

The Paris Principles: Ten Years On

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FEBRUARY 2004

ASIA PACIFIC HUMAN RIGHTS NETWORK

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National human rights institutions represent the “new actors on the human rights landscape”, empowered with promoting and protecting universal human rights within the domestic framework¹ and assuming prominence with the unanimous adoption by the UN General Assembly of the ‘Principles Relating to the Status of National Institutions’ (“Paris Principles”) on 20 December 1993.² Despite the weaknesses inherent in the minimum standards promulgated by the Paris Principles, which place limited responsibilities on national institutions in certain areas, their implementation remains significant in gauging the legitimacy and credibility of national institutions. This is particularly the case in the Asia Pacific region, which does not have an established inter-governmental regional mechanism for the promotion and protection of human rights and is more dependent on the transparent and independent functioning of national human rights institutions. On the tenth anniversary of the Paris Principles, the need to align the disparate working methods of national institutions within Asia is imperative. The Asia Pacific Forum on National Human Rights Institutions, as an organisation that places considerable emphasis on the value of the Paris Principles, is naturally the best placed medium through which informed discussion may take place.

The Paris Principles require, at a minimum, that the composition of national institutions be pluralistic, and that its methods of operation include interaction with NGOs, academic and legal experts, and other interested parties (the Principles unfortunately do not pay sufficient attention to the danger of politically motivated appointments). Responsibilities include the submission of recommendations and proposals to the relevant bodies on any legislative provisions, investigations of human rights violations, ensuring the harmonisation of national legislation with international law, encouraging the ratification of international human rights treaties, assisting in human rights education, and raising public awareness, to name a select few.

Since the adoption of the Paris Principles, an increasing number of governments have established national human rights institutions, on the basis that the Paris Principles

¹ Vijayashri Sripati, *India's National Human Rights Commission*, in BIRGIT LINDSNAES, LONE LINDHOLT, KRISTINE YIGEN (EDS.), NATIONAL HUMAN RIGHTS INSTITUTIONS: ARTICLES AND WORKING PAPERS - INPUT TO THE DISCUSSIONS ON THE ESTABLISHMENT AND DEVELOPMENT OF THE FUNCTIONS OF NATIONAL HUMAN RIGHTS INSTITUTIONS 151 (2001).

² Commission on Human Rights resolution 1992/54 of 3 March 1992, annex (Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap II, sect. A); General Assembly resolution 48/134 of 20 December 1993, annex.

constitute high standards of practice. However, these Principles only form the *basis* upon which a national human rights institution should operate. Its provisions are by no means exhaustive. Critical evaluations of national institutions by NGOs in the last decade have uncovered the inadequacies of the institutions and, by implication, the principles that govern them, calling for the need for comprehensive re-examination. These lacunae within the Paris Principles often facilitate governments in utilising national institutions as administrative machinery in order to scuttle international scrutiny, a policy that is antithetical to the very purpose of national human rights institutions. For example, one of the responsibilities enumerated is: “To promote and ensure the harmonisation of national legislation, regulations and practices with international human rights instruments to which the State is a party, and their effective implementation”. This restrictive mandate allows certain States that have not ratified legal instruments such as the International Covenant on Civil and Political Rights (ICCPR) to be absolved of responsibility in protecting those fundamental human rights therein. The Paris Principles neglects to stipulate that the corpus of international human rights law be considered.

Likewise, the Paris Principles are unclear regarding the “quasi-jurisdictional competence” of institutions. Certain institutions, such as the National Human Rights Commission of India, have been invested with powers similar to that of a civil court, whereas others such as the Danish Centre for Human Rights are little more than policy institutes and are not mandated to intervene in individual cases. Such judicial competencies as the Indian NHRC’s are central to ensuring the effective protection of human rights. Both of the models above, however, conform to the broad scope of national institutions under the Paris Principles.

Moreover, the Paris Principles do not contain any non-derogable standards. Some institutions, according to their statute/ordinance, are barred from inquiring into abuses by armed forces. The Paris Principles are silent on these issues. Acknowledgement of such deficiencies has increased in recent times, precipitating a movement that seeks the drafting of more stringent principles. Nonetheless, even rudimentary provisions of the existing principles are systemically contravened. Thus the challenge for national institutions is to, firstly, ensure its adoption, and, secondly, to set examples of best practice in order further strengthen the credibility of national and state institutions beyond the limitations of the Paris Principles.

Consequently, in celebration of the tenth anniversary of the Paris Principles, this is an opportune time to for the Asia Pacific Forum to assess their significance in the functioning of Asian national human rights institutions. Among the issues that may be addressed include:

- establishing a clear mandate for national institutions, communicating their role and mission through engagement with the media, NGOs and other interested parties.
- stressing the public accountability of national institutions.

- detailing the composition of national institutions, addressing the need for transparent appointments that ensure pluralism and avoid politically motivated appointments.
- assessing the performance and methods employed by national institutions in meeting their responsibilities under the Paris Principles, as listed above.
- further to the Paris Principles, assessing national institutions' interaction with the judiciary, judicial enforcement mechanisms, and access to the courts in facilitating the transparent administration of justice.
- working to establish the freedom of national institutions to pursue on their own initiative any investigations concerning human rights violations, without interference by State authorities and without immunity granted to State bodies such as the military.
- Drafting procedures for dealing with complaints and establishing advisory and/or expert Committees to provide legal advice, amongst other public services.

These constitute only a select proportion of topics that may be raised and are worthy of comparative analysis. It is important that all discussions and recommendations undertaken by the APF include contributions from NGOs, in accordance with the Paris Principles, which emphasise the significant contribution of NGOs to the role of NHRIs. Likewise, it is important that all other civil society interests be adequately represented, and recommendations considered. Such a discussion could be very constructive, empowering the APF to establish a basis for a centralised and uniform policy binding on all national institutions, plus a system of assessment for effective implementation of the Paris Principles and subsequent consensus recommendations. This would strengthen the protection and promotion of human rights in the Asia Pacific region and would allow Asian national human rights institutions to take the lead in exhibiting methods of international best practice.