

National human rights institutions: an introduction

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Veröffentlichungsversion / Published Version

Monographie / monograph

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:

Deutsches Institut für Menschenrechte

Empfohlene Zitierung / Suggested Citation:

Aichele, V. (2010). *National human rights institutions: an introduction*. Berlin: Deutsches Institut für Menschenrechte.
<https://nbn-resolving.org/urn:nbn:de:0168-ssoar-316943>

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National Human Rights Institutions

An Introduction

Valentin Aichele



German Institute
for Human Rights



Imprint

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Typesetting:

Wertewerk, Tübingen

July 2010

ISBN 978-3-937714-99-8

(PDF version)

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An Introduction

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Institute

The German Institute for Human Rights is an independent National Human Rights Institution based in Berlin. The Institute's activities include the provision of advice on policy issues, human rights education, applied research on human rights issues and cooperation with international organizations. It houses a human rights library, which is open to the public.

Preface

This publication aims to introduce the concept of National Human Rights Institutions, which forms an important component in human rights protection.

Over the past few years, National Human Rights Institutions with very different organisational structures have been established in more than sixty countries around the world. Yet they all have one thing in common: they adhere to the international standards developed in 1993 by the United Nations and known internationally as the 'Paris Principles'. The mandate of these institutions is to promote and protect human rights in their own countries, and in some cases with regard to the foreign policy of their respective countries as well.

This publication also seeks to draw attention to the ideas behind the foundation of the German Institute for Human Rights. The Resolution 'to establish an Institute for Human Rights', which was passed by the German Bundestag on 7 December 2000, made explicit reference to the Paris Principles.

Berlin, July 2010
German Institute for Human Rights

Prof. Dr. Beate Rudolf
Director

Frauke Seidensticker
Deputy Director



The page contains a large, faint watermark of a globe centered on the Atlantic Ocean, with the word "Globe" written across it. The watermark is very light and serves as a background element.



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Introduction

Although experts in the field are familiar with what is to be understood under the term 'National Human Rights Institution' (in the following abbreviated to NHRI), many people are still unfamiliar with the concept. The purpose of this introduction

is therefore to describe the functions and functioning of an NHRI. To this end, NHRIs will be described from a rather general point of view, without focusing in detail on institutions in individual countries.

1

Development of an international standard for National Human Rights Institutions

The final few decades of the 20th century, and particularly the 1990s, saw the establishment in many parts of the world of a number of national institutions whose mission was to promote and protect human rights. Through the international discourse among these institutions and with the United Nations, a common vision emerged. That concept was further elaborated into an international standard: the principles relating to the Status of National Institutions. These principles came to be known as the 'Paris Principles'. Drafted during a conference in Paris in 1991 and laid down in an annex to Resolution 48/134, these principles were adopted by the General Assembly of the United Nations (in the following referred to as 'General Assembly') on 20 December 1993.¹ They form the basis for our current understanding of the term 'NHRI' and stand for a concept which is common to all NHRIs worldwide.

As they were laid down in an annex to a General Assembly resolution, the Paris

Principles are non-binding in international law. Despite this fact, these principles are important for the practice of international law. They provide a vital point of orientation for countries wishing to set up an NHRI or to strengthen an existing structure to enable it to be an NHRI. At the same time, they serve as a benchmark for concrete criticism. Moreover, they set the standard by which a national institution will be deemed an NHRI.

Development of the Paris Principles started in 1946. With its final resolution of that year, the UN Human Rights Commission (in the following referred to as 'Human Rights Commission') encouraged all members of the United Nations to establish information groups or local human rights committees within their respective countries.² The aim was to provide a solid basis for communication between the newly established international organisation and its members in the field of human rights. At the time, the Human Rights Commission did not spe-

1 See the Annex to UN General Assembly Resolution 48/134 of 20 December 1993, which is available under www.ohchr.org

2 See Human Rights Commission Resolution 2/9 of 21 June 1946, para. 5.

cify what role these national institutions were to play.³ not surprising, therefore, that discussions in the following years were primarily preoccupied with the question of what tasks these national institutions were supposed to accomplish.⁴

One of the essential tasks established for NHRIs during these discussions, parallel to the setting of standards for the protection of human rights, was that of promoting the national implementation of international legal norms by government representatives and policy-makers.⁵ The term 'national implementation' describes the processes by which international legal norms are implemented and enforced at the state level. Implementation includes not only legally binding norms but also standards with no formal validity at the national level.⁶

The United Nations realised very soon that government authorities often focus on compliance with and enforcement of national legal regulations while the provisions of international law are left unaddressed. The task of the NHRIs, therefore, would be to identify problems relating to the practical implementation at the national level

and then suggest ways to overcome these deficits to their governments.

