

PARIS PRINCIPLES

The first significant event was a workshop of NHRIs, convened by the UN Commission on Human Rights in Paris, France from 7 to 9 October 1991. The workshop was attended by representatives of NHRIs and of States, the UN and its agencies, intergovernmental organisations and NGOs. For the first time the NHRIs were the key participants. The workshop was to review and update information on existing NHRIs, review patterns of cooperation of NHRIs with international institutions and explore ways of increasing the effectiveness of NHRIs.

The workshop did what it was told to do but, in addition, and far more importantly, it drafted the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles). The UN Commission on Human Rights endorsed the Paris Principles in 1992 and they were endorsed by the General Assembly in 1993. They are the standards against which NHRIs are assessed for recognition and participation in the international human rights system and are “the test of an institution’s legitimacy and credibility”.

The Paris Principles provide benchmarks against which proposed, new and existing NHRIs can be assessed or “accredited” by the International Coordinating Committee’s Sub-Committee on Accreditation.

The Paris Principles are not lengthy – only about 1200 words. They are quite general overall, though some parts are very specific. “They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism”.

Under the Paris Principles, NHRIs are required to:

- **Protect** human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and
- **Promote** human rights, through education, outreach, the media, publications, training and capacity-building, as well as advising and assisting Governments.

The Paris Principles sets out what a fully functioning NHRI is and identify six main criteria that these institutions should meet to be successful:

- **Mandate and competence:** a broad mandate based on universal human rights standards;

- **Autonomy from Government;**
- **Independence** guaranteed by statute or constitution;
- **Pluralism**, including through membership and/or effective cooperation;
- **Adequate resources;**
- **Adequate powers of investigation.**

Competence to "promote and protect"

If human rights are to be fully secured, comprehensive action is needed *both* to promote and to protect them. Institutions whose mandates are limited to one or the other do not comply. This recognises that promotion is needed to change attitudes and behaviours.

As broad a mandate as possible

The requirement that an NHRI should have "as broad a mandate as possible" reflects the diversity of institutional models that exist. National human rights institutions that draw their mandate from international treaties and deal with all human rights are the most consistent with the indivisible, interdependent and universal nature of human rights and are considered the "best model". Some NHRIs deal only with specific groups, women or children, for example. It is still possible to have such a more limited mandate and still comply with the Paris Principles.

Mandate set out in constitution or legislation

The Paris Principles provide that the NHRI mandate "shall be clearly set forth in a constitutional or legislative text". According to the Sub-Committee on Accreditation, this is a requirement: executive instruments such as decrees and orders do not comply with the Paris Principles.

A constitutional or legislative base ensures greater permanence (since the mandate cannot be changed or withdrawn merely by executive order), greater independence (since the mandate is less likely to be changed or withdrawn if the NHRI does something the Government disagrees with) and greater transparency.

Where there is a constitutional base, it is advisable to have separate implementing legislation, since the level of detail required to establish and authorise the functioning of an NHRI is not usually appropriate for a constitution. For example, it may be more appropriate to define the nature, purpose and operational powers of an institution in

legislation than in a constitution. Additional powers may be provided more readily through a legislative process.

NHRIs that have only a legislative base still comply with the Paris Principles. However, legislative processes can be used to weaken an institution more readily than had it been protected constitutionally.

In some cases, the enabling legislation of a national human rights institution has quasi-constitutional status. This means simply that if laws or Government policies violate human rights, they are considered inoperative to the extent of the inconsistency with the human rights law. In countries that have such a provision (e.g. Canada), the institution has a powerful tool to seek adjudication before a human rights tribunal and to render the impugned law of no force or effect.

AUTONOMY

The issue of autonomy is intrinsically linked to independence and is perhaps the most important of the principles. It is however also arguably the most difficult and controversial. In the end, an NHRI is a state-sponsored body in the sense that its existence depends on an act of the State and on state funding. Therefore an NHRI is accountable to elected representatives or to the government in terms of reporting on its performance, at the same time as being autonomous and independent.

Accountability to the State is generally achieved through annual reports and other types of reports filed with Ministers or, preferably, directly to Parliament.

The dependence of NHRIs on government for funding may suggest that they cannot be truly autonomous. It is not unheard of for governments to restrict access to funding quietly – or to threaten to do so – when an NHRI is critical of the government's behaviour.

Despite these realities, it is possible for a state-funded entity to exercise autonomy: the courts for example are autonomous even though their funding comes from state coffers.

An institution's level of autonomy must be considered in light of a number of structural and procedural factors that should be in place to ensure a high degree of operational independence for an institution.

INDEPENDENCE

Independence guaranteed by constitution or legislation

The Paris Principles require merely a “sphere of competence”, as set out in a constitutional provision or legislation. Obviously the breadth of the NHRI mandate is a function of both its competence and its jurisdiction, and these are interlinked concepts. It follows that the NHRI jurisdiction should be as broad as possible, following the standards set out for the mandate. The Paris Principles also state that an institution may examine any matter that is “within its competence”.

