she would like to engage in some form of dialogue with the government. She feels that an NHRI would act as a form of access mechanism.

Sophia argues that the UAE government has physically prevented them from meeting, contacting or representing alleged victims of human rights violations. This is she contends has given rise to the great air of suspicion with regards to UAEs human rights commitments.

...Really, we need an agency such as an NHRI, which allows us access into the country and allows us to deal with the people so that we can talk to them, find out what is going on, have a live feed on the ground and to be aware of what the issues are at the moment. But to be honest with you, we are not allowed that access as there is no real mechanism of delivery or accessibility... I think that a NHRI would allow us that mechanism to see what is going on in that country and interact with it to some degree... (Sophia)

Sophia recognises the strategic advantage of establishing an NHRI, as it would allow for an access route into the government for International Non-Governmental Organisations and other independent humanitarian bodies. She stresses the importance of open and established dialogue between them and the government and feels this will be greatly facilitated by the establishment of an NHRI.

Dr Noor is not so optimistic however, and views any government sponsored or backed initiative to be questionable.

...I don't know what difference the institution will make really, to be honest with you, the country is not democratic at all for these types of institutions... where they hold the government to account... These institutions must have some sort of neutrality, some sort of impartiality, they must be free from the government... but the government itself is not democratic so it cannot create such systems... I have heard about this recommendation from the Paris Principles about the establishment of a NHRI but really I don't see how a national institution which is set up by the government can have any real impact upon the government other than to act as a would be deterrent in the eyes of the world as a paper exercise. (Dr Noor)

Dr Noor appears to possess little patience in discussing the possible place of a human rights institution in the UAE. He perceives it as a governmental mechanism to enforce policies as

terrorists or threats to national security and human rights. He shares candidly his perspective that has often got him into trouble with the authorities as being focused on only one issue. This calls for a change in the way the government is organised in terms of its political structure. His demands for a democratic reform include the establishment of an independent and transparent human rights institution. This he says, would be funded by the treasury and would be completely independent from all branches of the government. However, it would have access and supervisory powers to monitor all branches of existing government.

I see the point of the institution and as we shared before... I would love to have a democratically elected government establish this... so as the governments change it maintains its impartiality... it's not fixed to one party or people in the power... (Dr Noor)

Dr Noor points out the example of the governments in the Gulf region, citing Qatar and Egypt as major examples of national governments utilising their influence to control what the NHRIs in their nations report and act upon. Although Jamsheed is not as familiar with the notion of human rights institutions, he contributes some valid points and provides some rich information from the perspective of a foreigner living and working in the UAE.

Look, I think there are many schools of thought and we must respect every culture, tradition and heritage for the knowledge that it brings with regards to how it creates its laws and society...So if the government has to create a special branch to make sure it is maintaining our rights, especially as foreigners then I welcome it... (Jamsheed)

Jamsheed observes that with the development of the UAE and its modern society, it has had to develop many vehicles and mechanisms, which can cater for its growing requirements. He believes that the establishment of institutions is a sign of progress and institutionalising best practices will enable the UAE to become recognised for its human rights provisions.

So, these laws and regulations that have come in, predominantly through the UN, and the bodies created after the Second World War are really there to help us create a sense of camaraderie and a sense of companionship where we protect the interests of each other and the individual human beings which comprise this relationship are the key tool to this. Their wellbeing or every individual's wellbeing is the concern of every other individual if we are not to repeat the horrors

of the world wars that we've seen and the continuing conflicts that are going on, especially in today's world. Human rights may become the first victim of a global or localised conflict which threatens to disrupt the security and stability of nation or the region... (Jamsheed)

He thus maintains his broad perspective that the creation and enforcement of universal laws and provisions will, from the angle of the international community living in the UAE, be protected and guaranteed and it will provide great assurance and mental satisfaction.

Sheikh Abdul provides a foreign migrant resident of UAE like Jamsheed with great comfort by arguing that the UAE is already a significant player and member of the International community due to its human rights provisions. He contends the government recognises that establishing a human rights institution would enhance the UAE's international reputation. However, he points out again that their sincerity and commitment to the global human rights agenda is demonstrated by refusing to rush into establishing an institution under duress or to make itself look good at the expense of its credibility.

...I know that these NHRIs as advocated by the Paris Principles in the nineties and their revised versions, we have been looking into that heavily since 2009... Just because something has a banner on its head that says, you know, Human Rights Institution, Human Rights Institution it doesn't make it legitimate, legitimacy is when it translates into the actual workings of the people on a daily basis and you see it here... We have been looking into how to reform our federal national council which we have already done, as you know, and the things we have discussed on that. We are already there! We already have had the first women to be elected as you know. They now occupy something like 30% of our higher leadership in the UAE since maybe December 2012. It is now compulsory for our organisations and corporations, government agencies to have the woman on their board of directors. So maybe 2/3 of the jobs in government belong to the women! We have nine serving women ministers... The new Ministry of State for Happiness and the Ministry of State for Tolerance were both appointed to women! (Sheikh Abdul)

Sheikh Abdul is full of facts on reform and how the government has begun the process of transition. He cites a number of government initiatives, which entail full-scale reviews, study and discussions on the drafting of possible future human rights articles and principles. This has also been coupled with ensuring that all foreign and domestic businesses are completely in line

with the existing domestic and international human rights provisions. Hassan appears to support Sheikh Abdul's claims of government expediency and efficiency on the human rights agenda. He asserts that the UAE government has pushed the agenda as it has actively moved to discipline several large domestic and foreign corporations that abused the rights of their blue-collar labourers. Furthermore, Hassan argues that the government should be given due credit as evidenced by its recent attempts at reform.

...The government we know is also very interested in assuring that happens. They themselves have pushed many of the agendas as you know, so you know we are moving in a good direction but of course there are problems in the sense of what these people may perceive the institution to be but so far, as you can see with the FNC, although there is criticism of it, we can see that the FNC has been an honest effort by the government to make some radical changes to the government and the way it functions... we are moving in the right direction and of course there are problems but there is change which is going on and we are seeing it and we can't really judge it until it is implemented. (Hassan)

Hassan expresses his personal conviction in the sincerity of the government in seriously assessing the requirements for the establishment of a fully functional NHRI. He agrees that although the government will attempt to aim for complete neutrality and impartiality, it is only human nature that at the start there will be issues.

Professor Rashid also searches to answer the core questions that he has identified to be related to the purpose, design, implementation and evaluation. Although Professor Rashid acknowledges the Paris Principles and their broad articles, he maintains that the UAE must define its own NHRI by taking into account its own unique context.

...So, we need to be implementing those values within how the institution is constructed from the ground up and that is sort of the focus for people like myself to be looking at this. We have gone past the viability stage, we know it is viable and feasible and there is a requirement for it. Now we have to look at what is the best possible way forward and we are at that stage. We must take our time, there is no rush, we must take our time to do it properly and we get the job done and the thing does not fall over flat before it has learned to walk. Other nations have tried it and failed and we do not want to be in that shoe. We want to do things properly in this country, there are many mistakes that have been made in areas, but we have learned lessons like there is no need to rush. We are going to study

this problem properly and then come up with the right solution at the right time, but there is definitely a need for it. (Professor Rashid)

Professor Rashid concludes that the onus is on the Emirati citizens tasked with the initial research details to undertake their work with due diligence and take ownership for their findings. He attributes the government's recent human rights initiatives to instigate a national discourse on the topic. Sophia however, contradicts Professor Rashid and shares that although the government has established some organisations in the country, which address the issue of human rights, they are not really independent.

She claims that the government controls them and they (human rights bodies) ensure that all government wrongdoings, such as the cases highlighted by Amnesty International are ushered under the table. However, she sees some change and approach in the behaviour of the government towards International Non-Governmental Organisations and other human rights organisations.

...Although we don't have a trusting relationship with the government... I have to say that the government has recently become more open, accessible and fair with us in terms of the information they have released or they are willing to share with us... There was a significant issue during the FNC stuff... when the elections took place and we suggested that they allow international observers... however, we have to remember that even those elections only really only allowed a small proportion of the population to be involved and then some of the voting was very questionable... (Sophia)

Sophia perceives there to be many issues with the current democratic reforms, such as mass participation. She states that the current system has become more customer-friendly and approachable. She contends however that for the UAE to demonstrate commitment and dedicated funding towards upholding human rights pledges a NHRI must be established. Although she feels its credibility will be questioned due to the UAE's previous human rights record and authoritarian governmental structure.

Dr Noor in mirroring and expanding upon Sophia's statement expresses strong sentiments, which demonstrate his complete lack of faith in any national or international organisation or

treaty. He argues that the UAE is too politically and strategically important to force to comply with human rights laws. The UAE government has according to Dr Noor a free reign to operate as it wishes with no repercussions.

There are many international protocols, starting with the Geneva Conventions and many conferences that have been held all across the world. The many reports by global NGO, like Amnesty International and the group of nine who went to the UN to ask the UAE government to alter its form of governance and stop the blatant human rights abuses and arrests of people and the hiding that many people are under and the talking undercover, such as myself here, to express these views. It is very dangerous for us to express these views and we have suffered. It is not to say we are for the destruction of the nation, we just want to change it, not in a radical way but for the people to have representation and to be able to attain or aspire to have positions of leadership within the government. If this is a closed-door shop, then what is the point of us? We are just like cattle; this is like a communist country, or a feudal lordship. This is the way we feel at the moment, we have no rights, and we have no freedom of expression, freedom of movement. Yes, as long as we comply, with everything that the government does then it is fine but to criticise to go against its policies is suicide... So the UN must itself establish an NHRI that monitors the UAE... but will they? No way... it would be a political disaster... (Dr Noor)

Dr Noor believes that the UAE is part of an international conspiracy to create a global hub, which benefits the rich and powerful. Thus, he argues that it has no legitimacy in monitoring itself and must be superseded by a global body. However, due to his rather traumatic experience and lack of support or aid from foreign bodies he has resigned himself to accepting his fate under the current regime and system. Jamsheed on the other hand is more optimistic and views the current UAE governmental policies to be improving as is reflected from his own daily experience.

I remember when I first came over... even at the airport the Emirati customs guys treated me roughly and rudely...even dealing with the bosses at work and then the visa people and the police were actually very scary and frightening... I thought I would get deported every time I spoke to an Arab in uniform... but no Alhamdulillah ... apart from the citizenship I feel like I belong here, and the airport staff and the officials are not scary at all... in fact they all speak Urdu... things have changed a lot you know... (Jamsheed)

4.3.5 Theme Three

*Discussing the role of Democracy and Governance in establishing a UAE
NHRI perspectives on the significance of the system of governance and the
place for democracy within that political structure*

It's not about really what is being championed with such verbosity these days, the idea that democracy this, democracy that, an election and another election, politics, voting etc. We know buzzwords and catchwords, but we have a tradition here in the Gulf, we have a heritage, a history, which has worked for us for centuries. It feeds direct into our family system... in fact the root of it is in our tribes and in our families, from every house this is where the power is extended and grows in a natural democratic process, which is really about the families helping and sustaining each other to grow and survive within a very harsh and inhospitable climate... this is the heritage of this place, this is where from the people have risen... (Sheikh Abdul)

Sheikh Abdul identifies the overarching structure of the government to be directly responsible for the remarkable growth and development experienced by the UAE nation. He equates the idea of democracy with the tribal family system.

You have seen our leaders... they have always given... Why? Not because they are angels or something like that... because the leaders of the people are from the peoples and the people are their family... their relatives! This is the type of relationship we have, and this is why there is respect and almost unanimous loyalty to the family and to our leaders. It is not about he is the leader and he is from this family or that family because that family is our family. We are his brothers and sons... he is our brother, he is our father, this is the way this system works... (Sheikh Abdul)

He argues that the UAE's own native system of governance has generated the high level of intensity and unity required to navigate the nascent nation through some turbulent stages in the early stages of their development. Hence, he argues that the Monarchical system is best suited to the Gulf region, due to their context and cultural heritage.

...Even the West, I mean if you look at Britain and most of Europe they have a monarchy system, the monarchy system has never been abolished! Why do they exist? Are they just a status symbol or what?... Because they are functional, they

have a purpose, they keep a nation united, they keep the nation straight. In our case, we don't hide the fact that our Kings and our Sheikhs are our rulers because they are there to do a job, this is not easy... You know basically in our Islamic faith, the leader is someone who is a servant of the people, and they are no bigger servants than our Sheikhs... They have ruled this nation with the love they have... like we are their children. (Sheikh Abdul)

Sheikh Abdul describes the native democratic process to reside in the Arab notion of community and tribal customs.

So really when we are talking about democracy, upheaval and change who is going to take over? People who have been conditioned to look after their people and the system... and to know how it should run, or those who have no idea... are in there to profiteer and then being pushed by foreign powers or actors with funding... The viciousness of their attacks on our country is tantamount to treason against the nation... they promote democracy but we see them buy those positions... in democratic countries, no names mentioned, where everything is basically run by lobbying powers with their millions and millions of dollars... So they buy into power positions by putting those people that will serve their interests... What we have here is allegiance to leadership which is proven over centuries and so what we have is a stability and understanding and accountability to the people... (Sheikh Abdul)

However, he perceives this native way of life and governance to be under threat by foreign agents. He cites the examples of Tunisia and Egypt as examples of manufactured attempts to destabilise their respective nations and throw them into chaos and turmoil. He argues that the current equation of human rights violation with the UAE's system of governance is based upon generalisations. He expresses his disgust at media reports and articles, which use examples of South American and African dictatorships as comparable models with the UAE. This demonization of the UAE is according to Sheikh Abdul a gross violation of the human rights of the entire Emirati population. Although Professor Rashid agrees with Sheikh Abdul's lamentations on the criticism of the governmental structure and its operational methods, he begins by identifying and acknowledging the criticisms leveraged against the UAE.

...We are still following a monarchical, hierarchical and tribal structure. A very paternalistic structure which basically signifies a hereditary system and that there is no room essentially for the election of leaders, but the leader is elected due to their heritage or due to their social position within the ruling families... We can criticise this system and there is much to criticise about this system and much

literature on this in terms of not allowing the masses to partake in the political system and process and are alienated from it. This is firstly from the Emirati citizens themselves and then of course the migrant workers who are here and cannot gain citizenship for example and be part of the process. There is much criticism about that and rightly so. (Professor Rashid)

Professor Rashid recognises that there must be some basis to the constant condemnation of its governance and human rights record by outside observers.

However, he argues that this exists due to the ignorance of the outside world with regards to their appreciation for the cultural and traditional heritage of the region, which is the driving force behind the success of the nation and region.

...But if you look on the other side you will see clearly that the system is part of the tribal heritage of this region and that it has worked for the survival and cohesion of the nation. There is much respect and allegiance given to the leader himself, so people are willing to follow what the leader prescribes because it is in the interests of the leader to lead his people well because they are the ones supporting him...in the Gulf support is coming from all the other ruling families. (Professor Rashid)

Professor Rashid identifies the existence of the contemporary pro-democracy movements to be an anomaly, which he claims have been shut down on the behest of the citizens. He recalls that it was the Emirati public themselves, which viewed these movements to be immoral and intrusive. The result of which has generated such negativity around the governance of the UAE. He argues that the country is passing through a great period of transition and is actually moving away from a very feudal kingship-based system into a much more democratic system.

...You can see that with the establishment of the FNC, this has come about after a long time, but the fact that it has been established is a great sign. Things do not happen overnight especially in nations which want to develop with some sort of stability. The UAE has been careful, it has studied its neighbours and yes there are ruling families here, but it is a unique system in the sense that all of the rulers of each Emirate are ruling their Emirate and they still come together and collaborate. (Professor Rashid)

He reveals that a majority of the native Emirati population do not have a problem with their government because the model has worked for them. His personal opinion is that the government and its governance has led the nation through great change and turmoil and has led

them to becoming a prosperous and influential nation on the global stage. He argues that there is in fact great change taking place. It can be considered democratic from a Western understanding if they could appreciate the *Shura or Majlis* processes.

We are becoming more formalised as I said, creating institutions etc.... however, we have our own established processes such as the hosting of *the Majlis* and the consultation... the *Shura*... the people are happy with that and they help create the strong leadership, recognised leadership, people who they can trust, people who can lead them through this time when there is great suspicion of the message of human rights coming from international organisations, which basically implicating the UAE as a human rights violator. To protect the nation against such attacks and especially at such troubled times, it is imperative the government maintains a strong stance which it has and it has clear leadership, and they understand the direction that the nation is going in. (Professor Rashid)

Professor Rashid contends that the nation is heading towards a much more democratic process throughout its entire structure. However, by comparing the UAE to the UK he observes that he can see the monarchy slowly fading into the background once the country is safeguarded. Accordingly, he discusses the processes which have already been initiated. This includes the greater participation of the public in the governance process including the role of women and the rights of foreign workers. Hassan, although in complete agreement with Professor Rashid, seeks initially to present the other side of the argument. This stipulates that due to the authoritarian nature of the government, it has a direct influence on the functioning of every institution it creates or establishes. He recognises the claims of nepotism and partiality, in that a human rights institution will be an instrument of the government and therefore be controlled by it.

We are seeing that this could be a problem as we have seen the examples from the region itself... where the NHRIs have become vehicles for government mouthpieces, in many cases. We also accept that governance based on democratic principles will ensure that people are always serving the best interests of the majority, which in our society is the interests of basically everyone ... so the political players are gaining and getting the rewards from the people, which is their vote... and this is what democracy is about, carrying the favour of the people by doing the favour for them or undertaking the job that you are elected for...
(Hassan)

Hassan then proceeds to concede on this notion and reflects on real world examples of the failures of so called established democratic nations in the West. He argues that in theory the principle of mass public participation in the political process is the only credible system of governance. He stipulates however, that it is how they participate, which creates the tension between the predominantly Western way of understanding and their native natural process.

So there are two sides through which we can understand this argument... democracy has in theory, the ability to ensure there is mass participation and protections of the peoples including, maybe, the protection of the minorities... Our form of democracy, which is conducted through the social networks of the families and tribes is as democratic if not more than the casting of anonymous votes...we support our leaders openly and there cannot be charges of fraud or nepotism as most discussions are conducted openly... and decisions taken with the knowledge of the senior elders and people of every tribe and family... (Hassan)

He identifies the contextual development to have significantly affected the way in which the Western and Gulf Arab understood the political process. He cites the European experience of colonisation to have bureaucratised and dehumanised the entire political process. However, he also recognises that this has allowed the Western European nations to evolve their political systems. Due to their broad experience of administrating nations across the world, they learned to integrate the functioning of diverse cultures and peoples into their bureaucratic systems.

Now what we have here is we are undergoing a similar sort of process but in a different way, we have global trading hub here in the UAE so what we have is a stable governmental system which is helping the country transition from its independence only 40 years ago to now where it is going heavily through a bureaucratic change. (Hassan)

Hassan believes that the globalisation process has accelerated the development of the political system as the requirement to become a major hub in the region and trading world imply that the government operate with greater efficiency. He contends that the UAE is already party to many international treaties on trade and economics, thus its efforts to uphold human rights

provisions are not beyond its capability or desire. He states that the UAE's election to the Human Rights commission has galvanised the new generation of Emiratis in the political system to work towards greater change.

...The governmental and democratic system will help with democracy and as I have said before, is recognised and is now coming through. At the sublayer it is already taken place, it is already becoming part and parcel of the way things are done in this country. At the top you may have the stable leadership, kinship system but at the moment it is providing for the unification and the stability of the country so we are seeing it. We see it at the ground level, we are seeing it in the middle of the country, the democratic process is already taking place, with mass participation already coming in, the rights of workers coming in. So a lot of change is taking place but it will happen slowly as we do not want this to be an uproar and upheaval, we have already seen this with the Arab Spring... (Hassan)

Hassan states that through his own professional and social networks, the native perspective welcomes change in the country. However, he states that they also understand that only through experience and education, will the nation develop its institutions in line with the developed world. So far he believes that in the Gulf region, the UAE has the most balanced system, which has worked to safeguard the citizens, maintain political stability and now with a thriving and growing foreign work force, the introduction of new legislations and reforms in policy. He concludes that a balanced perspective will consider the challenges faced by the existing government and its response to them. Sophia however disagrees with the rather optimistic and pro-governmental perspectives shared by Hassan. She observes that an undemocratic government by definition prevents the participation of citizens and residents in the political process. This in itself proves and justifies the severe criticism levied at the UAE government.

... For any human rights policies or institutions to function you really have to question whether it is possible to function under something which is very much an autocratic system. It is rule pretty much by a dictatorship and really you have to do what the Sheikh says otherwise it is pretty much curtains for you... (Sophia)

Although Sophia argues for the formation of a UAE NHRI, she states that the role of governance and democracy will be crucial in terms of the plausibility of the institution and establishing its credibility within the international community. Sophia however is cynical and cites the undemocratic nature of the UAE government to be enough evidence of the resistance and likely possibility that impartiality or operation will not prevail in a NHRI established independently from the government.

...Unless... the government suddenly decides to use the NHRI as a mechanism to whip people that have violated human rights... then maybe it might have a chance to work whereby the government itself becomes a benevolent overseer and then they try to oversee the issue of human rights from a very neutral perspective...
(Sophia)

However, she concedes that even this approach is dangerous as it allows the UAE government to dictate the very definitions and understanding of what entails the concept of human rights. This she argues may allow the government to decide the very humanity of individual's and their right to live or even exist in the UAE.

...From a Non-Governmental Organisation perspective, which operates all across the world we can see that the UAE has mastered, behind its clever economic policy and its subsidised investments and attractive trade policies the ability for the rest of the world to forget about its human rights violations of its migrant, or slave, population, who have built much of this place... (Sophia)

Sophia is adamant that the problem lies not just with the UAE but the entire international community. She cites their complete disregard for reports demonstrating the human rights violations and the election of the UAE to the human rights council which have completely discredited, for her, the legitimacy of that body. She argues that for a nation that is openly discriminatory and makes no effort to hide it, the international community has placed great responsibility and trust upon its shoulders.

To be honest with you they are not even interested in looking after the rights of the people that have built the entire place... it is more about looking after Emirati rights... It is not even a case here of the Emiratis being unhappy... many from the migrant labour force are being abused systematically by the government... because it all comes from the issue of a nondemocratic autocratic governmental

system that can do whatever it wants... These are Faros of the modern world...
(Sophia)

Sophia concludes on the point by noting that the unfettered power and control wielded by so few of the Emirati society will inevitably lead to gross inequality and marginalisation of the Emirati populace itself. She perceives an Orwellian future whereby the use of ‘double speak’ will imply that the protection of human rights provisions will actually mean the abuse and violation of them.