From a historical point of view, this role of NHRIs first became clearly evident in relation to the two UN human rights treaties of 1966 – the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.⁷ When the General Assembly adopted both Covenants, they considered the establishment of national commissions on human rights or the designation of other appropriate human rights institutions, since those could make a considerable contribution to the observance of the two human rights Covenants.⁸

In 1993, the World Conference for Human Rights was held in Vienna. Subsequently, the states adopted the Vienna Declaration and Programme of Action which marked an important step forward in the development of the international standards for NHRIs. The states pointed out the important and constructive role played by the national institutions in the past, in particular in their capacity as advisors to the competent authorities and their role in remedying human rights violations, in the

3 See UN Doc E/800 of 28 June 1948, para. 28.

4 See Report of the Commission on Human Rights: National Advisory Committees on Human Rights, Report 772 (XXX) part B of 25 July 1960.

5 United Nations / Centre for Human Rights (1995): National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Human Rights Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4, New York, Geneva, paras. 207 et seq. In the following cited as "UN Handbook".

6 See Valentin Aichele (2003), Nationale Menschenrechtsinstitutionen: Ein Beitrag zur nationalen Implementierung von Menschenrechten, Frankfurt: Land, page 41 et seq.

7 See General Assembly Resolution 6546 of 13 December 1966, para. 557 et seq.

8 See General Assembly Resolution 2200 C (XXI) of 16 December 1966.

dissemination of human rights information and in educating people on human rights issues.⁹

All states seized the occasion to encourage each other to establish NHRIs in accordance with the Paris Principles. The Vienna Declaration referred to the Paris Principles, and these were adopted by the General Assembly in December 1993. From then on, the General Assembly has regularly referred to the Paris Principles.

In recent years the international tendency towards the consolidation of national bodies for the protection of human rights has further strengthened the Paris Principles. The treaty bodies of the nine existing UN human rights agreements, monitoring the implementation of the respective standards at an international level, frequently emphasise the crucial role played by NHRIs at the national level. More recent human rights treaties, such as the Optional Protocol to the Convention against Torture or the UN Convention on the Rights of Persons with Disabilities, for instance, explicitly refer to the Paris Principles.¹⁰

9 See Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/23 of 12 July 1993, part I, para. 36.

10 See UN Convention on the Rights of Persons with Disabilities, Article 33 (2).

2 Accreditation of National Human Rights Institutions

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, also known as the ICC and hereinafter referred to as such, is authorised to make decisions regarding accreditation. Thus, the National Human Rights Institutions themselves decide which members to invite into their circle and to grant accreditation to.

Since 2008, the ICC has been set up as an association as a legal entity under Swiss law with its statutory seat in Geneva.¹¹ The organisation was originally a loose arrangement of NHRIs, formed at the beginning of the 1990s.¹² National institutions with full accreditation build the core of the ICC. Other national institutions that have not yet received full accreditation are also considered members of the ICC.

The ICC's statutory objects are to promote and strengthen national institutions to be in accordance with the Paris Principles and to provide leadership in the promotion and protection of human rights. It holds an

international conference for its members every two years, allowing them to share their experiences.

These and other ICC events are organised in close cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR). Despite good cooperation with the OHCHR, especially with its National Institutions Unit, the ICC is not formally affiliated to the High Commissioner's Office, even though that office acts as the ICC's Secretariat. The NHRIs have deliberately chosen this form of cooperation, maintaining an organisational separation from the politicised arena of the United Nations. This arrangement seeks to sustain the principle of independence which protects the NHRIs from state influence at the international level as well.

The ICC Bureau is the management committee of the ICC. It comprises sixteen NHRIs, with four members representing each of the geographical regions of Africa, America, Europe and Asia Pacific.

11 See Report of the Secretary-General, UN Doc. A/HRC/10/54 of 26 January 2009, para 54 et seq. For the new ICC-Statutes see pages 27 et seq.

12 See Report of the Secretary-General, UN Doc. A/50/542 of 20 September 1995.

The main task of the ICC Bureau is to decide on the membership of national institutions and in particular the accreditation of national institutions with NHRI status. The accreditation process starts with the submission of an application. The application documents are then submitted for examination to the ICC's Sub-committee, a committee set up specifically to manage the accreditation process. Applications are to include a copy of the institution's founding document, a description of its organisational structure, including information on staff and annual budget, a report on the institution's recent activities and a detailed self-assessment with regard to the Paris Principles. The Sub-committee examines whether the institutional set-up and relevant activities are consistent with the Paris Principles. It then submits its report with recommendations to the ICC Bureau, which takes the final decision on accreditation.

There are three different classifications for accreditation. The ICC Bureau accredits an institution that is fully compliant with the Paris Principles with an 'A' classification. Only those institutions with 'A' status can serve as one of the 16 accredited members of the ICC Bureau and are entitled to vote. By December 2009, the ICC Bureau had accredited 65 entities with an 'A' status.¹³ An institution is granted 'B' status if it is only partially compliant with the Paris Principles or has submitted insufficient

information as a basis for assessment. Institutions with a 'B' status can become members of the ICC, however, they cannot be elected ICC Bureau members and have no voting rights. Institutions that are not compliant with the international requirements are designated 'C' status accreditation.

