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PART I

Background: history and challenges

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## 1

## Introduction, history and context

The Paris Principles were adopted in 1991. Drafted by NHRIs in existence at that time, they have subsequently been endorsed by both the Commission on Human Rights in 1992 and the UN General Assembly in 1993. They have been further recognised at both the international and regional level and are now seen as the template against which to assess an NHRI. With the inclusion in two international treaties, they have arguably moved beyond their weak status as a mere annex to a General Assembly Resolution. Compliance with the Paris Principles is determined by NHRIs and gives these institutions membership in their international and regional networks. It also allows them to participate in the UN and regional bodies, including the Human Rights Council.

## 1.1 Adoption of the Paris Principles

Part of the legitimacy of the Paris Principles and their enduring value comes from the fact that they were drafted by NHRIs themselves.<sup>1</sup> The Paris Principles were adopted at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights. This workshop was organised by the French *Commission nationale consultative des droits de l'homme*<sup>2</sup> in cooperation with the UN Centre for Human Rights (now the Office of the UN High Commissioner for

<sup>1</sup> R. Goodman and T. Pegram, "Introduction: National Human Rights Institutions, State Conformity and Social Change", in R. Goodman and T. Pegram, *National Human Rights Institutions, State Conformity and Social Change* (Cambridge University Press, 2012) 9.

<sup>2</sup> The French *Commission nationale consultative des droits de l'homme* was the first NHRI ever to be created. It was established in 1947 and was named *Commission consultative pour la codification du droit international et la définition des droits et devoirs des Etats et des Droits de l'homme*, subsequently *Commission consultative des droits de l'homme* in 1984 and finally *Commission nationale consultative des droits de l'homme* in 1989. Initially, its role was to formulate the French position during the negotiations of international human rights treaties. It only acquired competence for national issues in 1986.

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Human Rights (OHCHR)) in Paris from 7 to 9 October 1991. The then existing NHRIs from across the regions – about twenty-five in total – came to discuss, for the first time – in the presence of other actors, including governmental representatives, UN agencies, international and regional courts and NGOs having observer status – the way in which they should be established and strengthened. The workshop resulted in the drafting of the “Principles relating to the status and functioning of national institutions for the protection and promotion of human rights”, now commonly referred to as the “Paris Principles”, due to the place, Paris, France, where they were elaborated. Discussions took place on the various aspects of NHRIs, including their independence and pluralism as well as their mandate and working methods. Participants were also able to build on previous reflection on NHRIs,<sup>3</sup> including the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights, convened by the Commission on Human Rights (now Human Rights Council) in 1978.<sup>4</sup> This seminar had proposed a set of guidelines which were endorsed by the UN General Assembly<sup>5</sup> and which set out the main functions of NHRIs.<sup>6</sup> These functions were to be enshrined in the Paris Principles thirteen years later.

The Paris Principles were subsequently endorsed by the Commission on Human Rights in 1992<sup>7</sup> and the UN General Assembly in 1993.<sup>8</sup> That the Paris Principles were written by NHRIs themselves and that the UN General Assembly welcomed them and annexed them to a resolution

<sup>3</sup> In 1946, the UN Economic and Social Council (ECOSOC) invited States to establish “local human rights committees” to work with the Commission on Human Rights (now Human Rights Council). See ECOSOC Resolution 2/9, 21 June 1946. Nothing was undertaken thereafter with regard to NHRIs before the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights in 1978, save for reminding States in two ECOSOC resolutions of the possibility of creating them. See ECOSOC Resolution 772 B (XXX), 25 July 1960; ECOSOC Resolution 888 F (XXXIV), 24 July 1962.

<sup>4</sup> Seminar on National and Local Institutions for the Promotion and Protection of Human Rights, 18–29 September 1978, ST/HR/SER.A/2. On this seminar, see B. Lindsnaes and L. Lindholt, “National Human Rights Institutions: Standard-setting and Achievements”, in B. Lindsnaes, L. Lindholt and K. Yigen (eds.), *National Human Rights Institutions. Articles and Working Papers: Input into the Discussions on the Establishment and Development of the Functions of National Human Rights Institutions* (Copenhagen: The Danish Centre of Human Rights, 2000) 5–6.

<sup>5</sup> GA Resolution 33/46, 14 December 1978, A/RES/33/46.

<sup>6</sup> NHRIs were also given their official title, National Institutions for the Promotion and Protection of Human Rights.

<sup>7</sup> Commission Resolution 1992/54, 3 March 1992, E/CN.4/RES/1992/54.