Dr Noor reflects on the rule of the tribal elders before the formation of the UAE and recognises it as an appropriate system for its context. He observes that it was a good system within a specific locale and tribal setting but now as they were part of an international community and dealing directly with international political and economic agents and processes they had to adapt their governance to not only compete but also survive in the international market.

...What you are trying to do systematically is to control the people using your own tribal mentality... Without democracy and without the involvement of the people there is no *Shura*, there is no *Majlis*, there is no coming together, this idea that we have tradition system, this is a fanciful form of dictatorship... This is what this is, this is a tribal mentality, to have control, to have people agree with you as long as you are looked up to and after... (Dr Noor)

Dr Noor argues that there is no room for growth and development of the mind under the current system. He contends that what is prevalent and continually reinforced is the tribal mentality, which effectively overrides the open, transparent and flexible approach required to operate in the 21st century. He states that he understands this to be the undemocratic process.

The democratic process, whereby the people are invited or part of the system to contribute their perspective and their opinion, to develop it, to be a part of the process to make the change and actively vote to take ownership, to take something that they can say they are a part of ... we don't see this in our current system. What we are seeing really is a bunch of sheep being herded here or there and we are falling behind and we have suffered greatly... (Dr Noor)

Dr Noor seeks to make the point that the government is operating a calculated program to keep its citizens and residents uninformed and in constant fear of repercussions. This way he alleges the migrant workers are too scared to demand any rights and the natives are pacified with the argument that they are being sent to study abroad and thus receiving the best education. However, the result of this he contends is that native unqualified Emiratis are being employed without the required skillsets, so they don't learn to take ownership for their own self-development. In raising this issue he has been victimised by the government.

When this argument is made to them they feel very threatened and take it very personal which makes me feel that there is some element of truth. I am an academic so I like to bring the facts and the facts are really that when the call is made, they act in a very barbaric way and in an irrational manner... (Dr Noor)

Dr Noor claims that for the simple act of calling for educational reform and to make more Emiratis accountable for their actions, he has suffered great abuse at the hands of the government. Although he is unwilling to discuss his case in detail he states that other intellectuals accused of nothing more than thought crimes are not only locked up but have disappeared. So he argues passionately that the notion and understanding of human rights should entail the protection of the individual from the powers that be.

...What we have here in the Arab world especially is a kingship system, which is gone on since the death of Muhammad (pbuh), we have seen that... And the four Rashidun Khalifas, since the death of them we have seen nothing but a kingship system, where the king decides and everybody follows. So in asking for reform here, we have really suffered, we are punished in fact you can do promiscuity, haram, and get away with it but to call for change or to challenge the leadership of the King is tantamount to heresy and this is what we are suffering... this is the oppression... (Dr Noor)

Dr Noor concedes on seeking any change or reformation of the governmental system as he is resigned to the fact that the current system has effectively eradicated any opposition or dissenting voices against its governance. He states that unless there is significant change of heart the current rulers will ensure that they use human rights provisions to suppress and negate any grassroots movements or influences calling for change. Jamsheed provides a unique

perspective as an outsider to the predominantly Emirati participants. He effectively contradicts the views of the human rights activists by refusing to critique the government, as he attributes his successful career and comfortable lifestyle to the policies of the government.

Look the first thing for me as an ordinary migrant professional is that I know I would not be enjoying the position and responsibility I am having here... So, I know there is a lot of talk about the democracy and how that is the best way to run a country... I am from Pakistan and we are trying to run the democracy but it is not like the one in Europe or West... it is corrupt and run by dirty politicians who are gangsters... here they are proper people with pedigree... they have their rules and they stick to it... but they are not saying we are a democracy and yet their system functions the best... (Jamsheed)

Although Jamsheed is full of praise for the UAE government, he acknowledges the suffering endured by his fellow countrymen, working as labourers. He observes however, that the majority of the cases we're not specifically the fault of the government but the actual organisations employing the personnel. He states that if the government had not acted to rectify the poor and substandard conditions experienced by the labourers then it could be held to account but the fact that new legislation and laws have been passed and enforced demonstrates their commitment to human rights.

Here you can see that they act and change stuff to make it work... In other places the bureaucracy is so bad that people are writing reports and reports and nothing seems to get done... here they identify the problem and then straight away they decide to deal with it... if this is not democracy than I don't know what is...? (Jamsheed)

He brings to light an important point that was not expressed by the other native Emirati participants. Jamsheed's observation of the inherent efficiency and ability to change is cognisant with the literature on the survival qualities of the nomadic Arabs. He shares a number of personal encounters to prove the impartiality and rapidity with which the government agencies had acted to resolve his own personal issues.

In dealing with a car accident... An Arab guy hit me from behind and he claimed to the police that I had braked hard and he had no choice... just before that he was shouting and swearing at me... I also wanted to shout back but I was a little scared because I heard that if you talk back to the Arabs or confront them then you go to

jail and police never take your side... well... when the police arrived... the Arab guy started to accuse me of saying this that and the other... he was being very arrogant... but the police officer then took me to the side and began to ask me my version... I told him everything... and he then went and booked the Arab guy and gave him a ticket for dangerous driving as he must have been speeding to have hit me as I was traveling at the speed limit... and for the use of bad language and aggressive behaviour... I was shocked and my whole attitude and belief about these people has changed... they are trying to their best to implement the true Islamic teachings of justice... (Jamsheed)

These rich accounts, exonerating the government of its apparent negligence and abuse of human rights of foreigners justify the passionate arguments presented by Sheik Abdul. Although this represents a single individual's perspective and experience, nevertheless it is significant in presenting the very best of UAE's society and functional bodies of its governance. Although Jamsheed is extremely content with his life in the UAE, the issue of foreigners being unable to acquire citizenship and permanent residency is a cause for concern. However, he does not perceive this to be related to the issue of democracy or the monarchical system of governance.

We could have a democratic system here... two or three parties ... whatever the number it doesn't matter... and what happens when an extremist or nationalistic party comes to power... we would have no privileges whatsoever... the way I see it is that... the world has built a relationship with the ruling families... who in turn have looked after the workers coming in... this relationship is building and I believe that in time ... it will be possible to get permanent residency if not citizenship...I can see why they would want to protect their own population because it is small... Yet they keep a fine balance, which is satisfying their own people and the foreign people like me... (Jamsheed)

4.3.6 Theme Four

The Role of Education in promoting the value of Human Rights and Human Rights Institutions to decipher the participants' understanding on the place for education in promoting and understanding human rights issues within UAE society

...Education is very important, in fact it is the de facto important thing, in order to get this message across, to remove the inherent mistrust around the message which is basically castigating the UAE government and its people in terms of their isolationism, their elitism, whereby they see themselves above the majority of the people that reside in the nation with them. So, we need more programs of education... Although I am aware that the government has actively launched programs in schools, colleges and universities and now within the police force they are actively trying to educate people... (Professor Rashid)

Professor Rashid observes that the UAE government is already in the process of undertaking significant educational undertakings with the aim of introducing the notion of human rights into schools and colleges. This is in addition to its projects to initiate a greater appreciation for human rights provisions and issues within the established police and security apparatus. He states that the design of the curriculum and material is extremely useful in that it addresses directly the relationship and inherent notion of human rights with the Islamic faith, the native Emirati and Arab culture and traditions. Professor Rashid argues that even the perpetrators may not be aware that they are committing human rights violations. The security services for example may be utilising methods or tactics to gain extra information that constitutes unlawful and excessive interrogation of potential suspects. However, he contends that these factors are now being identified through a systematic program of education and research.

For now, I think there is a robust program of education and understanding that will naturally go a long way towards helping the people understand their duty and obligations to their fellow citizens...Of course people in authority... to who this really applies will be taught not to abuse their power but use it wisely to make sure those within their jurisdiction are looked after... they are not devalued or dehumanised and maybe this will ensure greater results and working... This is something that has been worked on and is systematically being implemented through the different channels and mediums to the general population and I think we are moving in the right direction with that... (Professor Rashid)

Professor Rashid admits that although more effort is required by the government to increase the awareness of human rights, it is up to people like him in positions of authority and knowledge to not only guide the government but to educate the public at large. He shares that from a personal capacity, he needs to engage more with society and work with organisations to help them understand the benefits of complying with the rules and regulations not only in terms

of economics but from a social human perspective. Sheikh Abdul parlays the common rhetoric with regards to education in terms of its place, importance and vitality to the nation.

We recognise that to reform our society, to create the understanding of the universal human rights laws, their provisions and how that they fit into the system, we have had to obviously look at the whole system and the underlying principle by which everything is understood and delivered through the education system... so we have developed a very comprehensive program and package that we are now delivering to the secondary schools... They are actively receiving this training as modules and lessons within their classes at the grade levels... Then you are seeing this in university level courses and of course in our police, security and government jobs and departments they are also receiving specialised courses to make them understand the issues, the vulnerabilities and the sensitivities around what is these issues and what is required in terms of their upkeep and to ensure that before a violation occurs these provisions are respected and understood so that there is no need for the violation to occur in the first place. (Sheikh Abdul)

As per Professors Rashid's identification, Sheikh Abdul refers to the recent educational programs being rolled out across the UAE as a sign of progress. Sheikh Abdul states that an additional benefit of the programs has been the feedback it has provided. This entails that most cases handled by the police and security services did not automatically constitute a violations of an individual's human rights. The feedback by both the alleged victims and perpetrators suggest that a majority of times, it is usually a matter of political, social and tribal difference. Often times, he claims the people have issues with each another or governmental agencies, which have dealt with them in a particular way and they have perceived this to be a violation of their human rights. He states that more often than not, there is no violation of an individual's human right other than the way they have acted with the officers or government officials, and the response they receive is perceived to have violated their human rights, when in truth it has only damaged their ego.

You will see that a true human rights violation is rare, especially in this country. The way we operate, the diaspora that we have here, the multicultural atmosphere we have here; it is not possible for us to violate human rights, it is more a case of divergent cultures, work ethics etc.... mixing and for that disharmony of those forces. So really education is key in order to reduce the misunderstanding on both levels, for the people to respect the laws and customs of this nation that is also very important and once they can understand and become a part of that, they will

become natural defenders of society and therefore defenders of each other and human rights... (Sheikh Abdul)

Sheikh Abdul believes that the UAE is not only duty bound to uphold human rights in accordance to the Islamic *Sharia* and their own cultural heritage but due to political and social prudence. In seeking to become the leading global trading and business hub, the UAE must ensure it has an unblemished human rights record if it wants to attract the best talent and business and so there is actually no real reason for the UAE to not be working towards establishing itself as a model par excellence on human rights governance.

Hassan is in complete agreement with the others in citing the importance of education as a tool for development and greater appreciation of human rights provisions.

...The people are needing to be educated about these issues and we are talking about people in the government and ministries, so in one way when people are talking about the system of democracy... one way is to educate and to teach people that they have roles and responsibilities and this the right way to be conducted. ...Of course, there is a broader picture; the implications of violations of the human rights must also be discussed within the global context... (Hassan)

Hassan reveals, as per the other participants, that he has already witnessed the induction and implementation of human rights courses in schools, colleges and within both police and border forces. Speaking from personal experience, he says that there is already a greater awareness of the issue now, that didn't exist when he was growing up and passing through the UAE education system. He adds that he is also involved in many programs explaining the laws and their implications to both domestic and foreign businesses operating in the UAE on hiring foreign worker and the rights.

I am seeing this first hand on the ground and companies are now actively taking an interest and changing the way that they are doing the business to make sure that they comply fully with the rules because the government is really starting to clamp down on those violators. So, we are seeing active change in this field and it has all come about through education because people become more aware of it and the younger Emiratis that are coming through are becoming aware and more socially responsible because they want their country to fit in and be seen amongst the best in the world. (Hassan)

Hassan concludes on this point by highlighting that because so many of the younger Emiratis have experienced some foreign exposure they are eager to implement the same level of standards in all fields. Consequently, he sees great change, which will result in the eventual institutionalisation and inclusion of human rights studies as the main priority of a human rights institution in the UAE. Although Sophia agrees with the importance of education and acknowledges the government's initiatives in introducing human rights educational programs, she also questions the type and delivery of that education. Sophia claims that the content of the programs she has gained access to is very general with no viable method to enforce the mentioned principles of 'goodness', 'harmony' etc. She adds further that there is no way to measure them and their impact.

There is talk of systematic programs... but how well they have been conducted or received we just don't know yet. It is the right move, we do give the UAE credit on what they have attempted to do here we encourage it, we would like to be a part of it, we would like to help the government in terms of what it is doing and not be a hindrance as they have seen us before. Rather we would like to support and aid them in their transition from the period they are going through... (Sophia)

Sophia believes that an International Non-Governmental Organisation like hers would be an ideal partner in delivering these courses, as this is what her organisation does all across the world. However, due to the UAE's attitude and general approach to International Non-Governmental Organisations she finds it rather contradictory that a government promoting human rights values will not work with a human rights educator. She states that despite this issue she is hugely supportive of the initiative as it is at the very minimum introducing the debate to the broad public the government itself and the personal involved in leading the institutions and Ministries of the government.

This is a good start... it's a bit basic and questionable in areas but I think there needs to be a systematic overhaul of the education process within the region anyway... as I think this is a good way for human rights education to be incorporated into the main syllabuses and within the governmental bodies... and for there to be a broader range of study and acceptability of perspectives, which

will show that the education system itself is having the impact and is actively becoming a vehicle to change society. (Sophia)

Sophia recognises the UAE's efforts through its educational programs but feels they are still too narrow and designed to fulfil pledges rather than attain real change. She argues that for that to occur the UAE government must reform its own structure and demonstrate its commitment to human rights by giving everyone in the UAE a right to dictate their own lives and the systems that govern them. Dr Noor elaborates on the status and requirement for a sound educational program in countering human rights violations.

The education programs are a good thing... and I know it is being implemented, although it is limited at this stage but you know at least something is going on... At least we give a credit to that aspect where nothing has happened, something is happening right now but what it is, what its content is, what its impact is, what it is meant to be; that is something which we have yet to see. I cannot comment other than to say that the other education that is needed is about the violations that are going on here. There is too much quietness. The international media, we feel is scared to really explore and exploit these issues. It is their job, it is incumbent on them to really take these issues and really highlight our plight to signify some of the great people that have been shut down by the government, who have disappeared or systematically undermined... (Dr Noor)

Although Dr Noor supports the government's human rights educational programs and initiatives, he also identifies the biased manner in which they are presented. He personally recommends that if the government were to engage someone like himself then he would develop a systematic program to help them root out the problems at the most fundamental levels. He argues that there are two aspects to the whole human rights educational programs that the government is currently missing. The first entails what the government is already doing, in that it is raising the awareness of the public to these issues. The second aspect he identifies to be missing from the program is the causes of human rights violations. He says this can only be addressed via serious in-depth research that involves dialogue with the perpetrators and victims alike. He says that most of the studies and research are nothing but paper based exercises and battle of intellectualities between scholars and commentators. He states that the solution lies in the sincerity and resources devoted to undertaking this type of work and its

effects. However, what he is seeing at present even through the conduct of the educational programs are in itself a gross violation of human rights.

Yes, I agree that...education is everything, but education is also a tool... and whoever controls the tool, controls the mind, controls the young minds of the children, teenagers and adults... Whoever controls education is in control of a great power, so education is a powerful tool...Just because someone is educating it does not always mean a good thing... you need to ask... educating how and what? (Dr Noor)

Dr Noor saliently observes the dual nature of education and the possibility for it to be used to corrupt, indoctrinate or brainwash the public and especially the young minds of impressionable children. He states that his sincere hope is for the education programs in the UAE to have *...woken people up...* However, he also laments in the same breath that the government is incapable of such sincerity by design, as it is against their personal interest to see such change in the people. His last remaining hope is that the educational programs will at least introduce the concept and instigate the desire within the people's hearts to research further and eventually begin to see the discrepancies for themselves. Jamsheed, as a foreign worker with little exposure to the internal workings of the government and processes, says that he is unaware of any government initiated human rights campaigns or educational programs. However, he believes that education will prove to be the best method by which people can be informed and trained to ensure that they do not violate the laws and principles due to another human being. He makes an interesting point in that he feels it's the duty of the religious leaders and normal school teachers to actually promote this message through their classes.

I think the whole issue is the lack of education in these matters... society is so fast these days that no one has the personal close relationships, which would naturally build that respect for other human beings... Although we seem to have more Islamic classes and schools, they don't seem to be really teaching the kids the proper tarbiya and adab of how to behave in society... I think it's the job of the schools actually to teach the human rights stuff and not just governments ... but the governments could force the schools or include it in their curriculums as part of their mainstream courses... (Jamsheed)

Jamsheed argues that although the government needs to do more in terms of updating its educational curricula, the problem is with the people who are not interested in learning such things. He uses his native Pakistan as an example, whereby he states that there is racism between Pakistanis in terms of their colour, caste, race, tribe and region. So, he concedes that human rights have historically always been an issue and maybe the entire religious and education process was to develop a better understanding of human rights and values.

No matter where you go in the world, there are issues and people complaining about their governments... I think the fact that people don't get any education, can't read and write is the biggest violation of human rights especially considering that we are in the 21st century... Ok so everyone should be able to vote and chose their leaders and have the right to say what they want... but no-one ever questions why it's not ok for someone to learn how to think for themselves or to be taught how to be independent... Personally I don't think you can just say like a zoo animal... here is the animal and this what it does and what it likes... a human being just like any of Allah sbt creation is complex and to be honest it takes a lifetime to understand one single individual... how can a course really teach you about human values and issues... you have to live them and experience them... so that they become a reality in your mind and you can actually understand it... just like if you never seen snow before... you need to be in the snow to know how it feel and taste... (Jamsheed)

4.3.7 Participants' Recommendations and Suggestions

The participants' advice and proposed future recommendations and suggestions:

...Well what I would say is that in the future, going forward on both sides is that we all need to open our channels of communications in a better way. There needs to be greater trust and understanding between all of the parties, right now we feel like we are slightly victimised by the international media and the Non-Governmental Organisations; they see our success and they try to translate that into the way social norms and policies should be playing out in accordance to what maybe they are used to or where they are originating from, which is predominately in the West but really we have our own ethos and culture here which needs to be respected and before the respect needs to be understood so that a lot of the misunderstandings can be eliminated straight from the source, we need to have an active recognition of what we have achieved so far, so we are not constantly harangued and criticised and victimised by the peoples and that they can see actually that there is a lot of progress, great progress going on... (Sheikh Abdul)

Sheikh Abdul contends that the UAE is now beyond comparisons with other Muslim and Arab countries and should be viewed within a global context as a major International influencer. He argues vociferously that the media and other social commentators need to acknowledge the eradication of barriers and the processes created to ensure the mass participation of women and foreigners. He even challenges the researcher to compare any other Muslim or Arab country with the UAE in terms of its economic and social development and success.

...We are a very desirable place to live, it is a destination for a lot of expats, Europeans, a lot of tourism from all across the world and I think it is a model, a global model for the 21st century of how we can coexist as a humanity, break down our barriers. Yes we must respect our individual identities but going forward we have a model where we can live in peace and harmony, especially in these troubling times. (Sheikh Abdul)

Sheikh Abdul states that the UAE must consolidate its successes and now focus upon the issues, which have the potential to sow the seeds for destabilisation or chaos in the future.

...Well the contemporary formalisation, study and eventual implementation has come predominantly from the West... But this is not to suggest that the theories or the idea behind them are the exclusive works of European or Western thinkers only... We should take the approach presented to understand these ancient ideas through the contemporary modern lens... this is where the West has excelled... it has redefined old notions in a new language and so created a renewed interest and understanding of the oldest principle... this right of man... since the creation of man, itself. (Professor Rashid)

Professor Rashid maintains that the broad notion of education is crucial in the eventual successful implementation and safeguarding of human rights in the UAE. He calls for more in-depth educational programs, for both the professionals in government and private corporations, both domestic and foreign. He also identifies the need for greater studies, conducted by Emirati and UAE based scholars and researchers, which are sponsored and then utilised by governmental authorities, departments, ministries and universities. He stipulates that academics and students studying abroad for higher education should act as a bridge for those with limited travel and outside world exposure and share their experiences. This must also be coupled with utilising the enormous wealth of global talent already presents in the UAE.

...And the final thing I would say is that the world should have patience, to have patience to see the growth of the UAE and its understanding of the rapid economisation of the country and its development and the infrastructure which hasn't yet developed but will develop in time. The mechanisms of delivery are developing alongside a rather fast and emergent economy. So, they have to keep a pace... this is where we are at... (Professor Rashid)

Although he admits that the UA is playing catch up with its more advanced competitors in the West, it has time on its side and must not be rushed into policy and decision making at the behest of non-governmental actors and the media. He concludes by identifying the progress of the UAE to be nothing short of miraculous, which has led to it experiencing the inevitable problems and issues associated with change, development and transition to new paradigms and systems of governance.

All I would say, going forward, especially from a legalistic perspective there are many ways to look at these provisions and Articles, but I think the best way forward is to look at the spirit of what they are trying to achieve and the technicalities...Unfortunately some global corporations will just look at the technicalities to get out or not fulfil their social responsibility because they are always trying to look for the way out, so we really need to tighten down on some of the broad provisions and make sure the clauses for escape for some of these firms and international actors is reduced if not eliminated completely... (Hassan)

Hassan recommends that the government tasks itself to firstly ensure that any violations of human rights are dealt with adequately so that examples can be made of the perpetrators. Secondly, he argues that for the human rights provisions to be on par with the international standards and expectations, the UAE government must be given more credit for the work it has already begun and supported by its international partners.

...It makes the UAE government's work easier if other nations for example that supply the labour ensure that the people they send over are not criminals for example...we cannot check everyone as we would like... our partners can help us on that front...We want to see not only the UAE succeed but the other nations in the region and in the Muslim world... but for that to happen... core policies must be implemented and followed by all players... those who are punished for violation in the UAE must face global repercussions and should not be able to hide out in another nation free from blame... (Hassan)

Hassan concludes by arguing that the UAE has, unfortunately, become a victim of the human rights violations it is accused of. He states that there are many perpetrators that are not being punished accordingly by the international justice system for their practices in the UAE. This results in the UAE being blamed for the actions of some rogue players and actors and further tarnishes the image and opportunity for the UAE to progress and to become the global hub and trade zone that it should be.