From a legal point of view, the accreditation granted by the ICC Bureau is of little significance, since the ICC is not an organisation of international law. Its decisions, however, are of increasing practical importance. The international rules of procedure for state conferences, the UN Human Rights Council and, to an increasing extent, the relevant treaty bodies increasingly grant NHRIs with 'A' status the right to observe and participate in discussions and activities.

'A'-status accreditation also confirms that the institution in question fully complies with the Paris Principles. Since the accreditation practice was first developed, the community of states and international organisations have paid close attention to whether or not a state maintains an NHRI. An accredited institution is seen as an indicator of the credibility of that state's human rights policy. An accreditation strengthens the institution's position vis-à-vis the political authorities of the home country, since the accreditation also confirms the independent character of the institution.

13 See Report of the Secretary-General, UN Doc. A/HRC/13/45 of 18 January 2010, para. 4.

After the rather 'soft' accreditation policy of the early years, the ICC Bureau now applies a stricter approach regarding the criteria for accreditation. Moreover, under the new ICC statute, a periodic review of institutions that have already been accredited has been introduced. All members are now subject to a re-examination every five years. However, the ICC Bureau is authorised to conduct a review before the end of the five-year-period when necessary. In some cases, 'A' status accreditation has been revoked. Almost every accreditation is accompanied by recommendations from the ICC Bureau.

For instance, the German Institute for Human Rights, whose accreditation dates back to 2003 was subjected to a periodic review in 2008. The 'A' status of the institute was confirmed.¹⁴ As usual, the ICC Bureau recommended that the institute embrace the Paris Principles for fully in order to better exploit its potential. This would also involve a greater integration of

individual cases into the institute's work, in order to make more effective use of the institute's protective powers. Furthermore, the institute was encouraged to pay close attention to gender and ethnic diversity of staffing at all levels of the institution. The ICC Bureau recommends that the German Institute for Human Rights be established on a firm legal foundation, for instance in federal law, or that it be incorporated in the constitution.

The entire accreditation process also serves to ensure greater transparency. The High Commissioner for Human Rights is becoming increasingly involved in this process, as are non-governmental organisations. In addition, institutions that have been deemed non-compliant with the Paris Principles are now entitled to file an appeal against the decision of the ICC Bureau. The principles of the accreditation committee are laid down in the General Observations, thus ensuring consistency in practice.

¹⁴ See Report of the Secretary-General, UN Doc. A/HRC/10/55 of 26 January 2009, page 31.

3

Types of National Human Rights Institutions

As a group, NHRIs are characterised by great institutional diversity.¹⁵ This is due to the fact that each institution is embedded in structures that have evolved over time in its particular country, and which, from an ideological, socio-cultural and above all from a legal point of view, differ from those of other states. The specific institutional and political needs of the country in which an NHRI is founded greatly influence its functional status. Against this background, the question arises as to whether NHRIs can, despite their diversity, be categorised.

The Paris Principles do not offer a good starting point for developing a standardised classification system. They do not describe, let alone define, a standardised type of institution. Instead, they offer an open concept, the scope of which is generally defined by negative criteria. These criteria only make it possible to draw a distinction between NHRIs and other organisations or institutions. For example, the

NHRI differs from a non-governmental organisation in so far as its foundation is initiated by the state, whereas an NGO is not established by the government.

This conceptual openness was deliberately chosen by the drafters of the Paris Principles. It ensured, on the one hand, that a considerable number of national bodies could be categorised as NHRIs when the Paris Principles were adopted in 1993. As a result, in some countries, no significant legal changes were necessary in order to adapt the existing structures to reflect the newly-developed international standard. On the other hand, countries which envisaged the establishment of an NHRI were given the necessary freedom and flexibility to do so.

Since the Paris Principles do not provide a basis for classification, NHRIs can only be analysed through practical stocktaking. My analysis of NHRIs worldwide led to the conclusion that there are currently essen-

¹⁵ See, for example, the most recent survey of the United Nations / Office of the High Commissioner for Human Rights (2009): *Survey on National Human Rights Institutions: Report of the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*, Geneva. Available at www.ohchr.org

tially four different types of institution. They can be classified as follows:¹⁶

- the committee type,
- the institute type,
- the ombuds type,
- the commission type.

These types of institution differ considerably in individual points. The committee type is characterised by its mission to provide advisory services to the government and to government leaders, in particular. The activities of the institute type are mainly concerned with education, research and political advocacy, whereas the major activities of the ombuds type focus on aspects of individual legal protection and dealing with complaints. The commission type is largely characterised by its wide range of tasks, including investigations into human rights violations, educational work and public relations, as well as participation in legal proceedings. In most cases, the ombuds and commission types have extensive investigatory and informa-

tion powers, whereas the committee type has only restricted, and the institute type no governmental powers. Further differences will be elaborated on in subsequent chapters.

