



Fax: (41-22) 917 90 18
Telegrams: UNATIONS, GENEVE
Telex: 41 29 62
Telephone: (41-22) 917 1234
Internet www.unhchr.ch
E-mail: vstefanov@ohchr.org



Address:
Palais des Nations
CH-1211 GENEVE 10

REFERENCE: 23_11

BEST PRACTICES ON THE TRANSFORMATION AND/OR MERGER OF HUMAN RIGHTS INSTITUTIONS.

I. Introduction.

1. OHCHR has closely followed and provided advice regarding the merge of national human rights institutions (NHRIs) across Europe. OHCHR has provided comments on legislation, and has drawn the attention of governments, NHRIs and other stakeholders involved in these processes to the importance of ensuring genuine dialogue on these reforms through inclusive and participatory consultations.

II. Best Practices.

➤ Open and inclusive consultations.

2. The efforts of reforming the human rights infrastructure (whether by means of merging existing bodies and/or setting up new ones) are a complex endeavour that needs to be carried out through open and inclusive consultations among all relevant stakeholders, including the concerned national institutions, government officials, members of Parliaments, civil society organizations, trade unions, civil servants, academia, media and regional and international organisations. Involving stakeholders representing a diversity of interests will ensure that pluralism is built into the process and will enhance the public legitimacy of the new institution. Likewise, it will help to lay the foundation for further cooperation arrangements and to avoid possible overlapping mandates.
3. Among all these actors, the NHRIs themselves should be given a privileged place. In countries, such as Croatia and The Netherlands, the NHRIs (namely, the Ombudsman of the Republic of Croatia and the Equal Treatment Commission of the Netherlands) have been a key driving force of the processes of institutional merging/transformation. They have played a prominent role in facilitating consultations and dialogues with other national and international stakeholders.

The Netherlands

Several institutions and organizations participated in the consultations carried out by the Government on the drafting of the Act on The Netherlands Institute for Human Rights.¹

All these participants had the opportunity to comment in writing on the draft Act and the majority attended a subsequent meeting organised by the Ministry of Justice to discuss the draft legislation. A 4-week online consultation procedure to comment on the draft law was opened in order to ensure a broader number of stakeholders commenting on the draft law.

Prior to the submission of their respective comments on the draft law, some stakeholders carried out their own consultations processes among their own constituencies and partners. For instance, the comments submitted by the Netherlands Institute of Human Rights included the inputs from experts from 6 different universities across the country. Contributions of students at law universities were also acknowledged and considered.

The explanatory memorandum of the Netherlands Institute for Human Rights Act provides an account of the consultation process, the manner it was conducted, the comments made by each of the above-mentioned organizations, as well as the response/feedback provided by the Government. The explanatory memorandum can be accessed on: <http://www.naarenmensenrechteninstituut.nl/ul/cms/fck-uploaded/ExplanatoryMemorandum.pdf>

The consultation process in The Netherlands also involved OHCHR, which, upon the consecutive requests from the Equal Treatment Commission and the Ministry of Justice, provided comments on various versions of the draft law of the new institution.

➤ Adequate time-frame.

4. In order to ensure meaningful consultations, it is recommended to ensure adequate time and space for stakeholders' engagement (i.e. documents should be reviewed, approved and sent well before the scheduled consultation; participants should be given enough time to prepare, etc). Short time frames are discouraged as they limit the national dialogue that is necessary to ensure the new institution's legitimacy. In some countries, face-to-face consultations have been strengthened by online consultation procedures, which allow a broader outreach to stakeholders.

The Netherlands

The decision to incorporate the Equal Treatment Commission in a new broader mandated national human rights institution was taken by the Government of The Netherlands after several years of discussion. The drafting of the new legislation, which was eventually adopted in November 2011 started in 2009, when the Dutch Government decided to start the legislative process to establish a Paris Principles-compliant NHRI.

¹ Namely, the association of Municipalities, governing councils, advisory boards on supervision of the administrative burden, council for the judiciary, data protection agency, national ombudsman, the Equal Treatment Commission, the Netherlands Institute of Human Rights, the Dutch Human Rights Consultative Body (a network of civil society organizations), the human rights education platform, E-Quality, the non-profit organization Movisie, the Dutch National Association against Discrimination and The Hague Court of Appeal.

➤ Working Groups

5. The establishment of advisory working groups aimed at accompanying the merging process is strongly encouraged. The composition of these working groups should reflect the plurality of voices within a given country, as they can be a key instrument to ensure genuine dialogue and meaningful consultations. National and international experts (including UN/OHCHR representatives) could be invited to take part in these groups.
6. In most cases, the process of institutional transformation has had a clear focus on the review or drafting of relevant legislation. In this regard, the working groups have a key role to play in facilitating broad consultations aimed at suggesting legal amendments. The role of the parliament is key to ensuring open dialogues and the drafting of a legal framework in compliance with the Paris Principles.