I would recommend that the UAE government start engaging now with all the international actors and partners that are involved in the human rights struggle, especially for it to engage with the Non-Governmental Organisations and invite them to work with the government in terms of its education programs and its awareness... and to actually help deflect a lot of the negative criticism the government faces which may be unfair... (Sophia)

Sophia recognises government's initiatives but reveals that their unapproachable attitude is a barrier for them to gain the credibility and recognition they desire internationally. She argues that the government in totally refusing to negotiate hold discussions or deal with the Non-Governmental Organisation actors actually fosters a tainted picture of the UAE and justifies the arguments that seek to portray the UAE as being grossly neglectful of their duties.

There are some very good people there, but they need to be allowed to engage with us so that we can carry their story and maybe there are misunderstandings, maybe there are cultural differences, which haven't been understood properly. My recommendation is a greater engagement and honesty and open debate on and around the human rights issue... (Sophia)

Sophia concludes by requesting that the UAE government open up its channels of communication to engage with a greater number of non-state actors that will actually champion its progress and defend it from false accusations and criticisms.

I would recommend and urge the international community to pressurise the UAE government to implement and establish a human rights institution in the UAE... this will tell us how serious they are about the human rights provisions and their sincerity in development of their NHRI as recommended by the Paris Principles...Rights under the Geneva convention must become part of the system. I urge them to really highlight and question the UAE government, put them under a spotlight and make them answer for their crimes because now they are acting as they want to and they will not be subjected to any punishment, instead they have

been rewarded with a seat on the Human rights council which is a joke and laughs in the faces of those who have been victims themselves... (Dr Noor)

Dr Noor places a great deal of the blame for human rights violations in the UAE on the International community, which he states ignores the government's misdeeds because they rely on the UAE's vast reserves of oil, its ports, its flexible and questionable finance market. He argues that if the International community alongside the transnational institutions such as the UN were sincere, then the UAE would be placed under economic embargos and sanctions. However, Dr Noor concedes that due to the economic and strategic power of the UAE it has a free rein to behave as it pleases.

If the International community doesn't bring the UAE to justice the nation will fail miserably and I think the only people to blame for that is the International community because they have consistently supported a non-Democratic government with vast control of resources and a global migrant population for the benefit of itself... (Dr Noor)

Dr Noor argues that despite all the UAE's memberships and associations with human rights council, accords and treaties, the educational program it is conducting within the nation, and its promise to establish a domestic NHRI, will amount to very little in actual practice. The reason he provides alludes to the desperate desire for a small body of elite families to rule and pillage the natural wealth. He concludes that unless powerful enough nations decide to bring the UAE to task it will continue to pretend to the world that it is a defender and champion of human rights values, which the media promotes because they are owned by the corporations that operate freely within UAE's borders.

I would say that the government should engage more with the labourers and blue-collar workers... they have a tougher life and so their demands are sometimes not being met...other than that I have no other advice for the government... they are the government and so know what is going on... it's always easy to suggest from outside but inside it's a lot harder...maybe they can think of allowing permeant residency for people who have been here for a long time and some sort of national pension plan for those people whose companies don't provide it or to make these companies provide some form of retirement fund for us foreigners especially... (Jamsheed)

Jamsheed's real focus is on his own career aspirations and eventual retirement and settlement plans. Thus, he is actively seeking any advantage that could secure him a higher level of income or savings. Jamsheed states that he is apolitical and refuses to go into much detail or discuss the government and its human rights policies in any great detail other than to suggest that it could reward long term residents and workers with permanent residency status. Although he misses his family and home in Pakistan he really wants to settle in the UAE and believes that if this was made possible then his only major concern would have been alleviated.

I actually love this country... my cousins are in UK, US and some places in Asia... yes I would love to visit those places one day... but to live in an Islamic country, which is rich, developed, civilised and looks after you is truly a blessing here on Earth... so why would I complain... after coming from Pakistan this is heaven... at least I can earn halal income and don't need to bribe people or lose my dignity even paying my bills and fighting with the idiots behind the desk, in the ques on the roads... this is beautiful... peaceful...lawful and it is where my human rights has been protected... (Jamsheed)

Jamsheed concludes with a revealing statement that does not account for the perspective of all foreign workers. However, as a foreign economic migrant from a third world developing nation, the UAE has already proven to be better than anything he has experienced. He claims that in his own native land he was at the mercy of corrupt officials and bureaucrats but here in the UAE his human rights have been safeguarded by the UAE government.

4.4 Discussion of Findings

This section offers a critical reflection on the key findings derived from the empirical field study, which are supported by the review of literature

4.4.1 Finding 1: Government is the Human Rights Institution

The first finding derived from the data analysis procedure suggests that the participants perceive the overarching role of the government to be inherently to safeguard human rights and promote their best interests through its ministries.

A significant aspect of the literature on human rights within the Gulf States identifies the inherent values contained within the Islamic faith to have directly formed or influenced the peoples understanding of human rights in that region. The study participants gave further credence to this notion as they were unequivocal in their views that human rights formed an axiomatic norm ordained by God Almighty. The participants supported this assertion by initiating their understanding of human rights with references to the Islamic scriptures and tradition. They contended that Islam was revealed in order to eradicate the abuse of human rights in the region at that time. So historically the region had already undergone a significant revolution based upon the safeguarding of human values, whereby human rights are equated with the Quranic values of dignity, identity and the freedom to express, speak, move and associate with whomsoever one chooses. However, as per the literature all the participants understood that the freedom of an individual is curtailed by the prevailing norms and standards of the broader society in which the individual resides. Accordingly, an individual is free to act as they please within their own private domains, providing this does not entail any criminal acts or activity such as gambling, murder, prostitution etc. but they must act in accordance to the prevailing social norms in the public domain. Sheikh Abdul, a senior government representative identifies the UAE government to be a custodian of the Islamic faith, thus its entire purpose is to propagate the Islamic doctrines (ideology) through its institutions and ministries. He perceives the broad role and purpose of the government to be realising the Islamic faith articles and societal functions through the various apparatus of the government. Professor Rashid, as a scholar and academic supports this assertion and also identifies the government's purpose to be upholding the Islamic values. He argues that the government and specifically its leaders are the vicegerents of Allah and thus have the authority for self-governance and self-regulation. This does not imply that they are unaccountable or independent from the will of Allah, rather they are duty bound to protect and ensure the growth and development of their societies. Hassan, as a jurist, argues in the same vein and perceives the

entire legal structure to be formulated on the Islamic *Sharia*, which the government must ensure is not only enforced but made relevant to the contextual situation of the people's reality and circumstances at the current time. Jamsheed, a foreign white-collar worker from Pakistan, provides a somewhat surprising addition to those perceiving the government's role to be innately responsible for the preservation of Islamic values and human rights by default. He refuses to critique the government and cites the role of the UAE government to exemplary in the balance it has maintained. Although he argues that the government may have a specific understanding of Islam, which is not shared by a majority of the immigrant population, it nevertheless ensures that the nation functions efficiently and effectively by preserving law, order and security of the people. In comparison to his native Islamic Republic of Pakistan, he argues that the UAE government is clearly a defender of Islamic values and norms, whilst his own nation created upon the name of Islam is clearly in violation of the Islamic values. He reveals that the Pakistani people do not believe their government to be credible or representative of the Islamic tradition, which is contrary to the perspectives provided by the UAE populace. Sophia speaking from the perspectives of an activist and representative of an International Non-Governmental Organisation, although highly critical of the government, also recognises the influence of the Islamic faith in determining the role of the government. She contends that despite the broadly accepted narrative of separating religion from state, the UAE and Gulf region maintains this relationship and views it as a divine relationship. Although she argues that this is a problem as it effectively allows the government to become the *judge and jury* on religion, curtailing any alternative opinions and arguments. However, she acknowledges that the government is and has always been viewed by the natives of the region to be responsible for maintaining the socially accepted Islamic norms and customs. Although Dr Noor is an alleged victim of human rights violation by the UAE government, he also identifies the UAE government to be an instrument for promoting the Islamic ideology. He is highly critical of this however, and perceives the government to have usurped the functionality and purpose of

religion to provide legitimacy and justification to suit its own needs. He argues that that no government can justify its role and status to be divinely ordained as this will inevitably create a dictatorship and authoritarian style of governance. Nonetheless, he accepts with great trepidation that in the UAE, the government is perceived to be the upholders of Islam and thus by definition human rights.

The review of literature alongside the data derived from the study participants further revealed that the native and immigrant population perceived the national federal government to comprehend and be representative of the native culture, heritage and tradition. Although dissenting voices amongst the participants can be discerned (Dr Noor, Sophia) they nevertheless accept that the governmental structure is an extension of the tribal heritage and culture of the region. As we have seen, many researchers argue that the United Arab Emirates has experienced an exemplary level of continuity, with no significant reformations in the political structure or institutions since its inception. Although critics (e.g. Amnesty International) have used this fact to highlight the undemocratic and autocratic nature of governance, it has according to the study participants articulated a fundamental reason for the political stability and social harmony experienced by the UAE. Sheikh Abdul, Professor Rashid, Hassan and Jamsheed cite the initial rule of the late Sheikh Zayed, the ruler of Abu Dhabi and president of the UAE since its inception in 1971 (up until his death in 2004) and now Sheikh Nahyan (2004-present) as the primary example of the prevailing tribal structure that dominates UAE society. Sheikh Abdul relates this tribal structure directly to the concept of community and family. This implies that every Emirati individual is part of a local family, this is his or her own emirate, which is subsequently linked to other families or emirates through inter family relationships and treaties. The welfare of the national family has become the collective responsibility of the seven rulers comprising the Supreme Council. Hassan observes that the government officials and the leaders in particular of each Emirate and the nation itself are engaging directly with their public through the hosting of regular *Majlis*. Whilst the leaders

enjoying the collective support of their tribes then act through the *Shura* process to make collective decisions on the local and national levels. Professor Rashid identifies the UAE's approach to social politics to be an equivalent to Western style democracy and cites it to be appropriate for the context and cultural heritage of the region. He summarises the current situation in the UAE as a continuation of the heritage of the people, which entails the intimate relationship between the rulers and their people and he argues that the government is a representative of the families, whereby the interests of the people is vested in the rulers and the rulers in the people. The members of the public are loyal and place their trust in the government to deliver on their demands. Professor Rashid further contends that the Emirati citizens feel more secure and are more informed as to the workings of their government. This is because the public will have some direct connection to the government due to family relationships or personal dealings. This he argues is not the case within the Western democratic nations, as they are too bureaucratic and the people are alienated from the system and thus are treated as mere objects that work to contribute to the economy and cast votes. Jamsheed supports the previous argument by further providing evidence for the flaws in the modern democratic nations. He states that his native nation, despite being a democracy, is corrupt and the rulers, usually from one or two particular regions, frequently engage in rampant nepotism and steal the country's resources for personal gain. Jamsheed is however enamoured with the federal structure and functioning of the UAE government. He identifies it to have a legacy and heritage, which has given it a pedigree to take the responsibility to organise and manage a new nation to prosperity. This he observes is due to the government being formed of tribal families that have the interests of the people at heart because they are from them. However, some (as exemplified by the comments provided by Dr Noor and Sophia) argue that the tribal nature of the national and local governments justifies the accusations levied against the UAE, that it is an overtly autocratic and undemocratic political structure that has effectively enslaved its populace. Dr Noor and Sophia agree with both the literature and the other study participants regarding the

notion that the organisation of the modern UAE is influenced by its traditional tribal heritage. However, they note that the seven rulers of the Supreme Council are the only people authorised to communicate decisions with regards to the federation. Sophia believes this highlights the fundamental problem, whereby the Supreme Council is an effective court of kings, who has an audience with their subjects within a *Majlis* setting to provide them with material comforts. She recognises this practice to have effectively paralysed the Emirati citizens as the nanny state fulfils their daily needs. News of any wrongdoings or inhuman treatment by the government, especially against foreign workers, is suppressed and the Emirati citizens, being unaware and unconcerned, fail to bring the government to account. Dr Noor again furthers the point that the tribal heritage and customs of the region have naturally created a situation whereby the government is accepted to be the guardian and confidante of the native population. However, Dr Noor argues that any individual seeking to speak to authority and challenge the existing order is made an example of, thus ensuring that all dissent is effectively eradicated. Dr Noor accepts that whilst an NHRI is required, it will be a government-controlled institution as the government is in effect the only institution that is able to monitor and regulate itself. Although he concedes that this is highly improbable he observes that with the establishment of an NHRI, it will represent for him a symbolic rather than actual change.

4.4.2 Finding 2: Role and Purpose of NHRI to provide Human Rights Education

The second finding derived from the data analysis procedure suggests that the establishment of a UAE based NHRI would be for the exclusive purpose of conducting research and disseminating education and training to governmental, public and private institutions in the UAE.

The review of literature (Decara³⁸⁴; Murray, 2007³⁸⁵; Morten Kjærum, 2003³⁸⁶; Reif, 2000³⁸⁷) asserts that a significant aspect of the NHRI's function should entail that it is involved in the education of human rights to the governmental bodies, public and private bodies, alongside educational institutions and the general population. The findings from the data analysis phase also suggest that the participants were unanimous in their perceptions of the NHRI's purpose and function to be exclusively that of an educational institution. The argument presented in the first finding above has already revealed that the participants do not envision the creation or successful operation of a NHRI functioning independently in the UAE. All participants envision the role of the government to be inherently to protect the rights of individuals both native and foreign. However, they also recognise the requirement for establishing an independent NHRI due to UAE's commitment to international agreements and initiatives; but state that due to the socio-political climate, the primary function of the NHRI should be to provide education. Sheikh Abdul, Professor Rashid and Hassan argue that the UAE is ready and willing to implement International Human Rights norms, thus implying the establishment of an NHRI as per the Paris Principles. However, they also contend that this cannot be at the expense of destabilising their own socio-political structures and tearing apart the fabric of their societies by undermining the work of their governments. Sheikh Abdul reflects that an NHRI created specifically to oversee and monitor the government will inherently create a culture of suspicion and inherent mistrust. He argues that a government that is being judged by international observers and commentators is acceptable as long they are fair in their assessments and present all evidence for their findings. He admits that a NHRI created and

³⁸⁴ Danish Institute for Human Rights, 'NHRI Will Play a Strategic Role in Education' <<https://www.humanrights.dk/news/national-human-rights-institutions-will-play-more-strategic-role-education> > accessed 15 August 2017.

³⁸⁵ Murray, 'National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness' (n 196) 189-220.

³⁸⁶ Kjaerum (n 305).

³⁸⁷ Reif (n 324).

established by the government cannot fulfil its pledges for autonomy, impartiality and independence. Notably, whilst Sheikh Abdul accepts that the idea of an NHRI is feasible and plausible, he argues that its role should be educational so that it can prepare and ensure that the future generation of leaders and people in positions of responsibility and authority are fully cognisant of and willing to ensure human rights provisions.

Professor Rashid takes this point further and argues that officials who are educated to appreciate the value of their own Islamic faith and apply them to the modern-day notions of human rights will naturally ensure violations are curtailed or eliminated. This is, he observes a long-term strategy, which the international community needs to acknowledge and the domestic public support by actively becoming involved in the programs and disseminating the received knowledge. Hassan states that the government has already initiated these educational programs with great success. The formation of a NHRI would only consolidate and unify the entire human rights agenda and educational programs in a systematic and coherent fashion. Hence, he is in agreement with Sheikh Abdul and Professor Rashid in that the establishment of an NHRI would ensure that the entire debate upon human rights becomes institutionalised through an intellectual dimension. Hassan argues that through this process the entire Emirati society can be impacted organically and the minds of the younger generations trained to appreciate and understand the notion of human rights in real-world scenarios. Jamsheed again provides a unique point of comparison and although he possesses little knowledge on the notion of human rights institutes and NHRIs specifically. He states that an institution developed to educate society upon the value of human life in all areas will inevitably eradicate the systematic abuse of people. He argues that laws and regulations do little to prevent those in power from abusing their privilege, as he has witnessed in his own nation. In fact, he believes that those ordaining the laws in his native country are usually the worst offenders with open flagrant demonstrations of their abuse and perversion of their authority. So to prevent such attitudes from developing, Jamsheed identifies the formation of a NHRI to be positive and useful for the nation if its role

is concentrated solely upon education. He reflects that an institution created to regulate the government will only become a vehicle for political and social control.

Although both Dr Noor and Sophia accept that the establishment of a UAE NHRI cannot be in practice separated from the institution of government, they further add that the NHRI can be used effectively not only for research and dissemination of human rights education and training but also as a medium for rehabilitation for those deemed to have violated the human rights of those placed under their charge. Dr Noor argues that he grudgingly now accepts that the perpetrators to his abuse will not be brought to account, because it involves the entire machinery of government. However, he argues that those officials and senior members of the leadership should have to undertake some form of human rights education and remedy rights training, so that they can be made aware of their actions and the harm caused by them. Sophia agrees with Dr Noor's assertions and further adds that the UAE could actually use the work and advice provided by the International Non-Governmental Organisations as material for their NHRI. This will also help to create partnerships with International Non-Governmental Organisations so that both parties can establish a mutually respectful and beneficial relationship. The International Non-Governmental Organisations could help the UAE establish the NHRI and deflect any unwarranted criticisms levied at the UAE government. However, she concludes by stating that the entire process is at the behest of UAE's leaders. If they were to establish an NHRI and utilise it as a mechanism for change then the UAE government, which has been much maligned due to its poor human rights record could instantly become the de-facto model for other states to follow.

4.5 Conclusion

The aim of this chapter was to use an exploratory qualitative methodology to consider a core thesis question: *What are the perspectives of the Emirati population and Human Rights activists on Human Rights Issues and on the need for an NHRI in the UAE?* This entailed the direct

engagement with both those who are affected by the implementation of human rights laws and those who are responsible for its execution and legitimacy.

The chapter was organised into three major sections to address this query. The first section discussed the chosen methodology, whilst the second section focused upon the analysis of the captured data and the third section examined the findings derived from the data analysis phase.

The purpose of the first section was to establish the firm fact that, this was an exploratory study. As an examination into an extremely delicate subject matter with at times unpredictable consequences, the field work proceeded to respect the sensitivities of the State of UAE and the Region by explicitly and implicitly declaring that it had and has no intention to undermine the Government's position or stance on human rights in the UAE. The conversations with the selected study participant sample, reflects this approach. The primary targets of the fieldwork research were all individuals that were, in some capacity, either directly responsible for striving to preserve human rights provisions, experienced personally human rights violations, commentators, jurists and/or activists in the UAE.

The analysis of the dialogical process unearthed a rich narrative that the researcher has categorised under two major findings of the study. Although, it must be clarified that the study fully acknowledges the possibility that other arguments could formulate as part of or instead of the identified major findings. These arguments encompass the rights or voices of migrant workers as opposed to natives or residents, implying that there exists an inherent contradiction in society, which discriminates against the 'other', the foreigner, the outsider. The nature of this disparity between host and guest has resulted in many government-owned firms treating their migrant workers as an enslaved workforce. This then extends to the tradition and practice of the local *Majlis* and *Shura* councils. They are a natural innate part of the fabric of a deeply tribal society, which naturally caters for its own people. This highlights the ambiguity of universal terms and the deep misunderstanding they create. In the UAE the concepts of *Shura* and *Majlis* are built upon familiar, tribal understandings. This naturally creates what is termed

an autocratic leadership model. However, this represents the accepted and desired model of governance. The citizens of the State perceive their leaders within familial relationships and thus every Emirati has a direct connection to the rulership. This is a unique situation that is not without its flaws. There is ample evidence from the interviews that outsiders are not privy to the inner workings of UAE society. They have no viable channel through which they can challenge the workings of a Governmental agency. International human rights organisations argue that temporary workers and non-residents have little or no rights and their rights are deliberately flaunted. However, due to the economic and strategic value of the UAE, these are often overlooked or ignored by both the mainstream media and international political bodies. All the aforementioned factors could qualify to be identified as major findings of the study. However, the reason for not selecting them was because they are not new findings. They have already been cited by the literature, some of the study participants merely supported, reiterated or referenced facts and accusations that are already documented. The objectives of this study are construed from the perspective of identifying the factors that are required to establish and NHRI in the UAE. The purpose here is not to focus exclusively on human rights abuses but rather the remedy for it.

The first identified finding therefore reflects this approach and reality. It is a unique and pioneering encapsulation of the concept that the role of the government is intrinsically that of a human rights institution. The public perceive the overarching role of the government to be inherently safeguarding human rights and promote their best interests through its ministries. It can be argued that human rights are already an innate aspect ingrained in the UAE culture, faith, society and tradition. The argument stipulates that the participants perceive the existing societal structure to be an institution in itself, which is self-governing and self-regulating. This is a unique approach towards interpreting the role of the government and the formation of an independent NHRI. In UAE society, the establishment of an independent body to monitor governmental actions is unfeasible. Therefore, the government must establish and support an

NHRI, with its role concentrated solely on the awareness and education of Human Rights. This formulates the second finding, the establishment of a UAE based NHRI would be for the exclusive purpose of conducting research and disseminating education and training to governmental, public and private institutions in the UAE on human rights compliance.

The next chapter seeks to explore the existing provisions and required criteria for the establishment of an NHRI in the UAE.

Chapter 5

The Requirements for Establishing an NHRI in the UAE

The discourse on human rights norms is a strategic instrument utilised to deliberate and ensure the concurrent dissemination of progressive policies whilst repudiating the essential causes. Derived from either the realist or liberal schools of thought it proposes human rights to be either universal, whereby human rights are a common human factor and imposed through the threat of force, or culturally specific, whereby each nation must adapt the rights to fit in with their society. Within the purview of this cultural perspective, the Spiral model as proposed by Risse and Sikink³⁸⁸ suggests that nations traverse through five designated phases, whereby the last phases suggest that they are fully compliant with international human rights norms. The establishment of a fully operational and functional NHRI is a core indicator of this progress. Therefore, the primary aim of this chapter is to discuss *what is required for the establishment of an NHRI in the UAE?*

5.1 The Normalisation of Human Rights

Adopted by the United Nations General Assembly, The Universal Declaration on Human Rights³⁸⁹ is, initially, a statement of principles, which have now become the fundamental norms of Human rights and are used as part of binding treaties for international agreements and treaties.³⁹⁰

³⁸⁸ Risse-Kappen and others (n 375).

³⁸⁹ On 10th December 1948

³⁹⁰ By the late 1990s about 140 states had formally adhered to the two main international treaties, the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR). Both entered into force in 1976. There are other international treaties setting out certain specific rights such as the Convention against Torture, which entered into force in 1987.

This reflects the development of the contemporary International socio-political culture and practices, which demands that States comply with best practices in order to uphold their international commitments.³⁹¹ Ramos and Falstrom³⁹² note that every signatory to a binding treaty or protocol, which contains Human rights clauses must at the very least be fulfilling the minimum criterion otherwise they would be in violation of their agreements. However, although Schwarz acknowledges the points made, he observes that the eventual imbuing of these Universal Declaration on Human Rights principles by Governments may allude to their professed commitments to protect ‘and promote human rights standards but at the same time, they have ...massively defaulted on their normative commitments’³⁹³.