The comparative study of European institutions published by the German Institute for Human Rights in 2004 also confirms that a classification into four types of institutions is feasible.¹⁷ In January of 2010 Asia Pacific numbered 15 accredited NHRIs, Africa 15, and the Americas had 15. Europe counted 20 accredited NHRIs.¹⁸

Among the European institution, for instance, were committee-type institutes in France, Greece and Luxembourg. In Denmark, Germany and Norway, by contrast, the institute type was more prevalent. The ombuds type is seen largely in Albania, Armenia, Bosnia-Herzegovina, Poland, Portugal, Sweden and Spain. The Republic of Ireland and the United Kingdom¹⁹ have established commissions.²⁰

16 See Valentin Aichele (2003): *Nationale Menschenrechtsinstitutionen*, Frankfurt am Main, pages 102, 110 et seq.

17 See Valentin Aichele (2004): *Nationale Menschenrechtsinstitutionen in Europa*, Berlin: Deutsches Institut für Menschenrechte, page 20 et seq.

18 See Report of the Secretary General, UN Doc. A/HRC/13/45 of 18 January 2010, page 8 at seq.

19 The commissions of England, Scotland and Northern Ireland together form one NHRI.

20 See the comparative study European Union Agency for Fundamental Rights (2010): *National Human Rights Institutions in the EU Member States: Strengthening the Fundamental Rights Architecture in the EU I*, Luxembourg: Publications Office of the European Union.

4

The Paris Principles of the United Nations

The Paris Principles provide the foundation for the NHRIs. The following chapter briefly describes the principle characteristics of NHRIs.²¹

4.1 Legal basis

According to the Paris Principles, the founding text of an NHRI must have either a legal or a constitutional status.²² The establishment of an NHRI therefore requires a legal act of will on the basis of which rules are established, which are binding above all for the government. A government should not have the power to take decisions regarding the existence, composition and competence of the NHRI.

4.2 Mandate

Moreover, the Paris Principles specify that national institutions must have a broad and clearly defined mandate.²³ The term 'mandate' describes the official mission entrusted to the institution by the founding state.

The core purpose of the mandate is to explicitly charge the institution with the promotion and protection of human rights.²⁴ The mandate is to comprise all issues related to national human rights protection, and, in a wider sense, satisfy the requirement for a more extensive mandate by also addressing foreign policy issues. The wording of the Paris Principles also requires the institution to have a clearly defined mandate. A mandate is considered to be clearly defined if the official mission specifies the human rights standards the institution and its members are subject to and in accordance with which their work

21 The Paris Principles are divided into four sections with headings. There is no consecutive numbering of paragraphs as is found in most documents of the United Nations. In this study, the four chapters are numbered 1 to 4 and supplemented with Arabic figures to denote paragraphs.

22 See Paris Principles, Section 1, para. 2.

23 Ibid.

24 See Paris Principles, Section 1, para. 1.

is organised. This is designed to protect the NHRI from discussions concerning its scope of responsibilities and hence its legitimacy.

Generally, there are a number of national and international standards that may be included in the mandate. Both of these interlinked spheres can be aimed to the same degree at the protection of human rights. For the sake of clarity, it appears indispensable that a concrete choice is made by the founding state. Therefore human rights agreements ratified by the founding state may fall within the NHRI's scope of responsibilities in that state. In other cases, the mandate may make reference to specific legal documents, i.e. resolutions of international organisations. In other countries again, the national anti-discrimination law has been enshrined in the institute's mandate. In some cases, the fundamental rights granted by the state's constitution are explicitly incorporated.

To meet the requirements of national implementation, a mandate must also include a general reference to standards of international law. The historical background of the concept implies that a crucial task of the NHRI is to contribute to the national implementation of international law standards.²⁵

The question arises as to the extent to which the mandate's scope is allowed to fall short of these demands. The Paris Principles are of little use here, since they only

require a mandate to be 'as broad as possible'. In the accompanying explanation, the General Assembly explicitly refers to the Universal Declaration of Human Rights and the two Covenants as those treaties to be considered as a crucial point of reference for national implementation. One can therefore conclude that at least these three core documents of international human rights law must be part of an NHRI's mandate.

The question as to the NHRI's territorial scope is also closely tied to the question of its mandate. An NHRI can only be considered to be 'national' if it has authority over the entire national territory of the founding state.

4.3 Functions

The Paris Principles lay down a number of responsibilities to be fulfilled by an NHRI.²⁶ That list, reproduced below, however, is not exhaustive. The founding state is free to entrust the institution with additional tasks that serve the purpose of promoting and protecting human rights.

The Paris Principles mention the following responsibilities:

- to offer advisory services to the government and other governmental bodies;

²⁵ See UN Handbook, para. 207 et seq.