The determination of jurisdiction and its extent is a matter of statutory interpretation. In practice, many enabling laws restrict the types of issues that NHRIs can address.

NHRIs generally have no authority over parliament, nor can they in any way affect the traditional immunities and privileges enjoyed by members of the legislative assembly. These immunities are meant to protect freedom of political discourse and are generally staunchly defended in democratic societies. NHRIs can comment on bills to ensure laws meet human rights standards; some may be able to initiate proceedings or to intervene before the courts to question the constitutionality of certain laws.

Courts and the judiciary are generally exempt from oversight by NHRIs. Courts, and the judges that serve on them, have an independence that is essential for ensuring full respect of the rule of law. Respect for the rule of law demands that administrative bodies should not sit in appeal or review of the courts. This does not, however, prevent monitoring and reporting court activities, and making independent recommendations meant to improve the application of human rights principles in the court setting or to remove undue delay in judicial proceedings.

Independence in operation and funding

Independence is both operational and financial. The truest test of independence is found in the actions of the institution: an institution should have the ability to conduct its day-to-day affairs independently from any outside influence. This means that the institution has the authority to draft its own rules of procedure that cannot be modified by an external authority. An institution’s recommendations, reports or decisions should not be subject to an external authority’s approval or require their prior review.

In terms of financial independence, the Paris Principles require that funding be sufficient to allow the NHRI to have its own premises and staff “in order to be independent of government”. The constitutional provision or law that establishes an

NHRI should give the institution a separate legal personality sufficient to allow it to make decisions and undertake responsibilities independently. Having the institution report directly to Parliament or to the Head of State can diminish perceived interference that might exist if the institution reported to a Ministry.

Independence through appointment and dismissal

The terms and conditions that govern appointment and dismissal of member should be transparent, i. e. set out in the constitutional provision or law (or both) that establish the NHRI.

The Paris Principles emphasise the importance of the selection process of members, but not the ideal or required process.

Criteria for appointment: The quality of members, leadership and staff are vital to the NHRIs' reputation and effectiveness. Transparent and merit-based procedures will likely result in independent and professional members who have the confidence of the communities they serve. Even if there is no requirement in the enabling law that members have human rights experience, this can be ensured by transparent and engaged process of appointment.

Government representatives on National Institutions: The ICC Sub-Committee noted that the Paris Principles require that Government representatives on governing or advisory bodies of National Institutions do not have decision making power or voting capacity.

Terms of Office: It should be noted that the term of office of members should be long enough to support the principles of independence and effectiveness. Terms that are too short – two years for example – may limit, or be seen as limiting, an NHRI's independence. Members may feel that their re-appointment is dependent on how acceptable they have been to the government of the day. Moreover, short terms of two years or less do not give members the time to both enunciate a vision and put it into effect and therefore may impact negatively on the NHRI's potential effectiveness.

Independence through privileges and immunities

The ICC Sub-committee has strongly recommended that provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI.

There are two types of immunity:

The first is specifically meant to avoid situations where members are sued for slander or similar causes of action as a result of doing their job as required by the law. This immunity is limited to acts performed under the enabling law and it is lifted for offences conducted outside the scope of that authority.

The second is general immunity: The purpose of this latter kind is to protect NHRI members and staff from malicious accusations, and from using such accusations as a pretext to oust a member or harass a staff person. As a general rule, NHRI legislation provides for the first type of immunity. The second is generally taken into consideration indirectly through rigour in dismissal procedures that require some form of Parliamentary or judicial approval prior to dismissing a member for illegal conduct.

CHECKLIST: BROAD MANDATE AND RESPONSIBILITIES

PRINCIPLE	REQUIREMENTS	YES	NO
BROAD MANDATE (Subject-matter jurisdiction)	Competence is as broad as possible (from most to least broad)		
	○ Includes both CP and ESC Rights		
	○ Includes most CP and ESC Rights		
	○ Includes only CP Rights		
	○ Includes a subset of CP Rights		
	○ Is limited to a single rights issue (e.g., Race of Discrimination)		
BROAD MANDATE (Object-matter jurisdiction)	Competence is as broad as possible (from most to least broad)		
	○ Over State and Private Sector (with public function), without restriction		
	○ Over State, without restriction		
	○ Partial restriction with regard to sensitive State Organs		
	○ Total restrictions with regard to sensitive State Organs		
BROAD MANDATE (Time jurisdiction)	Competence is as broad as possible (from most to least broad)		
	○ Can examine matter even if it predates institution		
	○ No limits providing matter occurred since set up of institution		
	○ Discretionary power to limit examination of “old” cases		
	○ Limits on capacity to examine matters that are “old” set in law		
RESPONSIBILITY (to provide advice)	Can provide advice on own initiative		
	○ On legislative or administrative provisions		
	○ On any violation the institution takes up		
	○ On the national situation generally or in specific		
	○ On situations of violations and government reactions to it		
	○ Can produce advice directly without referral		