Schwarz argues that there is a discrepancy between the human rights norms as propagated by the Universal Declaration on Human Rights and adherence and application by national governments. He further contends that there exists a disjuncture between the translations of the legal theoretical discourse into actual political behaviour.³⁹⁴

5.2 The Role of Human Rights Discourse

Gordon and Berkovitch observe that discourse operates simultaneously to promote the positive and productive acts whilst seeking to negate and prohibit its essential causes.

On the one hand, discourse constitutes society's social norms by creating fields

³⁹¹ J Donnelly, ‘Human Rights: A New Standard of Civilization?’ (1998) 74 *International Affairs* 1, 1-23.

³⁹² JM Ramos and DZ Falstrom, ‘State Compliance with Human Rights Norms: The Importance of International Reputation for guiding State Action’ (2005) 25 *Human Rights and Human Welfare Working Paper* 10.

³⁹³ Schwarz (n 371) 199.

³⁹⁴ Schwarz (n 371) *Quoting from Amnesty International points out in its 1997 Report that, of the world’s 185 sovereign states, 123 routinely practised torture. See ; Amnesty International, Amnesty International Annual Report (1997).*

of knowledge, to produce identities and interests, thus influencing and shaping one's world view and behaviour. On the other hand, by defining objects, spheres of inquiry and fields of research, discourse sets limits, creating a system of exclusion, interdiction and prohibition³⁹⁵.

Human rights discourse is perceived to be a strategic tool, which both introduces and consequently shapes the perspectives of individuals and communities. Gordon and Berkovitch³⁹⁶ identify human rights discourse to be encapsulated and embodied within the entire corpus of international and regional covenants, treaties, declarations and protocols. This discourse is then propagated through conferences and meetings by organisations such as the United Nations alongside other international and regional institutions. They further contend that the nature of the discourse usually encompasses at the domestic level, the formation of regulatory bodies or Non-Governmental Organisations, which promote the introduction of new laws, policies, and their own role as intermediaries between the victims of human rights violations and the accused, which is usually the broad machinery of government or specifically the security forces for example. Gordon and Berkovitch³⁹⁷ argue that the formation and existence of this discourse furthers the ability of the people to identify repressive practices. (These are considered to be those that not only contravene domestic and international law but also effectively undermine the ethical and moral codes of their societies.) Although, they shrewdly note that the dissipation of the content and impact of this discourse upon the local domestic society used to take years or even decades, now with the advent of social media, the awareness of human rights violations is almost instant.³⁹⁸

They assert that mass public access has uncovered and verified accounts of human rights abuses from every single place on the planet and they stipulate that the discourse on human rights has

³⁹⁵ N Gordon and N Berkovitch, 'Human Rights Discourse in Domestic Settings: How Does It Emerge?' (2007) 55 *Political studies* 245.

³⁹⁶ *ibid.*

³⁹⁷ *ibid.*

³⁹⁸ *ibid* 244.

itself become public, local and global, as the very notion of human rights discourse and its language is imported from nation to nation via social and mass media channels.³⁹⁹

...The global processes affecting the domestic can't be restricted to the international human rights discourse or international institutions... Global processes also include actual events that were taking place in different countries during the same period... for the first Palestinian uprising... the collapse of the Soviet Union... the dismantling of the apartheid regime in South Africa... the failed student revolt in China, etc.... Moreover, these events were covered extensively in the Israeli newspaper, and the term human rights was employed in their portrayal⁴⁰⁰.

Shor reasons that once the human rights discourse has entered the domestic public sphere, it will extend to all geographical regions and spheres of public and private life.

He argues that although the degree and intensity of transmission is influenced by the underlying social factors, the level of democratisation of the nation's institutions also impacts it.⁴⁰¹ This means that a crucial aspect of the phenomenon of human rights violations is to understand the nature of the discourse and its formulations on the nature of compliance.

5.2.1 Discourse on Compliance

For the purposes of this study, the discourse around human rights apply to the establishment of an NHRI in the UAE which, it is argued by Shestack, are dependent upon perspectives derived from either 'radical individual universalism or radical culture universalism'.⁴⁰² Shor observes that the notions of *individual* and *cultural* universalism are a reflection of the *realist* and *liberal* approaches to human rights: 'Both realist and liberal approaches are actor-oriented; they take

³⁹⁹ *ibid* 246.

⁴⁰⁰ *ibid* 260.

⁴⁰¹ Shor (n 365) 134.

⁴⁰² JJ Shestack, 'The Philosophical Foundations of Human Rights'(1998)' 20 *Human Rights Quarterly* 201; J Symonides (ed), *Human Rights: Concept and Standards* (Routledge 2017) 56.

actors (states) as the ontological givens and assume that their actions are guided by rational motivations and interests...⁴⁰³.

State compliance is any action taken by the state in conformation of the international norms, thus naturally they are compliant, whilst any State actions that deviate from the accepted and agreed upon international norms is deemed to be non-compliance. Moravcsik⁴⁰⁴ however, negates this assumption by arguing that governments involve themselves in international commitments to counter any possible future political alternatives that may arise domestically. Hence, he observes that to maintain the survival of domestic politics, human rights treaties are adopted or ratified. He contends 'that while realists stress power politics and assume that states do what they are forced to do; liberals believe that what states want is the primary determinant of what they do...'⁴⁰⁵.

This debate leads Cardenas to question the effect of the relative role of external pressure in comparison to the internal commitment of States to comply with the human rights norms.⁴⁰⁶

Cortell and Davis had earlier expounded upon this point by noting that international pressure should be expected to be most influential when a 'cultural match or normative fit'⁴⁰⁷ exists. Their argument stipulates that human rights reforms are dependent upon the internal domestic acceptance of international norms. They perceive State compliance to be part of a much wider dynamic process, whereby even limited actions and half-measures can potentially contribute to

⁴⁰³ Shor (n 365) See also; SD Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press, 1999).

⁴⁰⁴ Moravcsik (n 363).

⁴⁰⁵ *ibid* 521.

⁴⁰⁶ Goodman and Pegrum (n 194) 42.

⁴⁰⁷ AP Cortell and JW Davis Jr, 'How Do International Institutions Matter? The Domestic Impact of International Rules and Norms' (1996) 40 *International Studies Quarterly* 451, 451-478 cited in; Cardenas, 'Norm Collision' (n 361).

profound social change.⁴⁰⁸

Habermas had earlier contended that the human rights discourse must diffuse to the general domestic public via mass communication mediums such as newspapers, periodicals, radio, and television also, for him at that time, the introduction of the internet.⁴⁰⁹ His argument remains relevant as he advocates members of a domestic society to support international norms and join transnational networks of activists. Cardenas, in support, notes that international pressure is likely to succeed when transnational networks use their influence and moral entrepreneurship to both lobby and place human rights issues on the national plans of powerful governments.⁴¹⁰

Whilst Susan Burgerman's work on the role of the UN in promoting human rights reforms in Central America, identifies five conditions to be taken into consideration when human rights compliance is examined⁴¹¹:

1. The existence of relevant international norms
2. The material interests of a major power
3. Transnational network activism
4. Domestic allies in target states
5. Domestic political elites, who are concerned with their international reputations

Although, Burgerman's analysis exemplifies the trend towards a broad and multifaceted examination of international human rights concerns, the onus for this study is on a specific region and nation State. The analytical perspective provided by Shor allows for a more focused and in-depth exploration of the factors required to implement a NHRI in the UAE. Shor

⁴⁰⁸ Cortell and Davis Jr (n 407) 216.

⁴⁰⁹ J Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (T Burger and F Lawrence trs, MIT press 1991).

⁴¹⁰ Cardenas, 'Norm Collision' (n 361) 216.

⁴¹¹ *ibid* 219 See also; S Burgerman, *Moral Victories: How Activists Provoke Multilateral Action* (Cornell University Press 2001).

identifies two significant sources of compliance, which are derived from either the *radical individual universalistic (strategic calculations)* or the *radical cultural universalistic (normative commitment)* perspectives.⁴¹²

5.3 Radical Individual Universalism (Strategic Calculations)

This perspective recognises the notion of human rights to be driven by common universal values. Donnelly observes that advocates perceive human rights to be a universal phenomenon that is common to all societies.⁴¹³ He argues that the very understanding of human rights is based upon the liberal tradition, which accords rights to the individual as a priori; therefore, the concept of human rights is universal as it applies equally to all human beings.⁴¹⁴ Winston, in support, states that human rights ‘belong to all people, at all times, in all situations and in all societies’⁴¹⁵.

Henkin summarises this perspective by noting that:

...In other words, human rights should be available to all and applied irrespective of citizenship, race, religion or gender. They must not differ with demography or history, culture or ideology, political or economic system or the stage of the societal development⁴¹⁶.

The argument stipulated suggests that the implications for this approach are centred on State compliance due to the pressure from powers with superior economic, military and political power. Shor observes that compliance is supposed to increase when pressure is applied by a

⁴¹² Shor (n 365) 120.

⁴¹³ J Donnelly, ‘Human Rights, Democracy, and Development’ (1999) 21 Hum. Rts. Q. 608, 608-632.

⁴¹⁴ *ibid* 611.

⁴¹⁵ ME Winston, ‘Indivisibility and Interdependence of HR’ <www.bu.edu/wcp/papers/Human/Humawins> accessed 8 June 2017.

⁴¹⁶ L Henkin, *The Age of Rights*, vol 2 (Columbia University Press 1990).

stronger state and the target state is weak internationally.⁴¹⁷

Krasner argues ‘...the content of human rights issues that were at the forefront in various historical periods reflected the concerns of those states which possessed a preponderance of economic and military power’⁴¹⁸. The idea presented reinforces the notion that compliance is greatest when dominance is applied by a hegemonic state (such as the United States), which compels weaker nations to adopt their moral and ethical standards. Cardenas, citing the work of International relations and politics scholars discerns, ‘...that in the case of human rights a target state's vulnerability is the most important factor explaining the impact of international pressure’⁴¹⁹.

However, a major contention against this argument as noted by Cardenas is that the violation of human rights and compliance are two sides of the same coin; she maintains that whilst some States are far too insignificant in terms of their international clout, there are other States that cannot be so easily cajoled by international powers.⁴²⁰

Cardenas argues in a more recent paper⁴²¹ that the pressure applied may produce a reaction, which could be a cause for confrontations between States but is more likely to be ignored by a State that feels no overwhelming desire to change its traditional practices; this, she contends, is not surprising however, as some of the contemporary practices that constitute a violation of human rights have been established practices for centuries. Furthermore, as Alhargan cites, the case of Saudi Arabia, States that are not in receipt of any international donations or foreign aid are able to resist the pressure placed upon them by human rights organisations and States

⁴¹⁷ Shor (n 365) See also; Ikenberry and Kupchan (n 368) 283–315.

⁴¹⁸ Krasner (n 403) in; V Rittberger, *Regime Theory and International Relations* (Clarendon 1993) 166.

⁴¹⁹ Cardenas, ‘Norm Collision’ (n 361) 218.

⁴²⁰ *ibid* 219.

⁴²¹ Goodman and Pogram (n 194) 42.

advocating greater measures for human rights.⁴²² As Schwarz asserts, there are certain State actors that are immune to international pressure due to their strategic and political status:

...Determining whether a state's human rights record will improve or deteriorate, certain states are partially immune to moral pressure from non-state actors. Such states are considered to be geo-strategically important or politically or economically vital for major Western powers. According to these interests, they condone the pressure to improve human rights record. Example, are: Turkey, Pakistan, Israel, and China...⁴²³.

Cardenas suggests that this explains the underlying reason as to why international norms tend to stipulate a package of obligations. She notes that this provides States with the flexibility to comply with human rights obligations as they deem to be appropriate.⁴²⁴ Cardenas argues that in situations where the survival of a privileged group's interests is at stake, for instance in mass protests, uprisings and general anarchy, the violation of international norms will almost likely trump the costs associated with human rights pressure. Significantly, she notes that State violators have a tendency to legitimise their actions in terms of the greater national good. As they always claim that personal liberty must be sacrificed for national security.⁴²⁵

An emergent point identified from this discussion is that certain social groups realise others to be of such threat that they consider it necessary and appropriate to violate their rights of personal integrity. In the specific case of the UAE, it can be argued that the State recognised the necessity and value of human rights in its international commitments from its formative period. This is evident in its agreement to the International Convention on the Elimination of Racial Discrimination of 1965 on 20 June 1974 with its emphasis on migrant workers.⁴²⁶ For example, Article 1(2) provides that the 'Convention shall not apply to distinctions, exclusions,

⁴²² Alhargan (n 370) 602.

⁴²³ Schwarz (n 371) 208.

⁴²⁴ Cardenas, 'Norm Collision' (n 361) 219.

⁴²⁵ *ibid* 221.

⁴²⁶ Table of ratifications available at 'Indicators' <<http://indicators.ohchr.org/>> accessed 10 August 2016.

restrictions or preferences made between citizens and non-citizens⁴²⁷. Whereby, the Committee on the Elimination of Racial Discrimination the body responsible for the treaty's application has identified human rights to be a principle that is enjoyed by all individuals and the institutions of the State are obliged to uphold these norms.⁴²⁸ The

1995 UAE Constitution dictates in Paragraph 30:

The Constitution affirms that foreigners residing in the United Arab Emirates are entitled to enjoy the rights and freedoms provided for in the international instruments in force or in conventions and agreements to which the Union is a party⁴²⁹.

Furthermore, Article 5 of the Convention the Members of the Committee demonstrates its foresight by discussing whether foreign workers were entitled to have their children join them and to have them educated in their own language, and whether they were free to practice their religion and culture.⁴³⁰

They also re-examined the content of all bilateral agreements with regards to the status of foreign workers and explicitly expressed particular concerns for women within Asian countries.⁴³¹ All notable International agreements and conventions that the UAE has signed are listed in chapter two, with recent focus upon equality, gender discrimination, equality of pay, organised crime, trafficking of human slave labour, prostitution and children. A recent example of the evolution and development of the national mind-set is the introduction of Law No. 2 (15-07-2015) whereby the UAE federal legislation explicitly recognised and forbade all forms of discrimination in terms of religion, belief, sect, faith, creed, race, colour or ethnic origin, each

⁴²⁷ International Convention on the Elimination of Racial Discrimination, art 1(2)

⁴²⁸ CERD, 'General Recommendation XXX' (2004).

⁴²⁹ UAE Government (1995) Periodic Report CERD/C/279/Add 1 para 30.

⁴³⁰ 'Article 5 of the International Convention on the Elimination of Racial Discrimination' <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> > accessed 4 August 2016.

⁴³¹ UAE, 'Concluding Observations UN Doc A/50/18'.

being a *Protected Characteristic*.⁴³²

The treaty-based bodies of the UN human rights system cite this as further justification for UAE's continuing progress.⁴³³ Furthermore, there is a great deal of evidence for this on the ground from the data collected during the field study. From the governmental perspective Sheikh Abdul notes the role of the UAE government in upholding international agreements and actively seeking to implement the human rights norms in all new policies and procedures. He has actively witnessed and implemented this change in a diverse number of sectors from the civilian authorities to the defence and security sector. Professor Rashid in support acknowledges the role of international human rights discourse in helping to raise both the intellectual and societal awareness about human rights norms. This he observes has led to a direct change in the laws and policies of the nation with greater changes planned through a systematic program. Whilst Hassan, a specialist and professional working in this area testifies to the actual number of cases he has personally encountered. He is aware of his colleagues working on a number of draft papers with regards to human rights norms that the government desires to include into new policies. Jamsheed, the foreign blue-collar worker provides a particularly interesting analysis. He claims that the laws and policies of the UAE have not only improved in his experience of living and working in the country but have become central factors in him continuing to live and wanting to permanently reside with his family in the nation.

It is evident from the discussion on UAE's international incumbency to human rights norms that it has taken some great measures in not only acknowledging but actively committing itself to their implementation. This is encapsulated in the speech delivered by the honourable Sheikh Mohammed bin Rashid Al Maktoum⁴³⁴, to the Arab Strategic Forum (Dubai.2004). Sheikh

⁴³² 'Federal Law of against Discrimination and Hatred ' <http://ejustice.gov.ae/downloads/latest_laws2015/FDL_2_2015_discrimination_hate_en.pdf >.

⁴³³ UAE Interact (n 138).

⁴³⁴ Vice President and Prime Minister of the UAE and Ruler of Dubai

Muhammad shared his personal and sincere concerns with the audience: ‘I tell my fellow Arab leaders if you do not change, you will be changed...’⁴³⁵.

He also went on to state that if Gulf Arab nations failed to initiate radical reforms and uphold the principles of transparency, justice and accountability then there was a danger in the current political climate of great resentment from the public.⁴³⁶

This also demonstrates the basis for the criticism levied against the UAE by Amnesty International⁴³⁷, which claim that the UAE authorities are actively involved in presenting a compliant and entirely desirable international image of themselves as a vanguard for human rights. However, Amnesty International claims that they are actively responsible for the:

...Unprecedented arrests, detentions, disappearances, torture and other ill-treatment of detainees... grossly unfair trials and the imposition of long prison sentences on government critics, and continuing harassment and persecution of their families. In some cases, depriving them of the rights and privileges associated with that status in the UAE and rendering them stateless...⁴³⁸

The Amnesty International claims are supported by Sophia, who argues that the Arab societies are dominated by an underlining paranoia and inherent suspicion of foreigners and outsiders. Likewise, Dr Noor utilises his own example and alleged suffering at the hands of the government to argue the insincerity of their actions. He completely rejects the notion that the current rulers of the UAE are even remotely interested in promoting or adopting a democratic system that seeks to liberate the minds of the people. He alleges that the overt compliance with International treaties and conventions is a smokescreen to appease its international partners. In

⁴³⁵ This event took place in Dubai from December 13 to 15, 2004 with notable participations from Bill Clinton, Madeleine Albright, Hanan Ashrawi, and a number of high profile Western and Arab politicians. See the Dubai daily English paper Khaleej Times of (December 14, 2004, 8)

⁴³⁶ *ibid*

⁴³⁷ Amnesty International, ‘Silencing Dissent in the United Arab Emirates (UAE)’ (n 336) 6-7.

⁴³⁸ *ibid* 5.

conclusion Sophia's point is crucial in leading us to the subsequent section on cultural universalism. 'The entire ethos of the region is built upon a protection of each other and the factors which benefit each other, so they are protected... That is what is built into the mind-set of these people'⁴³⁹.

5.4 Radical Culture Universalism (Normative Commitment)

In contradistinction to *the radical individual universalistic (strategic calculations)* this angle argues that human rights discourse should be focused upon culture specific values. Mathews calls for a culturally oriented analysis and formation of human rights norms and analysis.⁴⁴⁰ Diana, in support, identifies the necessity for human rights norms and policies to be reflective of the cultural, social and ideological diversities that exist not only globally but also within regions, and specifically within nations.⁴⁴¹ The argument stipulates that normative commitments can be achieved through a process of socialisation, as the State governmental agency interacts with societal institutions and individuals to develop a greater appreciation of human rights norms. It is proposed that as general society awakens and understands human rights norms, they will become more aware; thus the common identity of that society will be transformed to demonstrate this new understanding. The burden of obligation is however placed upon the State to facilitate this process through its governmental mechanisms. Whilst at the international level, there is a requirement by the international community to collectively demonstrate its commitment to human rights norms by actively instituting those measures,

⁴³⁹ Amnesty International, 'Silencing Dissent in the United Arab Emirates (UAE)' ch 4,s 4.2.3 (<https://www.amnesty.org.uk/files/mde_25.018.2014_-_there_is_no_freedom_here_-_silencing_dissent_in_the_united_arab_emirates_uae.pdf > accessed 17 August 2016.

⁴⁴⁰ F Mathews, 'Cultural Relativism and Environmental Ethics' (1994) IUCN Ethics Working Group 5.

⁴⁴¹ AS Diana, 'The Challenge of HR and Cultural Diversity' <www.un.org/en/index>.

which counter the opportunities for violation. This establishes benchmarks and standards that individual States can aspire to attain for greater access and active participation in formulating global policies on commerce, trade, politics and security etc.⁴⁴²

This focus of this section is to introduce and use the social constructivist model outlined in Risse and Sikink⁴⁴³ to address the broad development required for State compliance. The spiral model essentially seeks to explicate the phases a State may experience as it attempts to inculcate human rights norms into domestic society in response to pressures from a network of domestic and international actors.

5.5 Spiral Model

Risse and Sikink define socialisation as ‘the process by which international norms are internalized and implemented domestically’⁴⁴⁴.

The spiral model suggests a socialisation process by which international human right norms are included in domestic practices of states, and claims to present causal mechanisms of norm implementation, which are ‘truly universal and generalizable across regions and domestic structures’⁴⁴⁵.

⁴⁴² R Goodman and T Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, vol 80 (Cambridge University Press 2011) See also; R Goodman and D Jinks, ‘How to Influence States: Socialization and International Human Rights Law’ [2004] *Duke Law Journal* 621–703.

⁴⁴³ T Risse and K Sikink, ‘The Socialization of International Human Rights Norms into Domestic Practices ’ (1999) 66 *Cambridge Studies in International Relations* 5.

⁴⁴⁴ *ibid.*

⁴⁴⁵ R Schwarz, ‘The Paradox of Sovereignty, Regime Type and Human Rights Compliance’ (2004) 8 *The International Journal of Human Rights* 199, 208 See also; T Risse-Kappen and others (eds), *The Power of Human Rights: International Norms and Domestic Change*, vol 66 (Cambridge University Press 1999).

The spiral model, consisting of five-phases (Repression, Denial, Tactical Concessions, Prescriptive Status and Rule-Consistent Behaviour) illustrates how an organisation of transnational human rights networks, in coordination with national human rights institutions promote, protect and preserve international human rights norms.

Socialisation Phase	Description
Repression (1)	<p>The phase is characterised by negligible domestic oppositions, which are too weak to present a significant challenge to the government, thus resulting in the deterioration of human rights. This phase entails a tremendous suppression of legitimate independent news and information and possible severing of any of links between domestic Non-Governmental Organisations and International Non-Governmental Organisations. Schwarz observes that the time it takes a TAN to gather evidence and place it upon the international agenda effectively determines the transition to the second phase.⁴⁴⁶</p> <p>In this phase the violating government rejects the legitimacy of</p>

⁴⁴⁶ Schwarz (n 371) 201.