²⁶ See Paris Principles, Section 1, para. 3.

- to monitor administrative practices;
- to inquire into specific human rights violations;
- to conduct research on specific issues;
- to disseminate information;
- to participate in educational work and public information activities, with a special focus on preventing discrimination;
- to hear and consider complaints;
- to participate in international activities.

A crucial task of an NHRI is to offer advisory services to the government and other government bodies. There are many ways that such services can be provided. The most common is to submit a statement or report on specific issues. These documents often include recommendations from the NHRI as to how to solve a particular problem or to improve a specific situation with regard to human rights.

These proposals are then submitted to the responsible decision-making authority; this may be an administrative body, parliament or parliament committees. Advising on political matters also takes place in an informal way. The NHRI's appearance as an expert in court proceedings or the submission of advisory opinions should also be considered advisory services. Experience gained in many countries has shown that governmental authorities benefit from the advisory competence of an NHRI, which gives the political process additional legitimacy.

The question whether or not an NHRI should be responsible for monitoring administrative practices, in addition to its service-providing functions, has often been the source of controversy. In contrast to advisory services, monitoring is done continuously, with or without the consent of the institution under review. Some NHRIs have been empowered to conduct independent investigations, but not all NHRIs are authorised to do so.

The international guidelines, however, leave no doubt that NHRIs should undertake some kind of monitoring activities. The Paris Principles explicitly state that an NHRI has to ensure an effective implementation of human rights instruments.²⁷ To this end, the NHRI is required to examine whether national regulations, as well as the day-to-day administrative practices in the respective country, are in compliance with human rights.²⁸ According to this clear statement, the NHRI is understood as an institution acting as a critical observer of national authorities. However, the monitoring function of NHRIs is rather limited due to the particular power structures of NHRIs, and hence can only be considered as 'soft' control.

Another important responsibility is to investigate human rights violations. With the term investigation, we refer to the examination of the facts of individual cases in which human rights might have been violated. First of all, light must be shed on

²⁷ See Paris Principles, Section 1, para. 3 b).

²⁸ Ibid.

the facts. Only then can an assessment be made as to whether or not human rights have been violated in that particular case. All circumstances have to be clarified for reasons of the protection of victims. If government action has in fact led to a human rights violation, adequate measures must be taken immediately without requiring the victim to go through several stages of appeal. If an individual case becomes an issue of political debate, the NHRI must contribute to finding a solution that is in accordance with human rights principles.

The NHRI's investigative function is intended to close gaps in the legal protection system. Public prosecutors or the administrative courts might be entrusted with a case. Experience shows, however, that these authorities rarely investigate whether a human rights violation has occurred. In most cases, the authorities pay no attention to international human rights treaties even if those treaties have been integrated into the legal order of that country. Additionally, the responsible government authorities sometimes have little interest in clarifying such a case. Close investigation of individual cases is also important because it can often reveal a weakness in the system of national human rights protection. The NHRI is expected to help remedy such deficits.

The NHRI may also undertake studies aimed at finding facts related to human rights issues. The living conditions of social groups who find themselves in a vulnerable situation are often at the centre of such research projects. The research aims at creating a better understanding of this

especially harmful situation. An investigation might be the first step towards pooling the knowledge and experience of victims, non-governmental organisations and state actors. Then, concepts must be developed to protect these groups from elementary injustice in the future. People belonging to vulnerable groups are often more exposed to structural discrimination than is the rest of society. This research is, therefore, particularly important for all those groups that are not able to organise themselves or that do not have a powerful spokesperson.

An NHRI is supposed to conduct educational and promotional activities. Here, the Paris Principles specify first of all that an NHRI is responsible for the dissemination of information. The information is partly gathered from the NHRI's own research and investigative activities and from issues raised by international organisations or courts and entrusted to the government. In some countries, NHRIs have established documentation and information centres.

Educational programmes should form an integral part of the NHRI's scope of work. Human rights education, in particular, aims at conveying knowledge on human rights, questioning personal attitudes and opinions, and strengthening individual and institutional capacity to act *vis-à-vis* human rights realisation. An NHRI also offers advice on education, for instance, on how to integrate human rights education in the syllabuses of schools, universities and academies.

Another primary objective, according to the Paris Principles, is to offer protection

from discrimination. An NHRI should sensitise its government and society to the issue of discrimination. Authorities responsible for the enforcement of national anti-discrimination laws are entrusted, in practice, with the duty of offering protection against discrimination. The NHRI's task here is to inform people about the applicable law and to support the activities of the responsible authorities.

Most NHRIs also deal with complaints from the population. This means that they receive and investigate claims and try to work with the competent authorities to find a solution. Experience with alternative dispute resolution in many countries shows that through them, problems can often be resolved quickly, efficiently and cost effectively for all parties concerned. In terms of the Paris Principles, the function of hearing and considering complaints is essential for an NHRI because it helps to protect the rights of individuals. However, since it is optional, a national body may be considered to be an NHRI even if it does not deal with individual cases in the sense described above.