<sup>8</sup> GA Resolution 48/134, 20 December 1993, A/RES/48/134.

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is rather unique as they were not drafted by the UN's own political organs. This shows that NHRIs were, and to a certain extent still are, their main advocates, and they continue their struggle in finding their place within national institutional landscapes. This is in contrast to, for instance, equality bodies, which were made compulsory by the EU. The Paris Principles stem from the willingness of the then existing institutions to find a common denominator in terms of status as well as mandate and competences for NHRIs, while recognising their differences in terms of structures and operation. The main purpose, therefore, was to determine their relationship towards the State rather than defining strict criteria regarding their structures and operation. The conclusion is that, although this context has arguably protected the Paris Principles against external influences – especially from States – as Sidoti points out, “none of them wanted her or his own institution to fall outside whatever standards were adopted”, resulting in principles that were drafted “so widely and so flexibly” and “so hurriedly”.<sup>9</sup> Another explanation is that NHRIs probably never thought that the Paris Principles would be so influential in the years to come. There was no accreditation procedure at that stage, a process which was to be created ten years later, and there were only twenty-five NHRIs present in the First International Workshop. The context has dramatically changed since then, and, considering the importance acquired by the Paris Principles in the meanwhile, the question is whether they are still suited for the use that is made of them today.

The Paris Principles regulate the role, composition and operation of NHRIs. They are divided into the following sections: A. Competence and responsibilities; B. Composition and guarantees of independence and pluralism; C. Methods of operation; and D. Principles concerning the status of commissions with quasi-jurisdictional competence (the latter being only optional). They enumerate the mandate and working methods of NHRIs while stressing the importance of these institutions being independent and pluralistic.

Importantly, the Paris Principles do not provide a standard model for the creation of NHRIs but give States leeway in choosing the approach that is most suited for them taking into account their characteristics. This is confirmed by the UN General Assembly in its resolution endorsing these Principles, which emphasise that a State establishing an NHRI has “the

<sup>9</sup> C. Sidoti, “National Human Rights Institutions and the International Human Rights System”, in Goodman and Pegram (eds.) 96.

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right . . . to choose the framework that is best suited to its particular needs at the national level".<sup>10</sup> As a result, NHRIs can vary significantly in role, composition and operation according to States' existing human rights framework.

## 1.2 Recognition at both the international and regional level

The Paris Principles are not considered to be a legally binding instrument. They are a set of criteria established by the NHRIs that existed in 1991 and that were subsequently endorsed by the Commission on Human Rights in 1992 and the UN General Assembly in 1993. Yet, despite their soft law status, the Paris Principles have attracted widespread attention from and commitment by UN and regional organisations, States and civil society and have regularly been cited in their recommendations and declarations encouraging the establishment and strengthening of NHRIs. They have, moreover, become the criteria for national bodies with competences regarding specific human rights in two international human rights treaties.

### 1.2.1 *International recognition and endorsement*

Two years after the Paris Principles were adopted by NHRIs, the World Conference on Human Rights in Vienna in 1993 affirmed in its Declaration and Programme of Action "the important and constructive role played by [NHRIs], in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights" and encouraged "the establishment and strengthening of [NHRIs], having regard to the [Paris Principles] and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level".<sup>11</sup>

In addition to creating a Special Advisor on NHRIs, the Commission on Human Rights subsequently encouraged States in its annual resolutions

<sup>10</sup> GA Resolution 48/134, December 1993, A/RES/48/134, para. 12.

<sup>11</sup> Vienna Declaration and Programme of Action, 25 June 1993, A/Conf.157/23, Part I, para. 36. It also recommended the "the strengthening of [UN] activities and programmes to meet requests for assistance by States which want to establish or strengthen their [NHRIs]". See Vienna Declaration and Programme of Action, Part II, para. 84.

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to establish and strengthen NHRIs according to the Paris Principles.<sup>12</sup> More recently, the UN General Assembly has adopted annual resolutions on NHRIs emphasising compliance with these Principles. It has reaffirmed “the importance of the development of effective, independent and pluralistic [NHRIs] in accordance with the [Paris Principles]”,<sup>13</sup> encouraging them “to operate, as appropriate, in accordance with the [Paris Principles]”<sup>14</sup> and welcomed “the growing number of States that have accepted recommendations to establish [NHRIs] compliant with the Paris Principles”.<sup>15</sup> The Human Rights Council followed by adopting resolutions with more or less the same wording.<sup>16</sup> States are frequently reminded of the need to establish or strengthen NHRIs according to the Paris Principles in the Human Rights Council’s recommendations during the Universal Periodic Review and in the national reports following country visits of the Special Procedures mandate holders.