Croatia

In the case of the Croatian process aimed at merging the “A” status NHRI, the People’s Ombudsman, with the Human Rights Center, the Government established a working group where the concerned institutions, as well as independent experts and leading civil society organizations discussed the draft law of the new institution.

7. These working groups (also called review teams) are normally tasked to produce a mapping report on the state of the existing national institutions. Apart from assessing current challenges and strengths, these reports have included projections (analysis) on the possible merging of existing institutions, including recommendations on the legal, organisational, financial and economic consequences of the merger.
8. The methodology to prepare these reports has included public consultations; visits to the institutions and organisations, interviews, groups-focused discussions, as well as desk studies of relevant materials, such as legislation, reports and the institutions’ web sites.

Within the framework of the United Nations Development Programme (UNDP), the Croatian People’s Ombudsman and the Human Rights Center joint project on “Capacity building of the Croatian People’s Ombudsman Office”, two expert reports related to the rationalization of the Croatian human rights protection system were prepared in 2010: “Rationalization of the Croatian Human Rights Protection System” and “Projection of the possible merger of the People’s Ombudsman Office and Human Rights Center.”

9. In some cases, the working group has been tasked to encompass the whole national system for the promotion and protection of human rights (including the judiciary, the national assembly, any ombudsman institutions, the specialised agencies, civil society organizations, etc). In some countries, these processes are taking place in the context of initiatives of a larger scope, such as the reform of the entire justice sector, the rationalization of the national human rights systems, Constitutional reform, etc.

The Netherlands

In the case of The Netherlands, the process recognised the existence of “dozens of organisations concerned with human rights in the Netherlands,” among which the Ombudsman, the Equal Treatment Commission, the Data Protection agency, civil society organisations and academic centres. The specific work and perspectives of all these institutions were considered in the preparation of the analysis of how the duties of the new institution should relate to those other bodies.

➤ Independence and appointment process for members of the new institution.

10. The Paris Principles and the General Observations of the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) should be used as guidelines based on which the working group’s report should be structured. This is particularly relevant when “A”-status NHRIs are being merged with other national bodies. In no case the recommendations of the working group should imply a step backwards on the compliance of the existing NHRI with the Paris Principles and the General Observations of the SCA.
11. When reviewing the IHRC in 2008, the SCA drew the attention on the “undue interference from the Government” and the need for the IHRC to be able to “independently conduct its affairs”, including by “having a direct accountability to Parliament.” In this regard, the SCA pointed out that the IHRC’s financial grant was determined by the Ministers for Justice and Finance. It also referred to the processes for appointing and dismissing Commissioners. Regarding the appointment of Commissioners, the SCA noted that this process “ought to be formalized in the IHRC’s enabling legislation to guarantee on going transparency.” As for the grounds of dismissal of a Commissioner, the SCA recommended that they “ought to be more clearly defined.
12. The SCA has a key role to play when it comes to merging institutions that are accredited before the ICC. It is suggested to keep the Sub-Committee’s members constantly informed of any decision that may affect the status the NHRI had at the time it was granted the ICC’ accreditation. The SCA could also be asked to advising on specific questions related to the merging process, such as the strategy for the new institution to seek accreditation. Likewise, It is suggested to articulate the working group’s recommendations with the relevant recommendations from the international human rights mechanisms (Universal Periodic Review, Treaty Bodies and Special Procedures).
13. Being independent is the attribute that most clearly underpins a NHRI’s legitimacy, credibility and effectiveness. Independence itself is a fundamental pillar of the Paris Principles. These Principles emphasise the linkage between independence and the process of appointment of the institution’s members.² In this regard, the SCA has pointed out the critical importance of such a process “in ensuring the pluralism and independence of the national institution.”³

² Paris Principles, Composition and guarantees of independence and pluralism, 3.

³ SCA General Observation 2.2. “Selection and appointment of the governing body.”

14. Out of the 33 European NHRIs accredited by the ICC as of August 2011, 19 of them (that is 57 %) have received recommendations related to the process of selection and appointment of their members. The following are the main concerns expressed by the SCA in this regard: lack of broad and transparent process of selection and appointment, lack of involvement of civil society organizations, direct involvement of the Government in the appointment process, and lack of formalisation of the selection process on the NHRI enabling legislation.⁴
15. The setting up of a new institution offers a unique opportunity to strengthening the institution's independence, specifically regarding the selection and appointment process of its members. The appointment process is one of the most important ways to guarantee the NHRI's independence. It should be noted that in order to be successful, the establishment of a NHRI needs to enjoy public support and credibility. This can be achieved when the members of the institution are appointed as the result of a consultative, inclusive and transparent process, informing and involving relevant constituencies in the country (especially civil society organizations).