NHRIs are also active at an international level. Some conduct projects on the promotion of human rights abroad. All NHRIs cooperate at the regional and the international level. Yet, the emphasis of their work should be at the national level.

4.4 Powers

An NHRI should be vested with government powers. The Paris Principles explicitly refer to competencies of an NHRI. These competencies provide the NHRI with a particular power structure which is to be understood in its national context. An NHRI usually has no power to make legally binding decisions or to set laws in one way or the other. According to the Paris Principles, an NHRI is only entitled to complement and support the work of the legislative, executive and judicial branches of government. Concerns about the Paris Principles creating a 'supervisory authority of unlimited power' – an apprehension occasionally expressed by governments considering the establishment of an NHRI – are therefore completely unfounded.

In short, an NHRI is vested with the following rights and responsibilities:

- right to self-government,
- entitlement to self-initiative,
- authority to submit and publish statements and recommendations,
- cooperation powers,
- information and investigatory powers.

Self-government includes, for example, the authority of NHRIs to choose their own staff and to decide on the duration of employment.

The entitlement to self-initiative allows the NHRIs to inquire into issues of human rights protection and to address them in public. An NHRI must be free to express its opinion publicly, for example in the form of statements and recommendations.

An NHRI must be able to publish its findings. It may select the means of communicating its findings, for example by issuing a statement, recommendation, report, study and so forth, without the interference of the government. An essential component of the institutional independence of an NHRI is the right to manage its internal affairs.

Due to its enquiry and investigation powers, an NHRI is entitled to request information from government institutions and to actively investigate specific cases. This specifically includes the right to call and question witnesses, to take affidavits, to demand access to records, to request the submission of documents or to inspect non-public places without prior notice. These legal possibilities allow the institution to investigate a case, even if this interferes with individual rights. Not a few NHRIs are vested with investigation rights that are similar to the powers of a public prosecutor.

Investigation rights are indispensable if an NHRI is to monitor the administration, investigate human rights violations, conduct studies and address complaints effectively. In order to make an objective judgement about a particular issue, an NHRI

needs to have the right to receive all necessary first hand information. This does not exclude the possibility of obtaining information from other authorities through mutual assistance and administrative cooperation. Yet, no reasonable or feasible solution can be suggested without good knowledge of the facts.

Another question raised frequently is whether an NHRI is able to efficiently promote national human rights protection if it has no powers of enforcement. Part of the answer to this question can be found in the specific competence structure of an NHRI: while public authorities are able to make binding decisions, NHRIs are 'only' permitted to make non-binding recommendations. However, a recommendation based on human rights principles and that enjoys the widespread support of the population cannot easily be disregarded. An NHRI can support an argument by publishing its findings and thus exerting, political pressure on the competent authorities, together with other actors. The implementation of the steps recommended by the NHRI depends, after all, on the will of government authorities.

4.5 Composition

The Paris Principles do not specify criteria for the internal structure of an NHRI, thus leaving the founding state with a wide range of possibilities. In a consideration of the different types of NHRIs mentioned in

Chapter 3, huge differences among the institutions become apparent.

An ombudsperson is at the centre of an ombuds-type of institution. The committee-type, however, is characterised by a large number of members (the French Consultative Commission, for example, counts more than 80 members who work in sub-committees in specific areas). An institute has, in addition to its staff and management, a board of trustees composed of members from very different areas; in some cases there is an additional advisory committee or a general assembly. A commission is composed of three or more members, whose decisions are based on consensus, but who have independent areas of responsibility.

4.6 Appointment

Additionally, the Paris Principles only offer vague guidance on how to recruit executives and staff, and on what criteria recruitment should be based on. Emphasis is given to the fact that the management of an NHRI must be socially legitimised. The executive members should be elected or appointed in a transparent process which guarantees the pluralist representation of all groups in society concerned with the promotion and protection of human rights.²⁹ Vacant positions must be advertised.

²⁹ See Paris Principles, Section 2, para. 2 and 2 a).

³⁰ See Paris Principles, Section 2, para. 3.

³¹ See Paris Principles, Section 2, para. 1.

Once a member has been nominated, appointment is to be effected 'by an official act' which underlines the public nature of the institute's mission.³⁰ In some countries, the executive members are appointed by the head of state, i.e. in Australia or South Africa.

4.7 Staff structure

In accordance with the Paris Principles, a NHRI should endeavour to establish a pluralistic staff structure.³¹ Ideally, the personnel of an institute should reflect the cultural and social diversity of society and represent 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 impartiality.