There has been regular and ongoing engagement by the UN in supporting NHRIs through standard setting, capacity building and network facilitating.<sup>17</sup> This has included a Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, which provides recommendations on the implementation of the Paris Principles;<sup>18</sup> the establishment of a National Institutions Unit (now National Institutions and Regional Mechanisms Section (NIRMS)) responsible for the establishment and strengthening of NHRIs

<sup>12</sup> Commission Resolution 2005/74, 20 April 2005, E/CN.4/RES/2005/74; Commission Resolution 2004/75, 21 April 2004, E/CN.4/RES/2004/75; Commission Resolution 2003/76, 25 April 2003, E/CN.4/RES/2003/76; Commission Resolution 2002/83, 26 April 2002, E/CN.4/RES/2002/83; Commission Resolution 2001/80, 25 April 2001, E/CN.4/RES/2001/80; Commission Resolution 2000/76, 26 April 2000, E/CN.4/RES/2000/76; Commission Resolution 1999/72, 28 April 1999, E/CN.4/RES/1999/72; Commission Resolution 1998/55, 17 April 1998, E/CN.4/RES/1998/55; Commission Resolution 1992/54, 3 March 1992, E/CN.4/RES/1992/54.

<sup>13</sup> GA Resolution 63/172, 20 March 2009, A/RES/63/172, para. 2; GA Resolution 64/161, 12 March 2010, A/RES/64/161, para. 2; GA Resolution 66/169, 11 April 2012, A/RES/66/169, para. 2.

<sup>14</sup> GA Resolution 65/207, 28 March 2011, A/RES/65/207, para. 6(a).

<sup>15</sup> GA Resolution 66/169, 11 April 2012, A/RES/66/169, para. 7.

<sup>16</sup> HRC Resolution 17/9, 6 July 2011, A/HRC/RES/17/9; HRC Resolution 20/24, 16 July 2012, A/HRC/RES/20/24.

<sup>17</sup> S. Cardenas, “Emerging Global Actors: The United Nations and National Human Rights Institutions”, (2003) 9 *Global Governance* 23, 27.

<sup>18</sup> OHCHR, Professional Training Series No. 4 (Rev. 1), *National Human Rights Institutions. A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (New York/Geneva: UN, 1995).

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according to the Paris Principles; and regular reports by the OHCHR for the attention of the UN General Assembly on behalf of the UN Secretary General.

Parallel to these developments, UN treaty bodies have continued to encourage States worldwide to establish or strengthen NHRIs according to the Paris Principles through the concluding observations to State reports and through a number of them adopting general comments specifically on NHRIs. The Committee on the Elimination of Racial Discrimination was the first to do so – even before the Paris Principles were endorsed by the UN General Assembly and before the World Conference on Human Rights affirmed the important and constructive role played by these institutions – recommending that States establish such institutions “taking into account . . . the [Paris Principles]”.<sup>19</sup> The Committee on Economic, Social and Cultural Rights also affirmed that NHRIs “have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights” and asked States “to ensure that the mandates accorded to all [NHRIs] include appropriate attention to economic, social and cultural rights”.<sup>20</sup> Recognising that “NHRIs should be established in compliance with the [Paris Principles]”, the Committee on the Rights of the Child also considered that “that every State needs an independent [NHRI] with responsibility for promoting and protecting children’s rights”.<sup>21</sup>

The Paris Principles have now also found their way into two international human rights treaties: (1) the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and (2) the Convention on the Rights of Persons with Disabilities (CRPD). Both refer to the Paris Principles when requiring that States create national bodies with competences regarding the rights protected in these treaties. On the one hand, OPCAT created a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) to visit places of detention

<sup>19</sup> Committee on the Elimination of Racial Discrimination, General Recommendation No. 17, Establishment of national institutions to facilitate implementation of the Convention, March 1993, A/48/18, 25, para. 1.

<sup>20</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 10, The role of national human rights institutions in the protection of economic, social and cultural rights, 10 December 1998, HRI/GEN/Rev. 7, paras. 3 and 4.

<sup>21</sup> See Committee on the Rights of the Child, General Comment No. 2, The role of independent national human rights institutions in the promotion and protection of the rights of the child, 15 November 2002, CRC/GC/2002/2, paras. 4 and 7.



