

PROTECTING AND PROMOTING HUMAN RIGHTS IN NORWAY

Review of the Norwegian Centre for Human Rights in its Capacity as Norway's National Human Rights Institution

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SUMMARY

The Norwegian Centre for Human Rights (NCHR), which is a multidisciplinary research centre at the Faculty of Law, University of Oslo, was granted status as Norway's National Institution for Human Rights by a Royal Decree in 2001. The Centre has been accredited with A-status according to the standards of the International Coordinating Committee of the global network of National Institutions for Human Rights (ICC) since 2006. This indicates that the ICC at the time found NCHR to be in full compliance with the 1991 Principles relating to the Status of National Institutions (the so-called Paris Principles).

The Norwegian National Institution is due for reaccreditation in 2011. In light of the upcoming reaccreditation process the NCHR requested the Norwegian Government for a review of its work, organisational structure and resource base in its role as national human rights institution of Norway. The Norwegian Ministry of Foreign Affairs responded positively and commissioned a three member team, assisted by a secretary, to conduct the review. In conducting its tasks, the Review Team has been assisted by NCHR in numerous ways.

The *Terms of Reference* of the review were developed by the Ministry of Foreign Affairs in consultation with NCHR. Input had been received from various stakeholders including the UN Office of the High Commissioner on Human Rights (OHCHR), the ICC Sub-Committee on Accreditation, the Advisory Board of the National Institution (composed of various civil society actors, the Sami Parliament and Ombud institutions) and the NCHR's Board.¹

The Terms of Reference requested the review in particular to focus on the background for establishing NCHR as Norway's National Institution, NCHR's interpretation of its National Institution mandate and reasonable expectations from stakeholders, the multi-faceted challenge of a university institution having the role of National Institution, and NCHR's observations on performance to date.

The Review Team should discuss compatibility of the 2001 Royal Decree with the Paris Principles and ICC Guidelines for Accreditation and Re-Accreditation, whether adjustments in the mandate are needed, as well as documenting NCHR's organisation and activities in its role as Norway's National Institution. Furthermore the Review Team should explore alternative organisational models for a strengthened National Institution, and provide recommendations that will increase the likelihood of renewed A-status accreditation. In doing so, it should take into account the increasingly rigorous accreditation process by the ICC Sub-Committee on Accreditation (ICC SCA).

In fulfilling its mandate, the Review Team conducted well over 50 interviews and meetings with various stakeholders, including with representatives of the UN Office of the High

¹ The Terms of Reference is attached to this report.

Commissioner on Human Rights (OHCHR), the ICC Sub-Committee on Accreditation, the Advisory Committee (or Council) of the National Institution, NCHR staff and members of the NCHR Board, and with representatives of Norwegian institutions and organisations. In cooperation with NCHR, the team arranged an open meeting 11 January 2011 to include as many actors and individuals as possible in the process. Stakeholders were also invited to submit viewpoints in writing.

In addition, The Review Team consulted and analysed a large number of NCHR documents related to its role as National Institution, as well as relevant international documents. The team shared its draft report with renowned international experts in order to have their comments.

In order to provide clear overview of the results of the review process, the next section provides an overview of the structure and contents of the report while the subsequent section presents the Review Team's response to the main questions of the Terms of Reference. Indications as to where in the report the responses are to be found are also included.

OVERVIEW OF THE REPORT

The report consists of seven chapters, a summary and a section presenting the main recommendations of the Review Team. In addition, the full text of the Terms of Reference is attached.

The *first Chapter* ("Introduction") provides information about the background, mandate and methods of the review. It gives a preliminary overview of the reasons for designating NCHR as Norway's National Institution, and of issues put forward both by external stakeholders, by NCHR staff and in Board meetings on the way NCHR has functioned as National Institution.

These issues include NCHR's university connection as a factor limiting the development of institutional identity and a promotional role as National Institution. There is also reference to prevailing views that NCHR has not organised its National Institution work effectively, that it has not fulfilled expectations of being a strong voice for human rights in the public arena and that it has not been producing thematic reports. NCHR in its role as National Institution has remained relatively anonymous on the public arena, often seen more as an actor on international issues than as a strong advocate for international human rights in Norway.

The *second Chapter* ("Mandate of the Norwegian National Institution and the Paris Principles") describes the strengthening of Norwegian legislation on human rights in the 1990s. This development clearly made increased capacity at the national level to educate, interpret and promote human rights necessary. NCHR was seen as an obvious candidate to conduct such functions due to its high expertise on human rights and because of the important roles played by several of its staff both nationally and internationally.

A 1999 Governmental Plan of Action on Human Rights stated both that the NCHR needed more resources in order to conduct its core functions and that it should be tasked to become Norway's National Institution. Already on 21 September 2001, the Norwegian Government

adopted a Royal Decree that provided “The Foundation of and Mandate for a National Institution” at NCHR.

The Chapter both presents the Royal Decree and subsequent adjustments made to the statutes of NCHR in order to comply with the Paris Principles. The Chapter outlines relevant international developments related to the perceived role of National Institutions, including requirements contained in the Paris Principles, the 2009 ICC Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions as well as current expectations to National Institutions by relevant international institutions.