4.8 Legal status

The legal status assigned to an NHRI within a state's organisational structures – beyond the issue of legal basis (see above) – is another aspect that is not explicitly covered by the Paris Principles. The drafters at the conference in Paris deliberately chose not to give specific instructions, knowing that this

would interfere with historically evolved structures and cultural features which do not permit generalization.³²

4.9 Independence

Although the Paris Principles do not assign a specific legal status to the NHRI within a state structure, they presuppose that the NHRI is independent.³³ The principle of independence is explicitly mentioned in the heading of Chapter 2 of the Principles which is about 'guarantees for independence'. Further regulations literally refer to 'institutional independence'.

Independence is an essential feature of an NHRI. Both, the Human Rights Commission and the General Assembly of the United Nations have confirmed the principle of independence in many resolutions.³⁴

This alone, however, provides no indication of how far this independence should extend. Independence, as called for in the Paris Principles, primarily means the independence of the institution and its staff from the government. The NHRI must be free from the intervention of executive and other governmental bodies. If government

officials are members of the advisory or supervisory board of an NHRI, then, according to the Paris Principles, they may not have voting rights. In addition, any attempt by non-governmental forces to unduly influence the decisions of the institution goes against the principle of independence.

4.10 Funding

An NHRI is essentially a state-funded national entity. The state funds enable the institute to have its own staff and premises as well as access to communication devices such as telephones and internet services to ensure its independence of other authorities.³⁵ The working conditions and staff remuneration should be comparable to those of public sector employees.

In order to ensure independence from the government, the reason for and amount of funding should not be decided on by one ministry alone.³⁶ The provision of funds does not entitle the donor to exert any influence on the institution's work.

The criticism is often made that as recipients of public funding, NHRIs can in no way be independent. This is indeed a sen-

32 The European states, for example, have come to very different decisions regarding the legal status of their NHRIs within the state's political order: The French committee, for example, is associated with the Prime minister's office, whereas the Spanish ombudsperson is associated with the People's representation. The Danish institute is only formally affiliated to a ministry. The Irish Commission has no direct affiliation to one of the three powers of the state.

33 See Paris Principles, Section 2, paras 2 and 3.

34 See General Assembly Resolutions 54/176 of 17 December 1999; 52/128 of 12 December 1997 and 50/176 of 22 December 1995.

35 See Paris Principles, Section 2, para. 2.

sitive issue. Experience all over the world has shown that there is a danger that governments may be tempted to influence the NHRI's strategy and work through the amount of annual funding they provide.

To further ensure the financial independence of the NHRI, two aspects are being discussed: One 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. There is much to be said for including the institution's funding as separate item on the annual budget legislation.

Further, NHRI representatives are demanding the right to be consulted when the final decision is made on the annual funding in the legislature. The Paris Principles do not address the question of whether such a right is to be granted for the national budget committee or the parliament's plenum. However, the right to be consulted ensures that the objectives of national human rights protection are duly considered when decisions are made concerning the distribution of financial resources. The institution's interest would otherwise be placed at a disadvantage with regard to other social interests.

36 See UN Handbook, para. 75 et seq.

5 International activities

In line with the Paris Principles, the work of the NHRI focuses on the national level. In addition, most institutions conduct international activities, for example, in the field of development cooperation. The cooperation among the NRHIs and with regard to the ICC, or the cooperation among regional groups of NHRIs as well as with United Nations bodies, is explicitly mentioned in this context.

Due to the ICC's permanent representation in Geneva, the participation of NHRIs and their involvement in the relevant UN committees and working processes has increased considerably. Since their participation in the World Human Rights Conference in 1993 in Vienna, NHRIs have been involved in international conferences and have cooperated to an increasing extent with expert committees on the UN human rights treaties.³⁷ With the foundation of the Human Rights Council of the United Nations in 2006, which replaced the

Human Rights Commission, NHRIs were granted certain participatory rights.³⁸ In the past few years, the NHRIs have made increasing use of these rights, for example, by submitting statements relating to specific items on the agenda or by presenting these statements as official documents to the United Nations. In the context of the Universal Periodic Review (UPR) process, a special role is attributed to NHRIs.³⁹ They provide their own short reports, which stand alongside the state reports as well as the reports of the Office of the High Commissioner and non-governmental organisations.

There are regional groups of NHRIs in Europe, America, Africa and Asia Pacific. These groups cooperate, in some cases, with the corresponding regional human rights system. A European Group has been set up for Europe. This group has met regularly to discuss specific topics since 1994.

37 Amrei Müller / Frauke Seidensticker (2007): *The Role of National Human Rights Institutions in the United Nations Treaty Body Process*, Berlin: German Institute for Human Rights.

38 See Human Rights Council Resolution 5/1 of 18 June 2007 in relation to the Human Rights Commission Resolution 2005/74 of 20 April 2005, para. 11.