**Denial
(2)**

international human rights norms.⁴⁴⁷ TANs are activated to assemble and assimilate information on the target state. This phase is characterized by the initial activation of domestic and transnational networks that apply some pressure, denunciation, and shaming. Risse and Sikkink cite the examples of the suppression of the demonstrations in Tiananmen Square by the Army under orders from the Chinese government and the response of the Guatemalan government to human rights pressures in late 1970's.⁴⁴⁸ Whilst, Alhargan⁴⁴⁹ highlights the case of the Kingdom of Saudi Arabia in its oppressive actions towards the suspected Islamists following the Second Gulf War. The success of a limited number of governmental opponents in disclosing the role of the Saudi Arabia government to international media outlets led directly to the establishment of the Committee for the Defence of Legitimate Rights (CDLR) on 3 May 1993⁴⁵⁰, which brought the issue to light. However, the Saudi Arabia denied the allegations on the basis that human rights were an internal affair. Moreover, the state argued that the international criticism infringed upon national sovereignty, and that such criticism constituted an illegitimate intervention in its internal affairs.⁴⁵¹ According to Risse and Sikkink the process of socialisation has already been initiated by this phase.

⁴⁴⁷ Risse and Sikkink (n 443) 25.

⁴⁴⁸ *ibid* 27.

⁴⁴⁹ Alhargan (n 370) 602.

⁴⁵⁰ *ibid* 604.

⁴⁵¹ Schwarz (n 371) 201.

<p>Socialisation (3)</p>	<p>During this phase the increasing domestic and international pressures upon the violating State impels it to seek cosmetic changes in order to pacify the international community. This is a vital phase as it dictates whether the State will uphold its commitments to International human rights norms or renege completely from its pledges. This phase is characterised by the tactical concession from the regime, such as the release of prisoners whilst continuing to deny the failure and the illegitimacy of their policies. However, this phase allows for a much broader decimation of human rights discourse across society, therefore, as the tactical concession phase begins to transition the governments are no longer in complete control of the dialogue. As human rights violations occur, domestic and transnational networks are activated to coordinate and place the government under domestic and international scrutiny.⁴⁵² At the juncture whereby States begins to institutionalise human rights standards into domestic practices, this signals the start of a changing political and social order. However, Risse and Sikkink observe that a regime change becomes more likely when oppressive governments are confronted with a fully mobilised domestic opposition that is supported by transnational networks.⁴⁵³</p>
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⁴⁵² This terminology is taken from A Brysk, 'From above and below Social Movements, the International System, and Human Rights in Argentina' (1993) 26 *Comparative Political Studies* 265 *cited in*; R Schwarz, 'The Paradox of Sovereignty, Regime Type and Human Rights Compliance' (2004) 8 *The International Journal of Human Rights* 199, 201 *See also*; T Risse and K Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices' (1999) 66 *Cambridge Studies in International Relations* 26.

⁴⁵³ Risse and Sikkink (n 443) 26.

<p>Prescriptive (4)</p>	<p>This phase is depicted by the negligible discussions on human rights violations, although oppressive practices may still be in practice. However, there is a recognition that the process of change will be slow and gradual and will be manifested by the prescription of the norms within the constitution of the new laws, the establishment of institutionalized mechanisms to register human rights violation and further into the long term a change in actual behaviour. This implies that the State accepts the validity of human rights norms and ratifies human rights conventions, institutionalising norms in the constitutions and/or domestic law, institutionalising mechanisms for citizens to register human rights violations and refrain from denouncing and perceiving all external criticism as an interference in its internal affairs, and engaging in a dialogue and discursive practice with critics with regards to the validity of human rights norms.⁴⁵⁴</p>
<p>Rule Consistent Behaviour⁴⁵⁵ (5)</p>	<p>This phase is epitomised by the institutionalisation and enforcement an upholding of human rights norms through legislation. Risse and Sikkink warn however that even at this stage Government may still continue to commit occasional human rights violations, For example imprisoning people without trial. It is important to maintain domestic and international pressure on the government, particularly in view of the fact that with decreasing human rights violations and with the absence of gross violations in the target state, international attention tends to decline.⁴⁵⁶</p>

Table 5-1 Adapted and modified from the five phases of the Spiral Model as expressed by Risse and Sikkink⁴⁵⁷

⁴⁵⁴ *ibid* 26.

⁴⁵⁵ *ibid* 31.

⁴⁵⁶ *ibid*.

⁴⁵⁷ *ibid* 22-35.

The overarching purpose of this model is to demonstrate how a gradual process of socialisation may influence a particular State's identity, interests and behaviour.⁴⁵⁸

Risse and Sikkink argue that changes in the strategies of repressive governments result from a combination of pressures from below (domestic opposition in the form of civil movements and Non-Governmental Organisations) and from above.⁴⁵⁹ Keck and Sikkink identified this interaction of pressures to be 'a boomerang effect, whereby domestic groups in a repressive state bypass the State'⁴⁶⁰ to develop alliances with international agents to pressure the State from the outside.

Marsh and Payne perceive the spiral model to provide a realistic and workable framework for the socialisation of human rights norms through domestic human rights improvements. These are they note a causal response to the pressures from a network of domestic and international actors. Furthermore, they contend that nearly every country in the world can be placed into one of these five phases, making the model quite valuable for cross-national empirical research.⁴⁶¹

Jetschke and Lies in support of these assertions, observe that the spiral model remains the reference for most studies on multi-level human rights politics and compliance with human rights norms.⁴⁶² They also explain that Single-case studies that have used the spiral model as a

⁴⁵⁸ DC Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (PUP 2001) 13 cited in; RA Alhargan, 'The Impact of the UN Human Rights System and Human Rights INGOs on the Saudi Government with Special Reference to the Spiral Model' (2012) 16 *The International Journal of Human Rights* 598, 59.

⁴⁵⁹ T Risse-Kappen and others (eds), *The Power of Human Rights: International Norms and Domestic Change*, vol 66 (Cambridge University Press 1999) Cited in; E Shor, 'Conflict, Terrorism, and the Socialization of Human Rights Norms: The Spiral Model Revisited' (2008) 55 *Social Problems* 117, 121.

⁴⁶⁰ K Sikkink and ME Keck, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998) Cited in; E Shor, 'Conflict, Terrorism, and the Socialization of Human Rights Norms: The Spiral Model Revisited' (2008) 55 *Social Problems* 117, 121.

⁴⁶¹ DP Payne and C Marsh, 'Globalization of Human Rights and the Socialization of Human Rights Norms' [2007] *The BYU Law Rev* 665.

⁴⁶² A Lies and A Jetschke, 'The Spiral Model: How Does It Score After Ten Years? In Workshop: Power of Human Rights—Ten Years After' (2009) 23 *University of Wyoming Conference Center, Laramie, WY, USA*.

framework have confirmed the major mechanisms of the model. They conclude that the model remains valid for the cases for which the model was designed (authoritarian, repressive states with little political legitimacy and no experience of transnational advocacy).⁴⁶³

However, there are serious criticisms made of the model such as it being over-deterministic. Shor argues that the model fails to explain the causal relationship between the factors, which lead to a deterioration in human rights provisions and increases in violations.⁴⁶⁴

Moreover, Shor appears to be confused by the lack of reference to the exact point at which the governments are expected to endorse and accept human rights norms and discourse that is responsible for this course of action.⁴⁶⁵

Schwarz shares this concern and adds that the transition point between phase 4 (Prescriptive) and phase 5 (Rule-Consistent Behaviour), whereby an enduring respect for human rights is attained can only occur in the case of a democratic transition. This is a transition from a non-democratic to a democratic polity, and subsequently to democratic consolidation. Additionally, he contends that only in the exceptional instance of a democratic transition can a linear movement of human rights improvements along the five phases of the model be expected.⁴⁶⁶

He cites the example of Tunisia placed within the second phase of denial as being contrary to the spiral model. Whilst the spiral model expects the target State to practice instrumental progression, Tunisia showed a clear regression following its initial advancement towards less

⁴⁶³ *ibid.*

⁴⁶⁴ Shor (n 365) 131.

⁴⁶⁵ *ibid* 121; Risse-Kappen and others (n 375).

⁴⁶⁶ Schwarz (n 371) 206 However, other countries that are treated in the edited volume as “success stories” have, since its publication, shown significant regression. The Philippines (Jetschke 1999) and Uganda (Schmitz 1999) for example, are described as being in the fourth stage of the model and moving forward toward the fifth. But reports of Amnesty International during the 2000s show a clear regression to severe governmental repression in both countries..

repressive actions.⁴⁶⁷ Risse and Sikkink have defended this as an anomaly to the rule, which was a direct result of the absence of TANs to develop, organise and mobilise a weak and disparate domestic opposition.⁴⁶⁸

Risse and Sikkink state that the model is universally applicable across all countries irrespective of their cultural, political and economic differences.⁴⁶⁹ They argue that the expected outcome from the socialisation is the agreement on the internationality of the human rights norms. Whilst Landman disagrees and concludes that the model is too ambitious and unrealistic in its attempt to provide these types of universal generalisations.⁴⁷⁰ Jetschke and Lies, in support, explain that the model has not been able to capture all the nuances encapsulated within the formation of generalisations. They assert that whilst ‘the spiral model makes a fundamental contribution to the study of human rights norms and practices, it does not provide a truly complete or universal explanation of the domestic internalisation of human rights among all norm-violating states’⁴⁷¹.

Moreover, Pace argues that the spiral model may be limited to smaller, less powerful states rather than more dominant ones in the international system.⁴⁷² Alhargan disagrees with this point however and utilises the example of Saudi Arabia as a powerful and influential State without any reliance upon foreign aid, which recognises human rights norms and has pledged to uphold those norms that it deems consistent with its own culture and tradition. He notes that:

⁴⁶⁷ Shor (n 365) 6.

⁴⁶⁸ Risse and Sikkink (n 443) 243.

⁴⁶⁹ *ibid.*

⁴⁷⁰ T Landman, *The Political Science of Human Rights*, vol 35 (British Journal of Political Science 2005) 565.

⁴⁷¹ Lies and Jetschke (n 462) 23-24.

⁴⁷² GR Pace, ‘Human Rights from Paper to Practice: How Far Have We Come?’ Center on Rights Development, Denver Univ <<https://www.du.edu/korbel/hrhw/volumes/2001/1-1/risse.pdf>> accessed 8 September 2016.

The domestic internalisation of human rights proves that it is applicable to the Saudi state... Its applicability proves the validity of the spiral model, as many characters of the first, second as well as the third phases are present in the Saudi case... Saudi Arabia does not rely on foreign aid, which represents a heavy challenge for the human rights network in seeking to influence the Kingdom, yet it cannot escape their advocacy and dispense of its human rights record... Nevertheless, states that are not in receipt of foreign aid can resist the human rights network in trying to bring about significant improvements, as evident in the Saudi denial phase, which lasted for 10 years⁴⁷³.

Shor perceives this form of compliance demonstrated by Saudi Arabia to be an example of the model's inability to determine the decrease in some violations, whilst increases in other form of violations and abuse.⁴⁷⁴ Cardenas furthers this point, as she does not perceive States that violate human rights to all respond to domestic pressures for social change instantly or fully. Cardenas concedes that the gestures and concessions States make to appease critics often constitute partial compliance or steps on the way to fuller compliance.⁴⁷⁵

Consequently, the model does not allow for modifications in changes, and differentiation between separate violating practices. This perspective limits the capability of the model to account for decreases in some violations that are not echoed by parallel declines in others. For example, Rupp and Sikkink report that in Guatemala, during the mid-1990's the practices of torture, disappearances, and extrajudicial executions significantly decreased, but arbitrary arrests and detention without trial remained abundant, and in some of the years have even increased.⁴⁷⁶

Similarly, from the end of the twentieth and early twenty-first century, Morocco formed its own human rights institutions, began to cooperate with human rights organisations, 'abolished the practices of executions and disappearances, improved women's rights, and dramatically

⁴⁷³ Alhargan (n 370) 601-602.

⁴⁷⁴ Shor (n 365) 130.

⁴⁷⁵ Goodman and Pegram (n 194) 26.

⁴⁷⁶ Shor (n 365) 122.

decreased the use of torture and arbitrary arrests⁴⁷⁷. However, terrorist attacks in Morocco led to the death sentence and torture to be reinstated in a wave of new anti-terrorism laws.

The final critique of the model is based upon its incapacity to adequately identify the role of genuine clashes and security threats in shaping a State's repressive policies and subsequently impeding human rights norms. In the current socio-political climate, the significant terrorist and subversive threats from a number of transnational actors provides States with the legitimate excuse to undertake repressive measures.⁴⁷⁸

Although the argument that the spiral model is too deterministic, generalised and has not accounted for the upsurge in transnational terrorism is extremely informative, it has to be noted that the spiral model still offers useful insights into the gradual changes that must take place within specific repressive States before the norms of human rights can be appreciated and practiced.⁴⁷⁹

As noted by Risse and Sikkink, the key to the socialisation process are the transnational human rights networks, which can exert moral pressure on norm-violating states and the eventual establishment of NHRIs, which actively monitor, preserve and further the understanding and practice of human rights in the nations.

5.6 Role of Transnational HR Networks and NHRI in the UAE Context

Keck and Sikkink define Transnational Human Rights Networks as a:

...Network of actors bringing new ideas, norms and discourses into policy debates ...They also promote norm implementation, by pressuring target actors to adopt new policies, and by monitoring compliance with international standard⁴⁸⁰.

⁴⁷⁷ *ibid.*

⁴⁷⁸ Goodman and Pogram (n 194) 37.

⁴⁷⁹ *ibid* 123.

⁴⁸⁰ Sikkink and Keck (n 460) 3.

Keck and Sikkink assert that their studies have demonstrated that transnational Coalitions between international Non-Governmental Organisations, International Organisations and domestic-level activists and Non-Governmental Organisations, were effective in pressuring norm-violating governments to change. The underlying reason for this was due to the establishment of a network for effective communication amongst the citizens of different regions.⁴⁸¹

In this context, Transnational Human Rights Networks comprised of Non-Governmental Organisations, international agencies and members of the displacement collate, document and utilise all evidence pertaining to the intentions and actual violations by their governments. Risse and Sikkink⁴⁸² had explicitly noted that human rights Transnational Human Rights Networks were tasked with the careful documentation of abuses, as well as raising the States awareness with respect to their accountability for those abuses under international law.

Keck and Sikkink identify the power and authority of a Transnational Human Rights Networks to be in its organising mission of fomenting the appropriate conditions for sustainable change within the practice and promotion of human rights. They contend that Transnational Human Rights Networks must strive to bring the case of norms violating States onto the international agenda. This may entail some form of shaming both the violating State and the international community into taking action.

Cardenas adds that Transnational Human Rights Networks are also effective at lobbying powerful international actors to exert pressure on states and thereby altering their possible strategic calculations and foreign policies.⁴⁸³ Keck and Sikkink had already envisioned Transnational Human Rights Networks to serve as vehicles for forging relationships,

⁴⁸¹ *ibid.*

⁴⁸² Risse and Sikkink (n 443) 7-8.

⁴⁸³ Goodman and Pegram (n 194) 12.

transmitting international standards, exchanging best practices, and replicating identities. Thereby they construed that Transnational Human Rights Networks could shape state compliance by helping to reconstitute both states strategic calculations and their compliance⁴⁸⁴ and they concur that Transnational Human Rights Networks are characterised by their purpose to empower, defend and rally, ‘domestic opposition, social movements and Non-Governmental Organisations into challenging governments from above and below’⁴⁸⁵.

A regional conference hosted in Cairo (2013) by the Arab League declared that the region needed to develop its civil society so that it could make a viable impact upon the social, economic and political activities of their nations. They identified the importance of civil society in concert with domestic Non-Governmental Organisations to instigate the changes required to advance greater appreciation and awareness of basic human rights.⁴⁸⁶

Within the UAE it is evident that there exist no independent civil society associations, other than the ones established and controlled by the government, the following are three examples.⁴⁸⁷

Association	Purpose
Emirates Human Rights Association	This Association was established pursuant to the Federal Public Interest Associations Act No. 6 of 1974, as amended, to raise awareness about and explain the rights and obligations of individuals in society. It operates within the framework of the law and in cooperation with government institutions to promote the principles of respect for individual

⁴⁸⁴ Sikkink and Keck (n 460).

⁴⁸⁵ *ibid* 183.

⁴⁸⁶ ‘The Arab League and Human Rights Challenges Ahead’ (2013).

⁴⁸⁷ ⁴⁸⁹ The following examples are directly From National Report Submitted in Accordance with Paragraph 15 (A) Of ‘The Annex To Human Rights Council Resolution 5/1’ (2008) A/HRC/WG.6/3/ARE/1 s 3,para14

	rights, curb human rights violations, safeguard equality and prevent discrimination among members of society based on origin, religious & intellectual beliefs, colour, sex and race.
General Women's Union	The Union plays a key role in the formulation of general policy on women, the creation of plans for the promotion of women's issues in all domains and the establishment of plans and programmers to integrate women into overall development plans and empower them to play their role in life without discrimination.
Jurists Association	This Association was established on 25 September 1980 to promote human rights, defend freedoms and the rule of law, raise professional, cultural and social studs among jurists and cooperate with Arab and international human rights associations and foundations whose work has a bearing on the Association's aims.

Table 5-2 Government Established Associations⁴⁸⁸

Amnesty International claims that the UAE does not allow the establishment of independent Non-Governmental Organisations or trade unions.⁴⁸⁹ 'There are no political parties and political dissent is not tolerated. Islamists or those critical of the human rights or political situation in the country are often targeted for arrest, arbitrary detention and unfair trial'⁴⁹⁰.

⁴⁸⁸ 'The Annex To Human Rights Council Resolution 5/1' (2008) A/HRC/WG.6/3/ARE/1 s 3,para14 <https://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/A_HRC_WG6_3_ARE_1_United_Arab_Emirates_E.pdf>.

⁴⁸⁹ Amnesty International, *Challenging Repression: HR Defenders in the Middle East and North Africa* (Amnesty International Secretariat 2008).

⁴⁹⁰ Amnesty International, 'UAE: Crackdown on Fundamental Freedoms Contradicts Human Rights Commitments' (n 87).

Additionally, Human Rights Watch reports that sixty-nine suspects with alleged links to Islamist groups were randomly arrested and systematically tortured within the States security facilities and then convicted by the authorities.⁴⁹¹ Hence there is evidence to suggest that the UAE authorities have demonstrated their indifference towards the notions of justice, freedom of expression and free association. In addition, there are reports, which claim that the authorities have harassed and threatened lawyers and refused legal assistance to prisoners.⁴⁹² Although, there only exists one Non-Governmental Organisation in the UAE (UAE Human Rights Association), according to Freedom House's report⁴⁹³, it is completely controlled and operated by the government.

Moreover despite the existence of transparent standards governing visits from international Non-Governmental Organisation representatives, Amnesty International observes that the UAE government does not allow human rights International Non-Governmental Organisations to establish offices or presence in the country.⁴⁹⁴ They may allow International Non-Governmental Organisation representatives to conduct limited short-term visits that are confined to certain designated jurisdictions.⁴⁹⁵ However, it must be noted that under Article 30 of the UAE Constitution, freedom of expression is a guaranteed right but it states explicitly that it must be 'within the limits set by law'⁴⁹⁶. In seeking to address the establishment of a NHRI

⁴⁹¹ Human Rights Watch, '2014 Country Report on UAE' (2016) <<https://www.hrw.org/world-report/2014/country-chapters/united-arab-emirates>>.

⁴⁹² EU Parliament, 'Motion for a Resolution' <<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2012-484&language=EN>> accessed 16 April 2016.

⁴⁹³ UNICEF, 'MENA Gender Equality Profile: Status of Girls and Women in the Middle East and North Africa' Regional Overview <<https://www.unicef.org/gender/files/REGIONAL-Gender-Equality-Profile-2011.pdf>> accessed 16 April 2016.

⁴⁹⁴ Amnesty International, 'UAE: Crackdown on Fundamental Freedoms Contradicts Human Rights Commitments' (n 87).

⁴⁹⁵ Human Rights Watch, 'Stop Harassment of Human Rights Defenders' <<https://www.hrw.org/news/2006/10/04/uae-stop-harassment-human-rights-defenders>> accessed 7 September 2016.

⁴⁹⁶ UAE Constitution, Art 30

in the UAE it is argued that within the context of the spiral model the UAE is traversing between the denial and socialisation phases. The absence of independent domestic and international Non-Governmental Organisations or civil society associations in the country nullifies any possibility or opportunity for TANs to become a viable partner to bring about the necessary change to the subsequent phases.

Risse and Sikkink describe the transition to the third phase as ‘...the biggest challenge for the transnational human rights network...’ because ‘...the domestic opposition is too weak to be able to mount a major challenge to the regime...’⁴⁹⁷

However, it has to be acknowledged that in seeking to pursue this transition from the denial to the socialisation phase, the UAE must transform its entire socio-political culture. It must take as its role model Western style democracies, which operate under a different ontological and epistemological model. It is established, as witnessed by the responses of the participants in chapter four, that a proportion of the native Emirati society perceives its political and social system to be reflective of its Islamic and tribal traditions, making the notions of canvassing voters, garnering political allegiances and electioneering antithetical to its heritage as it is confrontational and seeks to displace and destabilise society.

Alhargan cites the example of the Kingdom of Saudi Arabia in defending this perspective. He observes that Saudi Arabia has always refrained from rejecting or opposing universally recognised human rights laws but requested the UN General Assembly take into consideration the concept and notion of cultural diversity. Abdurahmān Alrassi, second secretary at the Permanent Mission of Saudi Arabia, stated, that ‘...Saudi Arabia believes that when defining

⁴⁹⁷ Risse and Sikkink (n 443) 24.

human rights, the international community should take into consideration the diverse and specific historical, religious, cultural and social connotations of these rights⁴⁹⁸.

In the UAE, the inherent socio-cultural value of the tribal system and the allegiance due to it alongside its religious orientation provides the essential stability and legitimacy to the social authority of the rulers of the various Emirate states and the federal governance itself.

This innate aspect of the Gulf and UAE society is encapsulated in the notions of *Shura* (consultation) and *Al Majlis* (gathering). The leaders or sheikhs host open communal meetings or gatherings, whereby any citizen or member of that tribe is invited to attend and express their opinion openly or in private. It has already been noted that even today the current President and Vice President of the UAE still host their own *Majlis*, which is open to all from their specific Emirate.⁴⁹⁹ Additionally, the findings from chapter four suggest that the general consensus of the people is that the government is perceived by the public to be in itself both responsible and to act as a Human Rights Institution.