	<ul style="list-style-type: none"> ○ Can publicise the advice without referral or prior approval 		
RESPONSIBILITIES (other)	To encourage the harmonisation of national legislation and practices with international human rights instruments, as well as their effective implementation, including by:		
	<ul style="list-style-type: none"> ○ Participating in reviews of legislation and policy at time of ratification 		
	<ul style="list-style-type: none"> ○ Regularly reviewing and providing formal comments on draft legislation and policy 		
	<ul style="list-style-type: none"> ○ Regularly reviewing and formally commenting on the human rights situation generally or with respect to key issues 		
	To encourage the ratification of human rights instruments		
	To contribute to country human rights reports (from most to least broad)		
	<ul style="list-style-type: none"> ○ Directly participates in drafting of complete report 		
	<ul style="list-style-type: none"> ○ Drafts section(s) on work of institution and reviews report 		
	<ul style="list-style-type: none"> ○ Drafts section(s) on work of institution 		
	<ul style="list-style-type: none"> ○ Reviews report in whole or in part 		
	To cooperate with international and regional human rights organs and other national institutions		
	To elaborate and take part in education and research programs in human rights, including by:		
	<ul style="list-style-type: none"> ○ Assisting in developing/reviewing curricula for schools 		
	<ul style="list-style-type: none"> ○ Assisting in training of Prison Guards, Police, Army and Security Forces 		
	To sensitise people on human rights through publicity, education, information and the use of press organs, including by:		
	<ul style="list-style-type: none"> ○ Publishing an Annual Report 		
	<ul style="list-style-type: none"> ○ Regularly reporting on important cases through the media 		
	<ul style="list-style-type: none"> ○ Developing basic brochures on the inst. 		

CHECKLIST: AUTONOMY AND INDEPENDENCE

PRINCIPLE	REQUIREMENTS	YES	NO
AUTONOMY AND INDEPENDENCE (Mandate)	Mandate is set out in constitution or legislation		
	Mandate gives authority to promote and protect human rights		
AUTONOMY AND INDEPENDENCE (General jurisdiction)	Competence is defined in legislation		
AUTONOMY AND INDEPENDENCE (Appointment process)	Appointment is effected by official act		
	Appointment is for a specific duration, (but not too short – e.g. two years – as to potentially effect independence and effectiveness)		
	Appointment may be renewable, so long as pluralism is assured.		
	Appointment process, duration, renewability and criteria set out in legislation.		
	Appointment process supports pluralism and independence		
	○ Nominations include input from civil society		
	○ Selection process involves Parliament		
	○ Criteria for selection includes demonstrated experience in human rights		
AUTONOMY AND INDEPENDENCE (Dismissal process)	Conditions for which a member may be dismissed are set out in legislation		
	Conditions relate to serious misconduct, inappropriate conduct, conflict of interest or incapacity only		
	Decision to dismiss require approval preferably by autonomous body such as a panel of high court judges, at a minimum 2/3rds vote of Parliament		
	If Government Officials have membership in the NHRI, they have advisory capacity only		
	Institution reports directly to Parliament		
	Members have immunity for official acts		
	State funding is sufficient to allow for independent staff and separate premises		

AUTONOMY AND INDEPENDENCE	State funding is sufficient to allow for core programming in protection and promotion		
	Funding not subject to financial control which might affect independence		
	Budget drawn up by the institution		
	Budget separate from any other Department's budget		
	Institution has authority to defend budget requests directly before Parliament		
	Budget are secure		
	○ Not subject to arbitrary reduction in year for which it is approved		
	○ Not subject to arbitrary reduction from one year to the next		
AUTONOMY AND INDEPENDENCE (In examination of issues)	The institution can consider any issue within its competence on its own initiative on the proposal of its member or any petitioner		
AUTONOMY AND INDEPENDENCE (Meetings)	The institution can let the public know of opinions or recommendations, including through the media, without higher approval		
	The institution meets regularly and in plenary		
	Special meetings can be convened as necessary		
	All members are officially convened for meetings		
AUTONOMY AND INDEPENDENCE (In organisational structure)	The institution can set up working groups (which may contain non-NHRI members)		
	The institution can set up regional or local offices		

CHECKLIST: PLURALISM

PRINCIPLE	REQUIREMENTS	YES	NO
	Member composition demonstrates pluralism		
	○ Includes representatives of most social forces including NGOs, trade unions or professional associations		

PLURALISM (Membership and staff composition)	<ul style="list-style-type: none"> Includes representatives of most vulnerable groups (ethnic, religious minorities, persons with disabilities, etc.) 		
	<ul style="list-style-type: none"> Single member, with representative consultative boards or committees, or similar structural mechanisms to facilitate and ensure pluralistic engagement 		
	<ul style="list-style-type: none"> Single member 		
	Member composition demonstrates gender balance		
	Staff composition is broadly representative and gender balanced		
PLURALISM (Consultation cooperation)	The institution consults with other bodies responsible for promoting and protecting human rights		
	The institution consults with NGOs working in human rights or related fields		
	The institution carries out joint programming with NGOs working in human rights or related fields especially in awareness raising and education		

Sources:

A manual on national human rights institutions, published by Asia Pacific Forum, May 2015