CHAPTER 2: MANDATES POWERS AND FUNCTIONS

2.1. MANDATES:

- “A national institution shall be vested with competence to promote and protect human rights.
- A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.”

(Paris Principles, Articles 1 and 2)

There was general agreement among practitioners meeting in Paris in 1991 that national human rights institutions should be given a mandate both to promote and to protect human rights. As we have seen, this agreement was reflected in subsequent United Nations resolutions and in the reaffirmation by the 1993 World Conference that all human rights are equally important – indeed are “universal, indivisible, interdependent, and interrelated”.22

There was also general agreement in Paris that NHRIs should be accorded a broad mandate. Behind this formulation lay a well-founded concern that a number of governments were preparing to establish a “Children’s Commission” or similar body – to deflect international pressure – but would not create any mechanism to protect women’s rights, minorities, indigenous peoples, people with disabilities and other vulnerable groups. We were also concerned that many countries, including several in the Asia-Pacific region, had constitutionally entrenched a certain selection of human rights – with important omissions.23

---

23 These concerns were also reflected subsequently in Amnesty International’s 2001 “Recommendations on National Human Rights Institutions”, which provide that:

“NHRIs should enjoy the broadest possible mandate to address human rights concerns as set out in international human rights law and standards. The mandate should not be defined solely in terms of those rights that are specifically provided for in the country’s constitution – particularly as some constitutions do not contain key rights such as the right to life. Rather NHRIs should take as their frame of reference the definitions of human rights as set out in international human rights instruments and standards, whether or not the state has ratified the relevant treaties. The mandate
CHAPTER 2

While we secured agreement on both these important principles, and while governments subsequently endorsed them, we have been less successful in ensuring their incorporation in the legislative mandates of NHRIs in the region – as demonstrated in Tables A, B and C set out below.

The third important element stipulated in Article 2 of the Paris Principles was that a national institution’s mandate must be clearly defined. There are many reasons for this. (Several are addressed in more detail in subsequent sections concerning the relationship between NHRIs, the courts and other institutions). It is essential that Commissioners and staff understand the full potential – and limitations – of their charter. It is also important that members of the public can be clearly informed of the institution’s capacity to assist them. These issues concern not only the range of rights included in the institution’s mandate, but also whether its charter extends to the private as well as the public sector.24

Stipulating that the mandate must be prescribed “. . . in a constitutional or legislative text” was an attempt to avoid the possibility that some governments would establish a national institution by presidential decree (a concern subsequently borne out by events in Indonesia)25 – an unsatisfactory strategy for many reasons, including the institution’s vulnerability to being abolished by a subsequent decree if its activities offended the Executive.26

should include the power to protect and promote economic, social and cultural rights, as well as civil and political rights.”

These recommendations, which were prepared in consultation with the author during his term as Special Advisor on National Institutions to the United Nations High Commissioner for Human Rights, are set out in full in Appendix II.

24 While the various international human rights treaties impose legal obligations primarily on States, the Universal Declaration of Human Rights (UDHR) clearly envisages that protecting and promoting human rights is the responsibility of everyone in society (Article 29(1)) This is stipulated in more detail in the ICCPR and ICESCR.

25 The Indonesian Human Rights Commission, KomnasHAM, was first established in 1993, by Presidential decree. This has since been replaced by legislation (see Table A).