These derived perspectives alongside the review of literature suggest that the entire Gulf region identifies the innate tenets of the Islamic faith to be a significant influence upon the expectations and understanding of human rights. The interviewed participants were forthright in identifying human rights to be a norm ordained by God Almighty, as vouchsafed by the sacred texts and traditions of the faith. It was revealed that a significant aspect of the faith entailed the safeguarding of human values and quality of life, thus this idea of human rights norms as propounded by the international community was not a new ideal.

There was also an explicit recognition that although the individual was free to act as they desired in private, the public domain required that everyone must act and behave to a set standard of acceptance to maintain equanimity and harmony for all. It is with this spirit that

⁴⁹⁸ Alhargan (n 370) 607.

⁴⁹⁹ 'UAE Yearbook 2009' (Printable PDF Brochure)' (n 57).

Sheikh Abdul, (senior government representative); Professor Rashid (academic), Hassan (Lawyer) and Jamsheed (foreign white-collar worker) identify the UAE Government to be upholders of the Islamic faith tradition. They contend that its overarching mission is to preserve the Islamic ideology through its institutions.

Moreover, as noted in chapter two, the literature alongside the collated data from the field suggests that the UAE has experienced an exceptional level of permanence, with limited changes to its political structure or institutions since its formation. Although critics have cited this as evidence for the undemocratic and autocratic governmental system, the study participants argued that this has helped maintain the high levels of political stability and social harmony in the UAE. Accordingly, both the indigenous and foreign residents contend that the national federal government comprehends and is representative of the native culture, heritage and tradition.

For example, Sheikh Abdul, Professor Rashid, Hassan and Jamsheed utilise the examples of the national leadership to suggest that the tribal structures in place at the very top represent the concepts of community and family. They argue that every Emirati individual is inherently a part of not only his locale but also the wider national family with each individual alongside the rulers having an equal stake in the prosperity, stability and progress of the nation.

Although dissenting voices in the form of Sophia (International Non-Governmental Organisation representative) and Dr Noor (Activist/Victim) criticise the governments for acting as judge and jury, they nevertheless recognise the authority of the Islamic faith in defining the role of the government and conversely the government's role in promoting and protecting the faith ideology. Further still, they recognise that the governmental structure is an extension of the tribal heritage and culture of the region. However, both are critical of the lived experiences and realities on the ground with regards to the UAE government's actions. They argue that the government has utilised the notion of religion, faith and tribalism to justify and consolidate their power and hold over the people, which has lead them to enslave their own populace.

Dr Noor and Sophia argue that the Supreme Council is nothing more than a ‘court of kings’ as only the seven rulers comprising the Supreme Council have power and authority to make decisions with regards to the federation. They accommodate their subjects with an audience at *the Majlis* to either pacify or gain their support through a display of their authority by providing for them their material needs. Dr Noor and Sophia identify this to be the effective paralysis of the Emirati citizens as the nanny state, fulfils their daily requirements, meaning that any violations or abuses of human rights are not only ignored but are self-suppressed by the government and people.

A second finding from the data collated in chapter four suggests, as per the perspective of *radical culture universalism* that the primary purpose and role of the NHRI is to provide education around human rights.

The unanimous findings from the data analysis phase suggest that the NHRI’s function is exclusively that of an educational institution. Sheikh Abdul, Professor Rashid and Hassan contend that although the UAE is prepared to accept and instil International Human Rights norms, it cannot be at the expense of the stability of the socio-political structures and undermining of the government. They argue that an NHRI established to monitor the government would innately introduce a culture of distrust and scepticism. They suggest that an NHRI should instead be established upon the premise of furthering human rights education and awareness. This will then act to prepare the next generation of leaders to be appreciative and supporters of human rights provisions; although they concede that this is a long-term strategy, which must be acknowledged by the international community.

They maintain that the government has already instigated these educational programs. These include for example the Administration of Human Rights Care at Dubai Police Department⁵⁰⁰;

⁵⁰⁰ ‘About Dubai Police’ (n 156).

The Dubai Foundation for Women and Children.⁵⁰¹ Thus, the establishment of the NHRI would combine and amalgamate the human rights agenda in its entirety whilst educational programs morphed into a systematic institutional endeavour.

Jamsheed observes from the experiences of his own country of origin that laws and regulations have failed to prevent those in power from abusing their privileges. He notes that an institution formed solely to regulate the government will only become a vehicle for political and social control. Dr Noor and Sophia appear to vouch for this opinion as they both contend that an NHRI will not only become a tool for educational awareness but become the mechanism for remedy and rehabilitation for those who have violated human rights norms and for those who have been victims of it. Sophia suggests that the UAE should work with International Non-Governmental Organisations to establish its NHRI and prepare its educational programs. This will not only help the UAE develop its international partnerships with International Non-Governmental Organisations but allow them to use these organisations to counter the negativity the UAE government encounters in the international media and reports. This strategy, if adopted by the UAE government, would allow it to become the role model for the region and for other developing states across the world.

5.7 Formation of NHRIs in the UAE

In discussing the role of NHRIs it has to be acknowledged that although there exists no homogenous model or structure of an ideal NHRI, its establishment demonstrates within the context of the spiral model a State's transition from the Prescriptive phase (4) to the Rule Consistent Behaviour phase (5). There is an explicit recognition by the parties to the Paris Principles that due to the influence of such factors as the prevailing legal system, culture,

⁵⁰¹ DFWAC (n 159).

tradition, political and socio-economic milieu the human rights models must reflect the nation states' own individual contexts. Pohjolainen perceives these factors to account for the 'considerable differences in the legal basis, jurisdiction, functions, powers and the structure and composition of national institutions'⁵⁰². Therefore, at present there exists a wide variety of organisations purporting to achieve the same mandate as stipulated by the UN for an NHRI. The 1993 World Conference on Human Rights in Vienna confirmed the prerogative right and obligation of the individual nation states to implement NHRIs that best reflected their societal contexts.⁵⁰³ Hence, the classification of NHRIs into specific and uniquely identifiable models is challenging as many NHRIs incorporate many features from other models. Nonetheless, classification assists in highlighting the strengths and addressing the weaknesses of any particular model.⁵⁰⁴ For analytical purposes, Aichele suggests the formation of classifications in order to identify the similarities and 'differences in the formal characteristics of these institutions'⁵⁰⁵.

Muller observes that these organisations can be referred to as: 'Human Rights Commission (Committee or Council); Ombudsman (or Public Defender); Advisory Human Rights Institutes or Specialized Commissions'⁵⁰⁶.

⁵⁰² AE Pohjolainen, *The Evolution of National Human Rights Institutions-The Role of the United Nations*, vol 318, p 16.

⁵⁰³ 'Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993' pt I, para 36
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>> accessed 22 August 2016 .

⁵⁰⁴ Asia Pacific Forum, 'Manual on NHRI' <<http://www.asiapacificforum.net/resources/manual-on-nhris/>> accessed 22 July 2016.

⁵⁰⁵ Aichele (n 230) 16.

⁵⁰⁶ A Müller and FL Seidensticker, *The Role of National Human Rights Institutions in the United Nations Treaty Body Process*, vol 33 (German Institute for Human Rights) *See also*; Mertus (n 178) 3.

5.7.1 National Human Rights Commission

Beeman contends that the ‘predominance of this globally dominant NHRI model in Commonwealth countries, which were greatly influenced by the drafting of the Paris Principles implies that it is also referred to as the Commonwealth model’⁵⁰⁷. The model’s most defining features are its accurate representation of the community and its pluralist structure. Eren observes the notion of pluralism is designed to ‘prevent national human rights commissions from becoming mere governmental mouthpieces’⁵⁰⁸. Additionally, it features a mandate for a quasi-judicial investigatory authority to protect and promote human rights. In theory, it ‘has the power to investigate human rights issues and individual complaints, thereby addressing human rights’⁵⁰⁹ concerns in a meaningful manner.

Although the ‘mandates accorded to human rights commissions vary in scope, in general they are responsible for a wide range of functions, but with special emphasis on proactive and preventive tasks’⁵¹⁰. The National Human Rights Commission should uphold its investigative role alongside offering assistance to the governments and the provision of expert advice in monitoring and implementing human rights and legislation. ‘This advisory and research capacity is often limited to cases where the government has specifically requested the institution’s assistance’⁵¹¹. Further still, the human rights commissions ‘may engage in educational and awareness-raising activities’⁵¹².

⁵⁰⁷ Dam (n 302).

⁵⁰⁸ A Eren, ‘National Human Rights Institutional Models in Comparative Law and the Case of Turkey’ (2011) 175 <http://webftp.gazi.edu.tr/hukuk/dergi/15_3_7.pdf> accessed 29 July 2017.

⁵⁰⁹ United Nations (n 169).

⁵¹⁰ Aichele (n 230) 16.

⁵¹¹ *ibid.*

⁵¹² For instance, the French human rights commission is mandated to “assist the Prime Minister and the ministers concerned with all general issues pertaining to human rights and humanitarian action”. It is also responsible for preparing annual reports to the government on the fight against discrimination and xenophobia. (Constitutive Decree on the National Consultative Commission, art. 1) However, for instance the Moroccan human rights commission is also mandated to examine human rights violations cases and make recommendations on this basis to competent authorities.

Eren summarises the central purpose of the human rights commissions to be in their ‘consultancy function to the government on issues related to human rights’⁵¹³.

5.7.2 The Human Rights Institute

In terms of their function, Human Rights Institutes appear to be similar to the National Human Rights Commissions in that they disseminate material and training on human rights discourse through educational programs, social activities, public awareness campaigns and monitoring governmental practices with relation to human rights. However, the Human Rights Institute does not possess any investigate powers to explore human rights abuses. The sole purpose of this type of institute pertains to programs designed to provide human rights education, information, research and documentation.⁵¹⁴

The ‘Danish Institute for Human Rights (DIHR), established in 2003’⁵¹⁵ exemplifies this point. Its essential role entails conducting independent and ‘autonomous research on human rights and presenting its recommendations before the Government and Parliament’⁵¹⁶ with regards to their obligations. Another recent successful example includes the German Human Rights Institute, established in 2001. Its primary function is to bridge the gap between general society, the government and the International bodies and TANS. It has ‘16 members elected from civil

⁵¹³ Eren (n 508).

⁵¹⁴ However, the Danish parliament enacted a law in May 2003 giving the Danish Institute for HR the power to receive and investigate complaints on ethnic and racial discrimination. This task was previously undertaken by the Ethnic Board, which was closed by the end of 2002. Act No. 374 of 28 May 2003 on Ethnic Equal Treatment

⁵¹⁵ 517 The title and status of this institution were modified in June 2002 following the change of the government. As of 2003, the Danish national institution is called the Danish Institute for Human Rights (DIHR) and it forms the Danish Centre for International Studies and Human Rights, together with the former foreign policy, peace research and development policy research institutes. See ‘Humanrights.Dk’ <humanrights.dk>.

⁵¹⁶ 518 Act governing the Establishment of the Danish Centre for International Studies and Human Rights, Act no. 411 of 06/06/2002. *See also* A Eren, ‘National Human Rights Institutional Models in Comparative Law and the Case of Turkey’ (2011) 175 <http://webftp.gazi.edu.tr/hukuk/dergi/15_3_7.pdf> accessed 29 July 2017.

society, academia, media and politics and houses a human rights library, which is open to the public'⁵¹⁷.

5.7.3 The Human Rights Ombudsman Model

The Ombudsman as established by the Swedish Parliament in 1809 entailed a single appointee, elected and empowered by parliament to monitor and investigate administrative process as a result of a complaint or off their own initiative. In addition, they were tasked to offer solutions, provide legal redress and monitor unfair conduct whilst issuing 'annual and special reports detailing their findings'⁵¹⁸. Hertogh reflects that the classical Ombudsman model is conceived to be 'an institution that uses *soft powers* of persuasion and cooperation to control conduct, rather than coercive or adjudicative means'⁵¹⁹. Some schools of thought 'regarding common law and administrative law refer to the ombudsman as a non-judicial alternative for overseeing public administration'⁵²⁰. Similarly:

Comparative law scholars occasionally reference the ombudsman in discussions of comparative administrative law, essentially using it as an example of a public-sector institution that has been successfully transplanted in different legal systems around the world⁵²¹.

Establishing the ombudsman is a mechanism that monitors the conduct of public authorities is legal and fair. The legislature appoints the ombudsman in order that he may investigate the process and functionality of the executive branch of government. However, the conduct of the courts and legislative branch is often outside his investigations. As Eren argues, the classical model of the Ombudsman seeks to ensure 'conformity and accountability of the government to

⁵¹⁷ See website 'Institut-Fuer-Menschenrechte' <<http://www.institut-fuer-menschenrechte.de/en/library/>> accessed 12 December 2017.

⁵¹⁸ Reif (n 324) 13, 1, 6.

⁵¹⁹ M Hertogh, 'The Policy Impact of the Ombudsman and Administrative Courts: A Heuristic Model' (1998) 2 *The International Ombudsman Yearbook* 63.

⁵²⁰ G Coffey, *Administrative Law*, vol 73 (Round Hall 2009) 9.

⁵²¹ J Bell, *Comparative Law. A Handbook* (Hart Publishing 2007) 287-312.

the laws of the nation'⁵²². Moreover, as Ayeni notes, the ombudsman 'is not a judge or tribunal and has no power to make orders or to reverse administrative action; they seek solutions to problems through a process of investigation and conciliation'⁵²³. An ombudsman's authority and influence are generated by having been appointed by a principal organ of the state (usually the parliament) before, which they are accountable. Reif observes that the classic Ombudsman model

...has the power to launch investigations on receipt of a complaint or of their own volition, conduct an impartial investigation into the administrative conduct in question, make recommendations to eliminate the illegality or unfairness if faulty administration is uncovered and report to the government and legislature on the activities of the office⁵²⁴.

Since the 1970's, governments have established the Human Rights Ombudsman version of the ombudsman institution by giving them the mandate not only 'to monitor the legality and fairness of public administration'⁵²⁵ but to protect, promote and consolidate public sector human rights whilst monitoring the consolidation and administration of human rights education. The Human Rights Ombudsman is often formed around the appointment of independent and impartial individuals chosen by the executive branch of government 'to monitor the compliance of the governmental bodies with domestic and international human rights norms, laws and policies'⁵²⁶.

Tigerstrom highlights the similarities between the 'classic Ombudsman and the Human Rights Ombudsman'⁵²⁷:

⁵²² Eren (n 508).

⁵²³ VO Ayeni, 'Ombudsmen as Human Rights Institutions' (2014) 13 *Journal of Human Rights* 500.

⁵²⁴ Reif (n 324) 13, 1, 9.

⁵²⁵ *ibid* 8.

⁵²⁶ *ibid*.

⁵²⁷ BV Tigerstrom, 'The Role of the Ombudsman in Protecting Economic, Social and Cultural Rights' (1998) 2 *The International Ombudsman Yearbook* 3–56 *Cited in*; VO Ayeni, 'Ombudsmen as Human Rights Institutions' (2014) 13 *Journal of Human Rights* 500, 503.

The ombudsman institution is founded on the principles of human dignity and justice... As such, it is devoted to the fair and equitable treatment of all individuals in a society. A core function of the institution is to bring a balance in the powers between the rulers and the ruled by providing people with the means to complain about and rectify a failure of the rulers... All these are also fundamental to human rights⁵²⁸.

With both the ‘power to investigate, to report and to make recommendations about individual cases, administrative procedures, and relevant system-wide changes’⁵²⁹, the ombudsman keeps a close rein on administrative injustices. By appointing an ombudsman, time and expense are reduced and cumbersome and protracted processes are significantly reduced if not eliminated. Furthermore, the ‘judicial process is also highly impersonal and formal’⁵³⁰, with Frank noting earlier that in many cases, the citizens are willing to accept the injustice because they cannot afford to or do not desire to take the litigation route. By contrast the process of investigation by the Ombudsman is informal and flexible with due consideration and care provided to the abused victims at a fraction of the cost. Sawyer observes that ‘...the Ombudsman provides a much cheaper justice system’⁵³¹.

Reviewing the classical ombudsman model and the human rights ombudsman model it is clear there exists compatibility and the creation of hybrid ombudsman institutions since the 1970’s helps to illustrate this symbiosis. Fundamentally, ‘at its core, the ombudsman is an institution

⁵²⁸ Tigerstrom (n 527).

⁵²⁹ Ayeni (n 523) 500.

⁵³⁰ B Frank, ‘The Ombudsman Revisited’ (1975) 56 *The Journal of International Bar Association Cited in*; N Abedin, ‘The Ombudsman in Developing Democracies: The Commonwealth Caribbean Experience’ (2010) 23 *International Journal of Public Sector Management* 221, 228.

⁵³¹ G Sawyer, ‘The Ombudsman and Related Institutions in Australia and New Zealand’ (1968) 377 *The Annals of the American Academy of Political and Social Science* 62 *Cited in*; N Abedin, ‘The Ombudsman in Developing Democracies: The Commonwealth Caribbean Experience’ (2010) 23 *International Journal of Public Sector Management* 221, 228.

designed to monitor illegality, unfairness, and injustice in public administration⁵³². As Frank notes:

the classical ombudsman plays a role both in human rights protection and in the implementation of a state's domestic and international human rights obligations, therefore, breaches of human rights laws have always been part of the ombudsman's mission⁵³³

5.8 Proposed Model of the UAE NHRI

In seeking to suggest an ideal type of NHRI institution for the UAE, it is argued that the ombudsman model has an already established history within the Islamic tradition. Pickl observes that the precursor to the contemporary Ombudsman model was the Turkish *Diwan-al-Mazalim*.⁵³⁴ Escovitz notes that this type of model appears to have been established upon the earlier archetype, as instituted by the second Caliph, Umar (634–644), which was generally referred to as the *Qadi al-Qudat*.⁵³⁵

However, with regards to contemporary requirements, it is argued that a significant issue with the human rights ombudsman model is that the appointed candidates for the post are nominated exclusively by either the executive, usually in the person of the president of the republic, or by a group of parliamentarians.

Appointing a single individual to oversee the entire machinery of government is not only an overwhelming task but also compromises the requirement for pluralism. The overt drawback of such an option may also mean that the anointed individual will only be representative of the

⁵³² M Oosting, 'The Ombudsman and His Environment: A Global View' [1999] *The International Ombudsman Anthology* 10.

⁵³³ Frank (n 530) 122, 139.

⁵³⁴ V Pickl, 'Islamic Roots of Ombudsman Systems' [1987] *The Ombudsman Journal*.

⁵³⁵ JH Escovitz, *The Office of Qâdî Al-Quḍât in Cairo under the Bahrî Mamlûks* (Klaus Schwarz Verlag 1984).

majority populace which will reduce the institute's credibility and value amongst the general populace of society. Consequently, when leadership is placed within the remit of a single individual member, as is the wont of the ombudsman-type human rights institution, they may also become easy scapegoats for perceived failures or seen as government mouthpieces, as they are dependent upon them for their own survival.

For example, in Trinidad and Tobago, home to a multi-racial populace, complaints of tribal/racial bias were brought against the Ombudsman. The impartiality of the entire institution was questioned and therefore its worth to the nation and the people was suspect. The arguments made suggested that a pluralistic system was required, whereby the office of the Ombudsman would be alternated 'between an Afro-Trinidadian and an Indo-Trinidadian'⁵³⁶. Whilst the UAE is also compromised of many differing tribes and now immigrant resident workers, it may benefit the nation to adopt an institution with more pluralistic characteristics to represent all of society and offset any claims of prejudice, bias or appeasement to the government forces.

It is argued and suggested that the UAE should consider a more pluralistic based institution, such as the Human Rights Commission which adheres to the fundamental standards of the Paris Principles. Abdurrahman argues for the Human Rights Commission to be established with a 'pluralist structure and wide representation of the community and that it assumes consultancy function to the government in the issues related to the human rights'⁵³⁷. He argues that pluralism prevents national human rights institutions from becoming mere mouthpieces of the government.⁵³⁸

⁵³⁶ Abedin, 'The Ombudsman in Developing Democracies' (n 257) 230.

⁵³⁷ Eren (n 508).

⁵³⁸ *ibid.*

The Minister of State for Foreign Affairs and Chairman of the Standing Committee,⁵³⁹ Doctor Anwar Gargash, who is also responsible for the Universal Periodic Review (UPR) process since 2013, cites the voluntary pledge articulated in the UPR report (no. 7) ‘To consider the possibility of establishing a national body for human rights in compliance with the Paris Principles,’⁵⁴⁰ to suggest that the..

...UAE is currently working on establishing a National Commission for Human Rights. A detailed study on the project was carried out in consultation with the concerned national authorities to create a Commission in compliance with the Paris Principles, which will be the official body to deal with all human rights issues in the country⁵⁴¹.

Hence, this thesis recommends that the UAE NHRI is based on the Human Rights Commission model with an express mandate to:

...Protect and promote human rights. It is composed of a number of members who should have human rights experience and expertise in the particular field. It has broad mandates to promote all human rights. What is more relevant than the label attached to an institution is the fact that its mandate, functions and powers accord with the letter and the spirit of the Paris Principles⁵⁴².

⁵³⁹ National report (2013) submitted in accordance with paragraph 5 of the annex to HR Council resolution 16/21. Para (5 and 6) the committee took a series of steps to prepare the report in the framework of a consultative process. It organised several workshops and meetings with a wide range of civil society organisations and governmental bodies to discuss their proposals as to the best means to follow up on the outcome of the review and on the preparation of the second report. In addition, the draft of the second report on the universal periodic review was posted on the standing committee’s page on the website (www.mofa.gov.ae) of the Ministry of Foreign Affairs so as to allow the public and interested parties in the Emirates to submit proposals and comments. An overview of the universal periodic review process and of the country’s first national report was included and information was provided on the pledges and recommendations emanating from the process to familiarise the public with the process and with related practices and outcomes.

⁵⁴⁰ Ministry of Foreign Affairs (UAE) (n 127).

⁵⁴¹ The UAE underwent its first UPR in 2008-2009 and its second UPR in 2013. More than 90% of the accepted recommendations and voluntary pledges from the UAE’s first UPR have been implemented ‘Www.Ohchr.Org’ <www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> accessed 19 April 2016.

⁵⁴² United Nations (n 169).

5.8.1 UAE NHRI: Proposed Structure and Features

The discussion has thus far noted especially from the *radical cultural universalist (normative commitment)* perspective that the ‘...task and shape of... human rights institutions vary from country to country, which is due to the diverse local culture, legal traditions and political systems in which these institution operates’⁵⁴³.