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and make recommendations to State authorities on the situation of persons deprived of their liberty and require that States establish or designate national preventive mechanisms having the same role “with due consideration for the [Paris Principles]”. On the other hand, the CRPD requires that States establish or designate “a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention . . . [taking] into account [the Paris Principles]”.<sup>22</sup> Despite their weak language – using the terms “with due consideration” and “taking into account” – OPCAT and the CRPD demonstrate that the Paris Principles have now been given formal status in two international human rights treaties. OPCAT and the CRPD have thus partially anchored the Paris Principles and, indirectly NHRIs, in international human rights law.<sup>23</sup>

At the international level, NHRIs created the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The ICC is a representative body composed of four regional groups: Africa, Europe, the Americas and Asia-Pacific. It is an association with its own statutes and is recognised under Swiss law.<sup>24</sup> The ICC is headed by a chairperson and run by a bureau comprising sixteen members.<sup>25</sup> Its members form together the General Meeting, which meets at least once a year.<sup>26</sup> The ICC promotes the establishment and strengthening of NHRIs according to the Paris Principles and facilitates their cooperation worldwide and their interaction with UN human rights mechanisms. It gradually acquired an international position by increasing its engagement in policymaking with regard to NHRIs.<sup>27</sup> Since its inception, the ICC has considered that the Paris Principles are the criteria that define which national bodies are to be included or excluded and has undertaken to verify that its members comply with these

<sup>22</sup> Article 18 (4), OPCAT.

<sup>23</sup> G. de Beco, “Article 33(2) of the UN Convention on the Rights of Persons with Disabilities. Another Role for National Human Rights Institutions?”, (2011) 29 (1) *Netherlands Quarterly of Human Rights* 84, 103.

<sup>24</sup> Statute of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 30 July 2008, amended 21 October 2008, amended 24 March 2009 (ICC Statute).

<sup>25</sup> Article 43, ICC Statute. <sup>26</sup> Article 36, ICC Statute.

<sup>27</sup> See A.-M. Garrido and B. Kofod Olson, “Coordination of the Work of NHRIs – From Liaison to Joint Achievements”, in R.F. Jørgensen and K. Slavensky (eds.), *Implementing Human Rights: Essays in Honour of Morten Kjaerum* (Copenhagen: Danish Institute for Human Rights, 2007) 190.

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Principles.<sup>28</sup> This has now culminated in an accreditation procedure which categorises NHRIs according to their “compliance” with the Paris Principles. The adoption of General Observations by the ICC’s Sub-Committee on Accreditation adds further depth and clarity to the content of the Paris Principles and is also used in conjunction with them in the tool to assess compliance, as will be explained in the next section.<sup>29</sup> The ICC also organises biannual international conferences, which include thematic sessions and to which the NIRMS of the OHCHR provides secretariat support.

NHRIs also form regional networks which have their corresponding regional coordinating committees. Membership is likewise defined through compliance with the Paris Principles.

In the Asia-Pacific area, the Asia-Pacific Forum, which is probably the most developed regional network, provides a platform to exchange information and helps States to create NHRIs. It also has an Advisory Council of Jurists which issues opinions on human rights issues.<sup>30</sup>

In Europe, the European Group of NHRIs allows NHRIs to exchange experiences.<sup>31</sup> In addition, the Council of Europe has encouraged Member States to establish and strengthen NHRIs according to the Paris Principles. In 1997, its Committee of Ministers adopted Recommendation No. R(97) 14 on the Establishment of Independent National Institutions for the Promotion and Protection of Human Rights which proposed that Member States “consider, taking account of the specific requirements of each member state, the possibility of establishing effective [NHRIs]”, drawing, “as appropriate, on the experience acquired by existing national human rights commissions and other [NHRIs], having regard to the [Paris Principles]”.<sup>32</sup> It also adopted Resolution (97) 11 on Cooperation between National Human Rights Institutions of Member States and Between Them

<sup>28</sup> M. Brodie, “Progressing Norm Socialisation: Why Membership Matters. The Impact of the Accreditation Process of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights”, (2011) 80 *Nordic Journal of International Law* 143, 153–54.

<sup>29</sup> See Annex II for the content of the General Observations.

<sup>30</sup> See B. Burdekin, *National Human Rights Institutions in the Asia-Pacific Region* (Leiden/Boston: Martinus Nijhoff, 2007).

<sup>31</sup> See G. de Beco, “Networks of European National Human Rights Institutions”, (2008) 14 (6) *European Law Journal* 860.

<sup>32</sup> Council of Europe, Recommendation No. R(97) 14 of the Committee of Ministers to Member States on the Establishment of Independent National Institutions for the Promotion and Protection of Human Rights, 30 September 1997, sections (a) and (b).