39 See Human Rights Council Resolution 5/1 of 18/06/2007; Annex, paras 15 at seq. and 31 at seq.

Many of the activities of the European Group are conducted in close cooperation with the Council of Europe. They included, for example, the biannual Round Table Meetings, held in Strasbourg in 2000, in Dublin and Belfast in 2002, in Berlin in 2004, in Athens in 2006 and in Dublin in 2008. The European Group is also an observer on the Steering Committee for Human Rights, an important committee of the Council of Europe with regard to human rights. Lately, the Council of Europe's Human Rights Commissioner has been pursuing the objective of intensifying cooperation among NHRIs, thus further promoting human rights protection both at the national and at the regional levels.⁴⁰

Close cooperation is developing between the Fundamental Rights Agency of the European Union, founded in 2008, and the

European NHRIs. A practice of regular meetings has established itself in this context.

It is essential for the NHRIs to be informed about international developments and to participate in the shaping of an international system for the protection of human rights, since international procedures will, sooner or later, affect the national level and the NHRIs' work. For international actors, such as UN expert committees or UN special rapporteurs, the information provided by the NHRIs and their involvement in activities may also be regarded as an important precondition for their own work. Particularly with regard to cooperation at all levels of human rights protection, NHRIs often assume the role of an actor who is faced with the challenge of ensuring good communication at both the national and the international level.

40 See CommDH/Omb-NHRI (2007)1 Rev. 3 of 3 April 2007.

6 Concluding Remarks

The NHRI is a relatively little known type of human rights organisation. Compared to national authorities, the distinctive feature of the NHRI is that while its establishment was officially prompted by the state the institution is vested with full independence. An NHRI is not responsible for the execution of law but, by realising various activities, it supports the effective implementation of human rights in society. Since it is predominantly funded by public resources, the NHRI is not similar to a non-governmental organisation.

Moreover, NHRIs can be clearly distinguished from other governmental and non-governmental organisations since NHRIs share the same unique normative basis – the Paris Principles. These principles define the institutional preconditions to be fulfilled by an NHRI and cover the most important aspects on its organisation. However, some important questions remain unanswered, which might be an advantage. The open concept allows the inclusion of specific aspects that are characteristic for each state. The wide acceptance of the concept of an NHRI in today's heterogeneous community of states confirms its flexibility.

Yet, while the institutional diversity of the NHRIs remains considerable, the work performed by the NHRIs over the past few years has largely contributed to promoting the concept and sharpening the common profile of NHRIs in the most diverse contexts. The ICC's practice of strictly observing the accreditation requirements for national institutions has also contributed to this end.

It is also important to take a closer look at the work of an NHRI. The formal implementation of the Paris Principles alone is not sufficient for the institution to meet the requirements associated with being an NHRI. The Paris Principles are no benchmark by which to gauge the effectiveness of an institution. They only represent an attempt to outline the essential preconditions that must be met in order to ensure that the NHRI may function effectively. For a practical assessment it is important to know whether and to what extent an NHRI is actually able to promote and protect human rights.

Due to consistent efforts during the past few years, NHRIs have succeeded in further refining their conceptual profile in practice. They enjoy increasing recognition as a human rights organisation promoting and protecting human rights at the national, regional and international levels.

7

Summary

This publication informs about the international concept of National Human Rights Institutions (NHRIs). It explores the historical development of the concept, the accreditation of NHRIs, their classification, institutional elements, and national and international activities.

The basis of the concept of NHRIs is provided by the 'Principles relating to the status of national institutions', which the General Assembly of the United Nations adopted by Resolution 48/134 on 20 December 1993. Having been drafted during a conference in Paris, these principles became internationally known as the 'Paris Principles'. Compliance with these principles is used to determine the accreditation of NHRIs.

According to the Paris Principles, an NHRI is an officially established and state funded national entity independent of the government. It is mandated to promote and protect international human rights standards. An NHRI is additionally based in a legislative act securing the existence, composition and competence of the institution. Various functions and corresponding powers that serve the promotion of human rights at the national level are to

be assigned to such an institution, for example, to promote human rights education, to elaborate recommendations for state entities, to undertake general studies, or to inquire into specific human rights violations. The task to support state and non-state actors within the process of the national implementation of human rights also needs to be mentioned.

By December 2009, the Bureau of the 'International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights' had accredited 65 entities as being in compliance with the Paris Principles. The institutional design of these institutions differs immensely. If classified, they include committees, institutes, human rights ombudsmen, human rights institutions, and commissions. Some of these institutions are constituted with far reaching investigatory powers.

An NHRI is positioned between civil society and the state. It is neither an authority in classical terms nor is it similar to a non-governmental organisation. An NHRI is not intended to replace any existing institution or organisation. However, it is to be seen as complementary to the existing human rights structure within a state. Due

to the fact that NHRIs share the same unique normative basis, it is justified to consider them a new type of institution.

Due to sustained and targeted efforts, NHRIs have succeeded over the past years

in sharpening their conceptual profile in practice. They enjoy growing recognition as human rights organisations for the promotion and protection of human rights at the international, regional and national levels.

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