As discussed and introduced in the second chapter, the UAE has established a federal and regional system based upon its tribal heritage, which owing to its tribal heritage can cause intrinsic problems. NHRIs are established with a broad mandate that perceives the entire nation to be within their jurisdiction.⁵⁴⁴ For the formation of a UAE NHRI and for it to operate independently the federal government must ensure that regional individual Emirates submit and accept its jurisdiction and autonomy.

For this to be viable and applicable independence from the executive and legislative branches of government is essential. However, the potential NHRI ‘must have a legislative foundation, either through a constitutional provision or ordinary legislation, or both’⁵⁴⁵. This implies that an ‘official process designed to lead to the establishment of an NHRI must involve the Government and is usually led by it’⁵⁴⁶.

Although both Articles 110 and 114 of UAE constitution delineate the process of legislation,⁵⁴⁷ Article 115 stipulates that the: ‘...Supreme Council may authorize the President of the Union and the Council of Ministers collectively to promulgate, when the Supreme Council is not in

⁵⁴³ Müller and Seidensticker (n 506) 33.

⁵⁴⁴ Aichele (n 230) 17.

⁵⁴⁵ United Nations (n 169) 148.

⁵⁴⁶ *ibid.*

⁵⁴⁷ The Federal laws are drafted by the Council of Ministers and are then submitted to the FNC, where they are first sent to the proper committee. If a committee makes amendments to the proposed draft by the executive, the amended draft goes to the Legal and Legislative Committee, before the floor debate, for consultation and formulation of its provisions. Finally, the draft is presented to the president of the federation.

session...⁵⁴⁸ confirming that the UAE constitution provides the framework for the immediate formation and establishment of a NHRI.

Hamid Benhaddou, Head of the CCDH Division of International Organisations, recognises this salient point in the UAE legislature and observes that for this establishment to be successful and immediate the aims and ambitions of the future UAE NHRI should be advisory. He argues that to achieve this, the new institution should have a transparent structure and clearly defined terms of the functions and duties of the Institutions, they should be explicit within the constitution or legislation that governs the establishment of institutions in the UAE.⁵⁴⁹

The United Nations advises that NHRIs will enjoy greater opportunities for success and sustainability when their establishment directly involves crucial national stakeholders. They further suggest that the ‘knowledge and experience of international experts can and should also be utilised’⁵⁵⁰, but ultimately the institution must reflect the national consensus. The suggestion presented by Reif supports this assertion and is directly applicable to the UAE in:

...Establishing, strengthening, and diversifying a network of state and civil society institutions, the particular design of which will depend on a country's makeup. In the realm of human rights protection an independent and trained judiciary, reduction of barriers to human rights litigation, human rights training of police and armed forces, fostering a free press, and strengthening human rights Non-Governmental Organisations are some of the other institutions and processes that should be developed at the same time that national human rights institutions are established⁵⁵¹.

⁵⁴⁸ UAE Constitution, art 115

⁵⁴⁹ H Benhaddou, ‘Head of the CCDH Division of International Organisations’ <<http://www.cndh.org.ma/an/bulletin-d-information/nhris-role>> accessed 30 September 2016.

⁵⁵⁰ United Nations (n 169) 161.

⁵⁵¹ Reif (n 324) 13, 1, 68.

Consequently, it is argued that the UAE must undertake a systematic process of research that seeks to understand the relationship between human rights, development and core freedoms. This will provide greater insight into the inter-dependability between human rights, democracy and pluralism, at both the national and international levels.

As examined before, effective domestic protection of human rights requires a network of complementary norms and mechanisms. This requires the establishment of the new human rights institution in the UAE to be based on broad-based consultation and dialogue amongst all stakeholders in the nation. The process must be underpinned by a national will for attaining the common goal. This will further highlight the precise structural reforms required within the various organs of the government at both the regional and federal stages. For example, the 2008 Law on Associations, especially Articles 16, 17, 18 may have to be revised or even repealed, to ensure that civil society organisations can function free from state interference.⁵⁵² Otherwise, the newly established NHRI in the UAE will be prone to suffer from structural problems, functional deficiencies and lack of adequate mechanisms for the enforcement of human rights.

Hamid Benhaddou identifies some core issues that the UAE government must address before it can begin the process of establishing its NHRI. He observes that the nation is lacking overall in indigenous trained experts on the issue of human rights who can: develop national reports; conduct media campaigns; participate in international conferences; research and create a national human rights database; provide training opportunities for people responsible for human rights matters; and monitor and ensure that government agencies are fully informed and compliant with human rights norms.⁵⁵³

⁵⁵² UAE Government, 'Federal Law No (2) of 2008' *See Article (16,17,18)* ; 'Www.Icnl.Org' <[www.icnl.org/research/library/files/United %20Arab%20Emirates/AssoclawUAE.pdf](http://www.icnl.org/research/library/files/United%20Arab%20Emirates/AssoclawUAE.pdf)> accessed 10 August 2016.

⁵⁵³ Benhaddou (n 549).

Davidson provides further advice and supports the assertion that the production of annual reports could be utilised to disseminate and promote the culture of human rights at a national level.⁵⁵⁴ The role of the NHRI could also entail that it both conducts and produces more focused studies on what is required to promote awareness in the field of human rights to all sectors of society in the UAE and include such information in its annual reports. These reports can also provide an effective critique of the overall effectiveness of the UAE's approach and policies intended to promote and protect of human rights.

Furthermore, Davidson argues that the freedom of press is essential in engaging the broader society and placing potential violators under the national microscope. The establishment of a new broadsheet quality English-language newspaper in Abu Dhabi may have already initiated this process. Although it is completely funded by a government agency, it is staffed by Western editors and has been given a genuine *carte blanche* to provide critical coverage of domestic affairs.⁵⁵⁵

The thesis therefore proposes that a potential UAE NHRI should be modelled on the Human Rights Commission and it must fulfil the essential recommendations of the Paris Principles in terms of its *independence, accountability, members' appointment and composition, accessibility, and funding*.

5.8.1.1 Independence

The research conducted through the review of literature and the data collected through the explorative qualitative study suggests, as Murray contends, that there must be at inception an explicit recognition that there must be a relationship '...between the governments on the one hand, and civil society on the other, especially when their ability to influence human rights

⁵⁵⁴ Davidson (n 22) 127.

⁵⁵⁵ *ibid.*

promotion and protection in that society requires that they cooperate and work closely with both⁵⁵⁶.

However, this entails that NHRIs still maintain their independence as they must ‘...operate separately from government and not be subject to its influence or control and therefore not to be viewed simply as part of the state machinery’⁵⁵⁷.

The chapter has already identified through the spiral model that the UAE is in transition between the *denial (phase 2)* and *socialisation (phase 3)* and there should be no expectation that the NHRI will be fully independent at inception. As Cardenas observes, the NHRIs could be ‘...more adept at promoting rather than protecting human rights norms at this stage’⁵⁵⁸. However, the requirements for Independence and accountability cannot be ignored. Thus it is recommended that the nature of the relationship between the NHRI and the State be established. The terms of the functions and duties of the NHRI should be explicitly stated within the constitution or legislation that establishes the NHRI in the UAE. As argued previously and asserted by Benhaddou the NHRI should be an autonomous body and independent of the government. Nonetheless, due to the cultural specific socio-political factors as explained in chapters two and three, the NHRI should work with the government to examine the current legislation, alongside the draft laws and proposals, make recommendations for harmonisation of these laws with international human rights standards which are approved by the State and develop reports at national level regarding the situation of human rights and on specific issues, receive and examine complaints, and provide legal assistance to complainants.⁵⁵⁹

⁵⁵⁶ Murray, *The Role of National Human Rights Institutions at the International and Regional Levels* (n 190) 89.

⁵⁵⁷ *ibid* 89.

⁵⁵⁸ S Cardenas, ‘Emerging Global Actors: The United Nations and National Human Rights Institutions’ (2003) 9 *Global Governance* 38.

⁵⁵⁹ Benhaddou (n 549).

Reif argues that these roles mean that NHRIs require a great deal of autonomy, as they require adequate power and influence within their legal framework to conduct investigations and research into their own role and position at the implementation stage.⁵⁶⁰ Should the NHRI have authority to conduct independent investigations, this will feature as a global indicator of operational independence.

NHRIs must have the power to initiate investigations without any interference by the State authorities. Consequently, in order for the NHRI to possess this degree of autonomy the UAE government must also assist the process by conducting broad structural reforms within its own political and legislative structures.

5.8.1.2 Accountability

As argued in chapter three, NHRIs should, in adherence to the Paris Principles, be accountable to the public and State. It has been argued through the entire body of this study that NHRIs are a unique institution. They do not operate or function like the broad machinery of government. The UN stipulates ‘...they are not under the direct authority of the executive, legislature or judiciary although they are, as a rule, accountable to the legislature either directly or indirectly’⁵⁶¹.

Murray states that ‘the NHRI should be accountable to the Parliament and public, but it has no accountability before the government’⁵⁶². Hence it is asserted that the proposed NHRI should be accountable to the Federal National Council.⁵⁶³ The Federal National Council in the UAE formulates the traditional role of a parliament and established its Standing Committee on Human Rights on the December 28, 2012. The responsibility of this body, as per the

⁵⁶⁰ Reif (n 324) 13, 1, 25.

⁵⁶¹ United Nations (n 169) 20.

⁵⁶² Murray, ‘National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness’ (n 196) 213.

⁵⁶³ See Chapter 2 for the role of the Federal National Council in the UAE

Millennium Declaration (Part V), is to improve the protection of human rights through its legal, regulatory and representative functions.⁵⁶⁴

It is evident that UAE citizens have an institutional body through which they can express their concerns. Furthermore, concerns with regards to legislation can also be identified, brought before and addressed at the national level through the Federal National Council. This represents a great level of development and maturity of the political system.⁵⁶⁵

Moreover, it also highlights the role and place of the Federal National Council in raising political awareness, whilst supporting the governmental initiatives. This is exemplified by a recent Federal National Council session, whereby an extremely high level of attendance by government ministers resulted in the Federal National Council members posing direct questions and engaging them on issues related to

‘...arbitrary arrests, incommunicado detentions, and lengthy pre-trial detentions; limitations on citizen’s civil liberties (including the freedoms of speech, press, assembly, and association); citizen’s inability to change their government and reports of police and prison guard brutality’⁵⁶⁶

5.8.1.3 Members’ Appointment and Composition

Carver argues that the effectiveness of the NHRI is directly dependent upon the quality and independence of their leadership. This requires an independent appointment process as it is more likely to ensure the right calibre of leaders and members⁵⁶⁷ whilst providing the necessary

⁵⁶⁴ UAE Government, ‘Www.Almajles.Gov.Ae’ <<https://www.almajles.gov.ae/Pages/FNCHome.aspx>> accessed 5 October 2016.

⁵⁶⁵ UAE GOV, ‘Www.Uaeinteract.Com’ <http://www.uaeinteract.com/docs/FNCs_first_session_of_16th_legislative_chapter_concludes/76145.htm> accessed 1 October 2016.

⁵⁶⁶ UAE, ‘Human Rights Report 2012’ 2 <<http://www.state.gov/documents/organization/204599.pdf>> accessed 4 October 2016.

⁵⁶⁷ Carver (n 243) in; Goodman and Pegram (n 194) 181–210.

transparency. This will increase the credibility and confidence in the institution. It is recommended that the Constitutional Council should appoint the NHRI members.⁵⁶⁸ The essential requirements for these full time appointed members is that they are fully cognisant with human rights norms, laws and issues, not just in the UAE but globally.

Burdekin and Naum contend that the idea is to prevent cronyism and nepotism in the form of political appointees, or even the sabotaging of the NHRI through cuts in funding for staff appointments.⁵⁶⁹ This ensures the autonomy of the institution is maintained as only it can employ the required staff to conduct its functions.

However, this is an area of grave concern as reports from across the world demonstrate that this aspect of the NHRI is usually politically influenced and inadequately funded, which leads to it being under-staffed and inadvertently working to carry out the governmental agenda. As was noted previously, ‘A commission without strong and independent commissioners is voiceless and powerless’⁵⁷⁰.

5.8.1.4 Accessibility

The federal structure of the UAE means that there is some disparity between some of the laws ordained by the national and local governments, and therefore it is imperative that the NHRI establishes local and regional offices to gain widespread coverage and provide uniformed accessibility right across the entire nation. Moreover, the location of NHRI offices within the regions and locales is pertinent to how it is perceived. Hence, NHRI branches should not be located in exclusive and wealthy areas. This also precludes them from locating within governmental premises. This is vital to the credibility of the NHRI and to how the domestic

⁵⁶⁸ *See Chapter 3*

⁵⁶⁹ Goodman and Pegram (n 194).

⁵⁷⁰ Human Rights Watch (n 188).

populace will perceive it. Additionally, the NHRI should have in place procedures and information that are readily and easily available to the most vulnerable members of society. This should entail that the NHRI is equipped to receive verbal and informal complaints in a variety of languages, as UAE society comprises more than 200 nationalities.

5.8.1.5 Funding

Aichele notes that NHRIs have had to rely on private and international donor agencies just to remain operational. Hence, he argues, that there is a serious danger that governments influence the strategy of NHRIs through their annual funding.⁵⁷¹ It is clear that this could be fatal for the development, credibility, partiality and autonomy of the NHRI.

However, it is argued that this should not be an issue for a wealthy nation state like the UAE. The funding provided by the government should be sufficient to cover the overhead expenses incurred for staff salaries and premises in addition to its operational and administrative expenses, hence making it financially and politically independent from the government.⁵⁷²

In addition, as Cardenas observes:

The states with NHRIs may appear to be conceding some of their domestic sovereignty or control over national authority structures only to gain a firmer grip on it. To ensure that this does not occur, it will be necessary to create NHRIs that are more fully independent, perhaps funded partly by non-state sources, and have full jurisdiction⁵⁷³.

It is advised that the UAE authorities should review Article 20 of the 2008 Law on Associations, which states:

The society shall be subject to the ministry's control regarding the financial matters in order to verify the expenditures and to ensure safe allocation of its financial and in-kind resources for the purposes and

⁵⁷¹ Aichele (n 230) 25.

⁵⁷² The Paris Principles, "Composition, Guarantees of Independence and Pluralism"

⁵⁷³ Cardenas (n 558) 38.

projects executed by the society under its articles of association. In order to achieve that, the ministry shall have access to the society's books, records, and documents⁵⁷⁴.

Previously Sripathi advised in the case of the Indian government that:

The Federal Government must, after due appropriations by Parliament, pay to the Commission the sum of money that Parliament has approved. The NHRC should be given complete autonomy to spend such sums of money as it thinks necessary for performing its functions⁵⁷⁵.

Likewise, an appropriate level of ‘funding and infrastructure will allow the NHRI to be independent of the government and not be subject to financial control’⁵⁷⁶. The NHRI will be independent from the executive branch⁵⁷⁷ and it is recommended, as per the UN handbook, that the UAE NHRI receive its funding from the Federal National Council as opposed to a particular ministry in order to maintain its autonomy and minimise if not eliminate any political interference.⁵⁷⁸

⁵⁷⁴ UAE Government, ‘Federal Law No (2) of 2008’ *See Article (6,7,8)* ; ‘Www.Icni.Org’ <[www.icnl.org/research/library/files/United %20Arab%20Emirates/AssoclawUAE.pdf](http://www.icnl.org/research/library/files/United%20Arab%20Emirates/AssoclawUAE.pdf)> accessed 10 August 2016.

⁵⁷⁵ V Sripathi, ‘India’s National Human Rights Commission: A Shackled Commission’ (2000) 18 BU Int’l LJ 33.

⁵⁷⁶ See, the Paris Principles 2 under the heading of ‘Composition & guarantees of Independence & Pluralism’, which states “*the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff & premises, in order to be independent of the Government & not be subject to financial control which might affect its independence*”

⁵⁷⁷ 579 See, the Paris Principles 3 under the heading of ‘Composition & guarantees of Independence & Pluralism’. *See also*, Amnesty International, ‘NHRI Recommendations for Effective Protection and Promotion of HR’ <<https://www.amnesty.org/en/documents/ior40/007/2001/en/>> accessed 5 October 2016 (Fact sheet No.19) www.unhchr.ch/html/menu6/2/fs19.htm See also ; J Mertus, ‘Evaluating NHRIs: Considering Structure, Mandate, and Impact’ [2011] Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions 74 in; R Goodman and T Pegrum (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, vol 80 (Cambridge University Press 2011) 74–90.

⁵⁷⁸ United Nations Centre for Human Rights, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, vol 73 (1995), para 39, 75.

5.9 Recommendation

The argument of the above section stipulates that it is imperative to recognise that in establishing a NHRI, it must be granted a unique special constitutional status within the overarching political structure of UAE in line with the Paris Principles. This will enable it to have a substantial impact on the broad remit of society by first and foremost acting as a vehicle for education and awareness of human rights norms.

Incorporation of this human rights mandate into the foundational constitution is a very important aspect. This will provide it with the legal and public credibility to conduct investigation into human rights violations after it has been recognised and accepted as a part of UAE society. Furthermore, in its role to further normative commitments, the NHRI should be authorised and supported in the acceptance of complaints from civilians and where appropriate, civil society assistance from non-governmental organisations and community groups should be encouraged. In this respect, the NHRI will actively define for the public the method and process by which to report violations and abuses. However, the aim of the NHRI is not to undermine the government or public officials but to monitor the public sphere and identify both the actions and its causes, which are deemed to have caused human rights violations.

The independence of the NHRI is crucial to both its educational and investigative roles. Accordingly, the NHRI should be granted the power to conduct public enquiries into violations of human rights without any involvement from existing governmental establishments. In that respect the institution should be in a position to provide recommendations to the different governmental sectors that are in direct contact with the public including security forces and the judiciary. Moreover, the NHRI's mandate must allow them oversight of the entire human rights jurisdiction including civil, political, economic, social and cultural aspects, which must include organising regular audits of rights implementation of economic, social and cultural rights.

Therefore, it is imperative that transparent rules and regulations are established, which not only identify the role of the NHRI but govern its interaction with other institutions, both governmental and non-governmental. The institution should be viewed as an independent entity with its main objective of addressing human rights violations, which aims to work seamlessly as part of an ecosystem of democratic institutions. Furthermore, the appointment of the members and staffing of the NHRI are of utmost importance. The UAE government must respect the diversity and the independence of the members of the NHRI. Although the selection of personal must be based upon qualification, membership must also ensure adequate representation and inclusion of all of UAE society; for example, women and minority representatives. Appointments should also allow for multi-membership of institutions as this offers a greater opportunity for pluralism in the NHRI. Establishing a multi-membership governing council of such nature can be effective in influencing the direction of the establishment. However, it must be recognised that whilst pluralism is a core composite requirement of a potential NHRI, the multiple leadership and representative composition of members could impact adversely upon the efficiency and promptness of the decision-making process as well as involve increased costs.

Like any other governmental or public entity, the NHRI must be in control of and accountable for budget parameters which are overseen and monitored by the Federal National Council. The institution should be well endowed in a manner that will allow it to pursue its function. Unlike the standard lodging of a court case, individuals should not be expected to pay fees for filing a complaint and should be provided with all the legal support needed. Although many demands exist on the national treasury, providing adequate resources to the NHRI in order that they can fulfil their mandate efficiently and at a level that the international community recognises as demonstrating a strong commitment to human rights.

The argument presented above represents general guidelines with respect to the operational aspects of the institution. Once establishment takes place and operations commence it should

be expected that unaccounted and unforeseen obstacles and circumstances will inevitably arise. In that sense the government should be flexible and willing to facilitate and solve any operational aspects that might render the work of the institution ineffective. Accordingly, it is recognised that the duty of the UAE government would be to ensure the NHRI hits targets for success and efficiency.

5.10 Conclusion

This chapter sought to address the core objective and question of: *What is required for the establishment of an NHRI in the UAE?*

In response it can be stated that the very notion of human rights norms and the discourse generated to promote it reflects the development of the contemporary International socio-political culture and the practices to enforce compliance and commitment by nation states. However, it can also be argued that although States uphold their commitments, there exists a certain amount of discrepancy in its implementation and adherence by governments.

In attempting to reconcile the directives of the Universal Declaration of Human Rights, which exist to simultaneously promote positive and productive acts whilst seeking to negate and prohibit its essential causes, the UAE government has often exploited explicitly and implicitly the role of human rights discourse as a strategic tool, to introduce certain benevolent notions about the government and consequently shapes the perspectives of their own citizens to continue their subjugation and convince the international audience that this is a minor issue. This discourse is then further propagated through conferences and meetings at both the national and international stages, including the United Nations. At the domestic level, the government has formed regulatory bodies or Non-Governmental Organisations, to help promote the introduction of new laws, policies, and their capacity to work as an intermediary between the victims of violations and those accused of committing them.

The formation of this discourse has furthered the ability of the people to identify repressive practices. Furthermore, with the advent of social media, the awareness of human rights violations has become almost instantaneous.

Therefore, the UAE, as an independent rational actor, is aware of the enormous social pressures surrounding these issues. Its response could be classified as that of a realist, as it has recognised the necessity and value of human rights through its international commitments from its formative period. This is evinced through its numerous ratifications and being a signatory to International conventions and protocols. This argument is further supported by the data collected in chapter four, whereby participants acknowledge UAE's international commitments and its active process to change and implement policies that adhere to these international standards. However, it is also fairly evident that the discourse advocating the notion of human rights to be driven by common universal values as derived from a radical individual universalism viewpoint is in contradiction with the socio-political culture of the UAE. The concept of human rights within UAE society is not universal and does not apply equally to all human beings. Although the literature stipulates that the UAE may be ratifying and becoming signatories to human rights treaties due to pressures from powers with superior economic, military and political power, there are ample arguments that suggest the strategic and economic value of the UAE ensures that it is not coerced on the international stage.

Rather the arguments suggest that the UAE has clauses for derogation of treaties and violation of human rights norms under the pretence of threats to its own national security.

Therefore, the study suggests that the UAE should be examined from the lens of *radical culture universalism (normative commitments)*, which argues that human rights discourse should be focused upon culture specific values to the UAE. Human rights norms and policies should be reflective of the cultural, social and ideological diversities that exist not only globally but also within regions, and specifically within nations. The argument here is that as the general UAE

society becomes aware of human rights norms over time, the common identity, understanding and appreciation of these issues will transform society and will reflect this new understanding.

The process required to attain this transformation can be conceived through the social constructivist model as outlined by Risse and Sikkink, which provides the framework for the expansive development process required for State compliance.