Direct appointment by the executive branch of government is undesirable. Processes should be open and transparent. Appropriate models of appointment include: nomination by civil society organisations, appointment by Parliament and appointment by another autonomous institution (i.e. judicial service commission). In theory, appointment by Parliament distances the process from the government of the day. An advantage is that the legislature is likely to have regard for the overall composition and balance of a multi-member institution. The body responsible, such as a parliamentary committee, may receive nominations from civil society organisations, and nominees can be subject to a public interview process.⁵

Norway

In the document prepared by the Norwegian Ministry of Foreign Affairs' team for the review of the existing National Institution,⁶ the Review Team recommends that “a new type of institution be established in order to achieve a fully Paris Principle compliant National Institution that is able to promote and protect human rights effectively in Norway. **It proposes that a Norwegian Human Rights Commission with three members is established by the Parliament (Stortinget)**, and that the Commission is vested with the mandate to: Protect and promote human rights; Protect and promote indigenous peoples and minority rights; Being able to assume national monitoring tasks under international conventions.”

The Review Team elaborates on the appointment of commissioners and make specific recommendations in this regard:

“The Commission should be composed of a Chief Commissioner and two commissioners. The three Commissioners should have outstanding legal or other skills in human rights and experience from international and/or national work in the human rights field. **Together, the Commissioners should reflect the pluralism of Norwegian society.** Each Commissioner should be vested with a specific thematic mandate that reflects current human rights issues and challenges in the Norwegian society. **In line with its independence the Commission should have the power to make its own decisions on the division of tasks and issues.** The Chief

⁴ The ICC-accredited NHRIs that have received recommendations related to the appointment process are as follows: Albania, Azerbaijan, Bosnia and Herzegovina, France, Great Britain, Hungary, Ireland, Switzerland, Romania, Sweden, Slovenia, The Netherlands, Moldova, Belgium, Austria, Denmark, Poland, Ukraine and Russia.

⁵ OHCHR – International Council on Human Rights Policy, Assessing the Effectiveness of National Human Rights Institutions, p. 14.

⁶ Review of the Norwegian Centre for Human Rights in its Capacity as Norway's National Human Rights Institution, Oslo, March 2011.

Commissioner should hold the administrative responsibility of the Commission and the secretariat.”

“The Review Team suggests that one of the Commissioners should be appointed with the specific mandate to protect and promote the human rights of the Sami population and national minorities. The Commissioner’s skills and experience in the field of indigenous and minority rights, as well as competence on international structures supporting these rights would be of paramount importance for the effectiveness of the commission in this field.”

“The Commission should be established by law and ensured full independence from Parliament, Government and public authorities. The Commissioners should be appointed by Parliament and hold office for a period of time not exceeding four years, but with the possibility for reappointment for the same office for another four years. The Commissioners may be relieved from office upon personal request to Parliament, but cannot be removed from office by Parliament during the period of time for which they have been appointed.”

The Commissioner on Sami and minority rights should be appointed according to a proposal from the *Sameting* according to similar criteria.”

III. Relevant recommendations from the Sub-Committee on Accreditation

Hungary

16. While reviewing the Parliamentary Commissioner for Civil Rights (PCCR) of Hungary in May 2011, the SCA noted that a new Constitution of Hungary has been passed by Parliament and will come into force on 1st January 2012. The new Constitution will restructure the Ombudsmen institutions for Civil Rights, Future Generations, Data Protection and Freedom of Information, and the Rights of National and Ethnic Minorities into a single Ombudsman for Fundamental Rights. The legislation enabling this restructuring is to follow. The SCA further noted the assurances of the Ombudsman for Civil and Political Rights that this will strengthen the capacity and independence of the institution.
17. The SCA recommended that the PCCR advocate to ensuring that the founding legislation of the Ombudsman for Fundamental Rights is compliant with the Paris Principles, and encouraged the PCCR to submit an application for re-accreditation following Parliamentary approval of the new legislation. The SCA encouraged the PCCR to seek advice and assistance from OHCHR and the European Coordinating Committee of NHRIs.

Norway

18. In the recent review (in May 2011) by the SCA of the Norwegian Centre for Human Rights (NCHR), the importance of “inclusive and consultative process to ensure broad support”, when it comes to the establishment of new NHRI was highlighted. The SCA also drew the attention that such a process “should be initiated by the Government” and “should include the NHRI, civil society groups and other stakeholders”.
19. Further on, the SCA recommended that “without delay and in close consultation with the NCHR, the Norwegian Government should develop a strategy for the interim period with clear commitments to uphold as a minimum, the current level of NCHR work until a new NHRI has been established. That portion of the existing budget earmarked for the NHRI should go directly to NHRI work. In the interim period, the NCHR should make every effort to continue the NHRI work it undertakes particularly in relation to conducting human rights monitoring, documentation and advocacy, and to enhance its current knowledge base, work methods, and independent functioning” (Report of the Sub-Committee on Accreditation, May 2011).

20. The full engagement of the concerned institutions in the merging process is strongly encouraged, particularly when it comes to NHRI accredited with the “A” status by the ICC, such as the Irish Human Rights Commission (IHRC).

December 2011