In beginning that discussion, it must be acknowledged that within the UAE, there exist no independent civil society associations, other than the ones established and controlled by the government. It must also be duly noted that independent international observers citing the human rights abuses committed by the UAE government have no physical presence in the country. Therefore, in accordance to the spiral model, the UAE is traversing between the *denial* and *socialisation* phases. It is asserted however, that this demonstrates UAE's initial commitment and, as supported by the spiral model, the UAE would have to transform its entire socio-political culture for the necessary changes to take place. Conversely though, the argument identifies the Islamic and tribal aspect of UAE society would eventually have to undertake this due course of action in a manner, which was consistent with its own heritage and tradition. This is exemplified in the institution of the *Majlis*, which is a significant example of the *normative commitment* and innate process of radical culture universalism within the UAE. It is observed as per the findings of chapter four that the people perceive the national government to be a human rights institution in itself. This ideal is derived from the Islamic tradition and heritage of the region. Hence, interviewed participants identify the extraordinary level of permanence of the political structure and its institutions from its formation to be evidence of this cultural and local perspective. The pertinence of the tribal structure within Emirati society has aided the political and social stabilisation alongside maintaining the status quo. This point is recognised by even the opponents of the UAE government, who recognise the role of religion, culture and tribalism as vital factors in the growth and development of the nation. However, as the critics have also noted, this does imply that the government acts as both judge and jury by utilising

the notion of religion, faith and tribalism to justify and consolidate its power and hold over the people, which has consequently led them to enslave their own populace.

This essentially implies that as per the perspective drawn from the radical culture universalistic perspective that the role and purpose of the NHRI in the UAE would be to provide and further Human Rights Education. This would then act to prepare the next generation of leaders to appreciate and support human rights provisions. This also means that concession must be made in expectations by the international community, as this is a long-term strategy. The creation of a NHRI would amalgamate UAE's human rights agenda and educational programs into a systematic institutional endeavour. An approach supported by the dissenting critics of the UAE government, who believe that an NHRI could become a tool for educational awareness and mechanism for remedy, accountability and rehabilitation. In developing the NHRI, the UAE government could work closely with both domestic and International human rights organisations to create and establish educational programs. This strategy would also further the UAE government's image as a role model for the region and other developing states across the world. In order to attain such a lofty position, the UAE from the context of the spiral model, should initiate a transition from the Prescriptive phase (4) to the Rule Consistent Behaviour phase (5), whilst reflecting its own socio-political outlook. Although the NHRI should maintain its independence from the executive and legislative branches of government, it has to be rooted in the legislative branch through either legislation or a constitutional provision. The established NHRI should then have a broad mandate that recognises the entire nation to be within the jurisdiction of the NHRI. This provides it access to each individual Emirate and resident for the purposes of furthering human rights education and provisions. The NHRI in the UAE should, as suggested in the main body of the chapter, be formed on the Human Rights Commission model, with a unique special constitutional status within the overarching political structure of UAE, in line with the Paris Principles. This would enable it to have a substantial impact upon all of UAE society as a medium for education and awareness of human rights

norms with the funding and support provided by the UAE government as an indicator of its sincerity and commitment to the issue of human rights.

Chapter 6

Conclusions and Recommendation

The primary purpose of this study was an exploration into the purpose of establishing a National Human Rights Institution (NHRI) in the United Arab Emirates (UAE).

Due to the sensitivity and ambiguity surrounding this topic, there has been minimal research commenced in this arena. The scarcity in credible scholarly data relaying the (native) Emirati perspectives on human rights and NHRIs provides an explicit example of the point being made.

This study has been undertaken so as to address the gap in the literature, by capturing and analysing primary first-hand data on the native Emirati perspective on human rights and the formation of a NHRI in the UAE. This implied that the focus would be on those involved in the process of developing, sustaining, maintaining or ensuring human rights provisions in a professional capacity in the UAE. Utilising a qualitative methodological framework, this exploratory study has initiated a pioneering investigative study, capturing the primary perspectives of the 'social actors' involved within the context of this topic. The aim here is to initiate and provide impetus for further research in this neglected area.

The literature that exists generally reflects the perspectives of (external) international human rights organisations and media agencies, which are critical of the UAE for its suspect human rights record and provisions. Their predominant argument centres around the notion that the UAE government is too tribal and anachronistic to cope with the reality of its meteoric development. The economic boom accompanied by the mass migration of an International labour force has introduced previously alien concepts to the nation and the region. Subsequently this has translated to the complete curtailing of the rights of its migrant population in comparison to the citizens of the state.

The analysis of the dialogical narrative collated through the field work process appears to support these claims. Study participants revealed that many organisations utilised their workers, usually desperate labourers from the Subcontinent, Far East or Africa as a slave work force. They have their passports taken from them on arrival into the UAE, they live in squalid conditions with little or no hygiene considerations, experienced problems with regular payments, holidays to their home nations and when returning, visa and immigration issues. This exemplifies the overtly unequivocal discrimination against migrant labourers.

Some participants also discussed the harsh reality of accepting that there were no viable channels through which a foreign worker or resident could challenge the workings of a Governmental agency. They observed that government appeasers always argue and cite the argument that the UAE as a signatory to numerous agreements and International conventions and protocols is demonstrating its commitment to the recognition and value of human rights. However, in reality, they contend that the UAE's overt compliance with International treaties and conventions is a concealment to appease its international partners. In truth, they argue, the geo-strategic value of the UAE allows the suppression of major human rights violations within the UAE by the mainstream media and international actors.

According to the findings from the literature and the field study, this concealment of information is compounded by the fact that universal human rights are treated with a certain degree of scepticism and suspicion by commentators and observers in the UAE. The typical perspective derived from the interviews related to the notion that the contemporary notion of human rights was not only derived from the West but were designed to serve Western interests.

As discussed in the previous chapter, the arguments cited above paint a certain perspective of the situation in the UAE. It is not for this study to argue or focus upon the points made, as these arguments and contentions have already been articulated and established. The review of literature is practically dominated by these topics. The analysis of data could read to support

the arguments focusing exclusively on human rights abuses in the UAE; however, that is not the purpose of this thesis.

The novelty of this thesis is in its penetration of the previously unearthed perspectives on the purpose of a proposed NHRI in the UAE. Therefore, in order to understand the perspectives of the study participants, it is essentially based upon the interpretation of the researcher. The understanding and trust developed between the researcher and study participants was based upon mutual respect through personal relationships. Therefore, the perspective being furthered by the researcher, through the hermeneutic analysis and findings of the data are authentic and capture the essence of the dialogical narrative.

This implies that the argument being presented identifies the UAE government as having suppressed the discourse on international human rights as it presented a direct challenge to their traditional tribal culture. However, the study also recognises that the UAE government has accepted this shortcoming and is working to implement the necessary changes to address this issue through both its informal and formal political processes. The tribal culture of the UAE necessitates a type of human rights discourse that is focused upon culture specific values, whereby human rights norms and policies are reflective of cultural, social and ideological diversities that exist not only globally but also within regions, and specifically within nations. The discussion postulates that normative commitments should be achieved through a process of socialisation. This implies that as the State governmental agency interacts with societal institutions, the individuals within that society will develop a greater appreciation for human rights norms and thus, the common values and identity of that society will be transformed to reflect this new understanding.

Literature and data resulting from the interviews demonstrate that the notion of human rights within the Gulf States is encompassed in the intrinsic ethical and moral values enclosed within the Islamic faith. This stipulates that the regional perspectives on human rights are formulated by an axiomatic norm ordained by God Almighty. Hence, human rights are equated with the

Quranic values of dignity, identity, freedom to express, speak, move and associate with whomsoever one chooses.

Conversely, the diverse perspectives also recognise that the freedom of an individual is curtailed by the prevailing norms and standards of the broader society in which the individual resides. An individual is free to act as they please within their own private domains, providing this does not entail any criminal acts or activity such as gambling, murder, prostitution etc. but they must act in accordance with the prevailing social norms in the public domain. This is evidence for an entrenched culture of engagement with the notion of safeguarding human values.

It is contended that the UAE government is understood to be the custodian of the Islamic faith in the nation, thus, its entire purpose is to propagate the Islamic ideology through its institutions and ministries. The people perceive the government, specifically its leaders, as the vicegerents of Allah and have the authority for self-governance and self-regulation. This does not imply that they are unaccountable or independent from the will of Allah; rather it is incumbent upon them to protect and ensure the growth and development of their societies. This implies that the entire legal structure is based upon the Islamic legal code, the *Sharia*. Therefore, the government is expected to not only enforce, but make relevant laws considering the people's reality and circumstances. The implication of this innate worldview is that the native and immigrant population perceive the national federal government to embody and be representative of their native culture, heritage and tradition.

In chapter two, (where the question on *'what aspects of the existing social, political and legislative milieu facilitate the establishment of an NHRI in the UAE?'* was addressed) it was demonstrated that the traditional political system was theoretically established to serve the native tribal interests. The formation of the UAE nation state and its modern bureaucratic structure is a reflection of the region's historical and traditional praxis. The UAE is defined by its dynastic monarchies of the seven Emirates, the ruling families, which are exclusively

responsible for the formation and establishment of the government. These tribal and family lineages have become formalised to uphold the highest offices in the national government. Under the capacity of the federal constitution, the ruler of Dubai is also the UAE Prime Minister whilst the ruler of Abu Dhabi also uptakes the role of President of UAE.

Only the seven rulers of the Supreme Council have been granted authority with regards to decision making regarding the federation. It has to be remembered that this is the traditional structure of the society and region and the criticism, as we shall come to analyse shortly, fails to acknowledge this reality. The discussion identifies *the Majlis* to be a significant example of the *normative commitment* and innate process of *radical culture universalism* within the UAE.

The current system of governance reflects the traditional practices of *Shura (consultation)* within *the Majlis (gathering)*. This informal method of governance is rooted in the original tribal tradition of *Shura*, which inherently embodies the notion of respecting the opinions, status and value of other individuals in the tribe.

This is an essential quality of human rights norms and it is argued that it still defines the socio-political style of the UAE. *The Majlis* is traditionally a part of the Islamic heritage of the region and ingrained into the tribal traditions. The council of elders, collectively comprising *the Majlis*, can still discuss whatever issue was and is pertinent to them in a cordial informal setting such as the house of the Sheikh or elder. The modern practice of *the Majlis* within a national socio-political context of the UAE entails the granting of an audience to the public by the rulers of the State. Petitioners to the President, Crown Prince, Prime Minister or other members of the ruling dynasty are able to present their concerns and issues directly and often receive instant responses or mandated actions. This practice has traditionally facilitated an open dialogue between the rulers and their subjects and raised the awareness of the rulers of the socio-economic situation and reality of their followers. Through the interview schedules it was discovered that the consensus of the interviewees was that the UAE's approach to social politics was perceived to be equivalent to Western style democracy but one that was grounded in the

social and cultural heritage of the region. The argument being presented clearly indicates that the people believe the government to be an extension of their own families, whereby the interests of the people are vested in the rulers and the rulers in the people. The members of the public are subsequently loyal and place their trust in the government to deliver on their demands. The research uncovered that the Emirati citizens felt more secure and were more informed as to the workings of their government because they generally had some direct connection to the government as result of a family relationship or personal association. The Emirati perspective was critical of the Western democratic tradition, which it contended was overtly bureaucratic and alienating as it secluded and marginalised people as objects that functioned to be operable within a mechanistic economic system. There is ample evidence here to justify the argument that there exists in the Gulf and specifically the UAE, a form of intimacy and kinship between the ruling families and their societies that is unique to that context.

However, this does not mean that the study ignores the contention that the hierarchical tribal nature of the government is overtly autocratic within an undemocratic political structure, which has effectively enslaved its populace based on the extent of the authority granted to the seven rulers of the Supreme Council to make long reaching decisions across the entire federation. The supreme council is taken to be a '*court of kings*', whereby, the rulers play judge and jury on politics and religion, thus curtailing any alternative opinions and disagreements.

The argument stipulates that they give audience to their subjects within a *Majlis* context to provide them with material comforts. Nevertheless, this practice has, it is argued, effectively paralysed the Emirati citizens as a *nanny state*, that fulfils and caters for their daily requirements. International Non-Governmental Organisations and the mass media argue that news of misconduct, transgressions or inhuman treatment by the government, especially against foreign workers, is suppressed. The Emirati citizens are so detached from reality that they are in an unaware and unconcerned state of existence, whereby they fail to bring the government to account. Those who have experienced some form of abuse or misconduct relate that any

individual seeking to speak to authority and challenge the existing order is made an example of, thus ensuring that all dissent is effectively eradicated. The argument for an NHRI is made within this discourse, which seeks to counter the notion that the government is in effect the only institution that is able to monitor and regulate itself. The critical argument dissecting the human rights record of the UAE identifies the government to have usurped the functionality and purpose of culture, religion and tradition to provide legitimacy and justification to its rule. The government, it is proposed from this perspective, has assumed its role and status to be divinely ordained, which has subsequently, lead it to become a dictatorship that administers the nation through authoritarian styles of governance.

The literature notes that the Constitution of the UAE⁵⁷⁹ was only ratified and made permanent in 1996, some twenty-five years after the nation's creation. At present there exists no political opposition as political parties are prohibited. Only after 2006 was the election process on the emirate or federal level introduced. Therefore, there has been increasing discontent and criticism of the Federal National Council, which was formed to represent the wider Emirati citizenship.

The UAE has been accused by several International Non-Governmental Organisations and human rights institutions acting as collective stakeholders to either address their concerns directly or to allow them to have representative observers in the nation, especially as the UAE government has shut down independent domestic and international Non-Governmental Organisations that had called for political transformation. The argument being made is that the UAE should be forced to establish an independent NHRI.

⁵⁷⁹ Federal National Council, 'The UAE Constitution of 1971 with Amendments'
<http://www.iedja.org/wp-content/uploads/pdf/litterature_juridique/EMIRATS%20ARABES%20UNIS/revision_constitutionnelle_2011.pdf> accessed 27 December 2017.

The notion of the NHRI is that although it is established by national governments, it acts exclusively within the broad premise of the Paris Principles. Hence, the question (*what is the theoretical purpose of NHRIs in accordance to the Paris Principles and their place in the Arabian Gulf Region?*) aids further understanding of how the government is innately perceived to define the role of the human rights institute. This argument is justified in the consideration that, despite the establishment of NHRIs in North Africa and the Middle East, there appeared to be an increasing universal crackdown on human rights activists. Alarmingly, NHRIs had failed to intervene or condemn the violations of human rights by the State in several instances.

Furthermore, the literature also recognised that certain states were almost immune to moral pressure from non-state actors. Due to their geo-strategic importance, political or economic potential for major Western powers, they were not subject to sanctions or penalties. The discussion conceded that States had the flexibility, extent and method by which they could comply with their human rights obligations. Although several International Treaties explicitly make it incumbent upon national governments to protect human rights, there exist claw back clauses designed in specific articles that also allow them to suspend human rights under the pretence of national security. Hence, it is understood from the research undertaken that the establishment of a successful NHRI is dependent upon a democratic civil society that comprehends the role of social and political activism. However, the study discovered that this approach would encounter resistance from within the Arab governments themselves as the predominantly authoritarian forms of governance were utilising NHRIs as a political mechanism to respond to domestic and international criticism by Non-Governmental Organisations and critics of the regime.

The argument proposed that the UAE Government has to utilise the framework proposed by the Paris Principles to initiate the formation of the NHRI. Although the Spiral Model, as proposed by Risse and Sikkink, recognises ‘the establishment of a NHRI to be consistent with

the requirements of the Paris Principles⁵⁸⁰, there exists no homogenous model or structure for an ideal NHRI. It is argued that due to the unique cultural context of the UAE, the NHRI should reflect its societal context and heritage whilst taking into consideration the rights, traditions and influence of its immigrant population.

Taking into consideration the radical cultural universalist (normative commitment) perspective, the NHRI has to be established with a broad mandate that encompasses the entire nation within its jurisdiction. This requires each individual Emirate to submit and accept its jurisdiction and autonomy and accept the NHRI to be *independent* from both executive and legislative arms of the government. Another recommendation is that the NHRI be established along the parameters of a Human Rights Commission, whilst adhering to the essential principles promulgated by the Paris Principles. This implies directly that the NHRI be independent, which obliges the UAE government, International Non-Governmental Organisations and other external parties to refrain from interfering in the mandates, function, composition and competence of the NHRI.

Subsequently, the onus to initiate and develop relationships with all sectors of society, including governmental departments and non-governmental organisations lies within the responsibility of the NHRI. As stated already the NHRI should be established through the legislative and constitutional process, so that it is afforded official legal status, which implies in theory, its independence and impartiality. In the case of the UAE, as argued in chapter two, this is represented by the Federal National Council.

The NHRI should be *accountable* as per the guidance of the Paris Principles, which imply a NHRI is not accountable to the government or the executive body. Instead the NHRI should be answerable before the Federal National Council, or a specific parliamentary body created thereof, before which it can present its own reports and request the government to release or share their reports on human rights provisions and violations. This also addresses the issue of

⁵⁸⁰ Risse-Kappen and others (n 375) 10.

funding, which must be allocated and dispensed through the Federal National Council or that specific parliamentary body to which it is answerable. As recognised in chapter three, there was a certain amount of irony in the issue of funding. To maintain the financial independence of the NHRI, the Federal National Council, or the parliamentary body must decide the means to secure the future operations of the NHRI, so that it is independent from political decision makers and economic fluctuations.

The role of the Federal National Council or the parliamentary body is once again made apparent in the principle of the Appointment of Members. Although the Paris Principles are vague in their guidance on the recruitment process, they do stipulate a prohibition on government or executive representation. This clear principle ensures that representatives of the executive branch are not provided with the opportunity to acquire any voting rights in order to influence the NHRI. This independent democratic appointment process will at least purport to ensure the right calibres of leaders are elected to maintain the independence of the institution. To further ensure the credibility of the NHRI, its executive members should be elected or appointed in a transparent process that is representative of all sections of the UAE society, so that the NHRI becomes a model for and of diversity. This is also encompassed in the principle of the *Pluralism of Composition*, whereby the NHRI is not only an agent of the broad segments of society but is actively working to highlight, alleviate and bring to justice the divergent issues, violations and abuses within its remit. This demands pluralism within its staff, membership and the diversity of bodies and the platform it provides, thus giving rise to the final principle outlined by the Paris Principles, *Accessibility*. This entails the NHRI to be visibly and physically accessible and open to the general public. The NHRI offices should be located within the urban areas, where majority of the population reside. They should also not be located near security and government buildings and installations. It is recommended that that NHRI also establish regional offices and hubs and have a presence in the economically disadvantaged parts of the major cities.

It is asserted that along with fulfilling these core principles from the 1991 Paris Conference, the jurisdiction and investigatory powers provided to NHRIs must be recognised by the UAE government. This includes its role in investigating individual cases and bringing them before the Federal National Council or the designated parliamentary body. There are calls from International Non-Governmental Organisations and other human rights institutes that NHRIs should be given the authority to participate in court proceedings with the authority to call witnesses, gather evidence and if needed call State officials to have their practice and authority questioned before independent monitors, all the while having the authority to issue sanctions for violations or refusal to cooperate. This argument, although enticing, fails to acknowledge that the Paris Principles were not seeking to endow NHRIs with such formal powers of investigation and adjudication. The result of that would be the initiation of a court specific to hearing cases reporting human rights violations, as it is agreed that the broad generalist guidelines and standards of the Paris Principles imply a universal adherence. The argument contends that the necessities for *independence* and *pluralism* create no fixed definition or guidance, for there is an innate understanding of the existence of the divergent contexts of the world, which cannot be accounted for. The argument being presented argues that the Paris Principles must be analysed from a developmental perspective, whereby the principles become a recognised set of criteria that are essential in the functioning of the NHRI with its appropriate purpose. This can only be attained, as vouched by the Paris Principles through the medium of education.

6.1 Recommendation

It is recommended that the role of the proposed NHRI in the UAE should be as a promotional, educational, advisory, and investigative body. Any attempts by the NHRI to intrude into judicial and legislative practices may cast suspicion and doubts onto its allegiance and purpose.

The expectation would be that the UAE NHRI would work with educational institutions such as schools, colleges and universities and other sanctioned education providers to integrate human rights education into the syllabi of their institutions. Consequently, the overarching aim of the NHRI would be to deliver knowledge and educate the broad spectrum of civil society.

The argument is that the formation and establishment of an NHRI does not address the inherent issue of human rights violations. It has to be legitimised and accepted by the broad society to be a viable and beneficial instrument that will enhance their relationship with the government. Any NHRI which is established to solely monitor the government would naturally introduce a culture of suspicion and uncertainty. The suggestion presented is that the NHRI should instead be established upon the premise of furthering human rights education and awareness. This will then act to prepare the next generation of leaders to be informed, enthusiastic backers of human rights provisions. It must be accepted that this is a long-term strategy; the justification for this is in the demonstrable actions the UAE government has already taken.

In 2006, the Federal National Council elections signified an initial movement towards political liberalisation of the federal structure. Although the UAE government was heavily criticised for its selection of candidates and their remits, the President of the UAE introduced the adoption of amendments. These included increasing the powers of the Federal National Council, establishing a fixed duration for the Council's members from two to four years and an increase in the duration of the annual sessions to more than seven months. This included the introduction of an election process, which provided the Emirati citizens with the opportunity to engage with the decision-making vehicle of government. It also allowed the UAE to establish an election-based, democratic culture for the first time, ahead of its more established regional neighbours.

The role of women has also increased, with up to 30% of the higher leadership and decision-making positions in the UAE being occupied by women. In governmental posts women hold two-thirds of the jobs, while nine women were serving as ministers in the Government. In 2016,

two new ministries, the new Ministry of State for Happiness and the Ministry of State for Tolerance were established and women were appointed to both (ministerial) posts.

From a strictly educational perspective the most significant step taken by the government has been by the Ministry of the Interior, which conducted human rights training courses between 2009 and 2012 in police academies and schools to familiarise students and personnel with the broad nature of human rights norms and concepts; thus underlining the requirement for the establishment of an NHRI which could amalgamate, combine and initiate the entire human rights agenda and educational programs into a systematic institutional endeavour.

The NHRI would also have the potential to act an instrument for educational awareness and mechanism for remedy and rehabilitation for those who have experienced human rights violations and for those responsible for the violations. The UAE government could work with International Non-Governmental Organisations to establish its NHRI and conceive its educational programs. If the UAE government grants the NHRI a unique special constitutional status within the overarching political structure of UAE in line with the Paris Principles, this would enable the NHRI to have a substantial impact upon all of UAE society as a medium for education and awareness of human rights norms. The funding and support provided by the UAE government would then serve as an indicator of its sincerity and commitment to the issue of human rights. This strategy would further the UAE government's image as a role model for the region and for other States across the world.

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