The *third Chapter* (“Activities of NCHR as National Institution”), analyses how NCHR interpreted its mandate as National Institution. The Chapter describes NCHR’s main types of activities, the organisational set-up of its National Institution work, and the relationship with external stakeholders both nationally and internationally. The Chapter includes a section of Review Team observations on the quality of NCHR fulfilment of its role as National Institution, including its performance related to specific Paris Principles requirements.

The *fourth Chapter* (“Human rights issues in Norway”) presents overview of human rights conventions and protocols that Norway has ratified, points raised in debates concerning human rights instruments not yet ratified, as well as an overview of international views on human rights in Norway.

The Chapter presents elements of the legal as well as the factual human rights landscape that a Norwegian National Institution has to operate within, and thus underpins arguments for a strengthened National Institution presented in Chapter 6.

The *fifth Chapter* (“Presentation of findings”) present a systematised overview of viewpoints that have come forth in the Review Team’s interviews and consultations with stakeholders. The presentation does not indicate which persons or institutions have communicated a viewpoint; rather it indicates whether there were few or many informants advocating it, or whether there was total or near consensus in relation to an issue.

The views are concerned both with the way NCHR currently fulfils its role as National Institution and with specific challenges confronting Norway’s National Institution, given the complex architecture of supervisory and complaints mechanisms. There are also views on how the National Institution should relate to civil society, as well as on ways to strengthening its mandate and organisation.

The Review Team is of the opinion that the stakeholder’s viewpoints should be presented as comprehensible as possible. Their views have been a vital input for the assessment and recommendations formulated by the Review Team.

The *sixth Chapter* (“Organisational model of a strengthened National Institution”) presents the Review Team’s views on organisational set-up, mandate and resource base of a strengthened National Institution. It argues that a university entity cannot serve as an effective National Institution; nor can any of Norway’s public Ombud institutions. There is therefore a need for a new structure. The Review Team proposes that Norwegian authorities should establish a three member Human Rights Commission, supported by an academically strong secretariat.

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.

Finally, the Chapter presents arguments in favour of a substantial increase of the National Institution's resource base. As a minimum the Commission should have an annual budget of 25 million NOK to be able to fulfil the obligations and tasks required by the Paris Principles as well as to contribute effectively to full respect of human rights in Norway.

The Commission may also assume national monitoring tasks under international conventions.

The *seventh Chapter* presents a proposal for key elements of a law on a Norwegian Human Rights Commission.

MAIN ANSWERS OF THE REVIEW

A) Background for establishing NCHR as Norway's National Institution (Chapter 2, "Background"; Chapter 2, first section):

- The designating of NCHR as Norway's National Institution for Human Rights came as a result of one of the recommendations in the Norwegian Government's National Plan of Action for Human Rights 1999-2004;²
- The mandate of being Norway's National Institution was interpreted by NCHR as being in line with its overall statutes, namely "... to promote the practice of internationally adopted human rights by means of scientific research and assessment, training, counselling/guidance, information and documentation." This original promotional role of NCHR was an important factor in the Norwegian Government's decision to designate NCHR as Norway's National Institution;
- In addition, NCHR founders and staff had already long been active in international human rights bodies as well as in as advising the Norwegian authorities on human rights;
- A significant decision was that the mandate of the National Institution should *not* include an individual complaints procedure, since the well established Ombud

² Menneskeverd i sentrum: Handlingsplan for menneskerettigheter, St.meld.no 21 (1999-2000), p. 48-51. Available at: <http://www.regjeringen.no/nb/dep/ud/dok/regpubl/stmeld/19992000/stmeld-nr-21-1999-2000-.html?id=192704>

institutions include human rights in their mandates, and two of them are mandated to deal with individual complaints;

- The NCHR Director underlined that by assigning the task of being Norway's National Institution to NCHR, the Norwegian state would save costs of establishing a new institution;
- The decision to delegate the function as Norway's National Institution to the NCHR was thus basically interpreted as a continuation of the established purposes and practices of NCHR.

B) NCHR's interpretation of its National Institution mandate and reasonable expectations from stakeholders (Chapter 3, "NCHR interpretation of its mandate as National Institution"; Chapter 2, "Paris Principles and ICC Guidelines for Accreditation and Re-Accreditation"; Chapter 5, "Presentation of results")

- NCHR interpreted the mandate stated in the Royal Decree as prescribing that all activities had to be based on its own research or participation in research cooperation. It's vision was to become a leading centre for university level research on human rights issues in Norway;
- It focused on activities of Norwegian authorities although other actors could be evaluated in terms of their human rights performance, such as businesses and organisations. Activities of Norwegian authorities outside Norway could be evaluated;
- The National Institution should not handle individual complaints mechanism, but forward complainants to the Ombud institutions or to non-governmental organisations;
- International expectations:
 - o Based on the expectations that National Institutions are organised and functions in line with the Paris Principles, there are comprehensive expectations by international human rights bodies that National Institutions become crucial partners by monitoring how international human rights treaties are being put into practice at the national level;
 - o The EU Fundamental Rights Agency (FRA) summarises its expectations in the following way: "National Institutions should ... be equipped with strong preventive powers, and sufficiently resourced to be able to collect data and conduct research and awareness-raising..."
- National expectations:
 - o Norwegian non-governmental organisations expect the National Institution to become a strong and visible voice for human rights in the public arena, that it provides high quality input to important debates, and provides thematic reports with recommendations to Norwegian authorities;
 - o Non-governmental organisations and Ombud institutions expect the National Institution to provide leadership and guidance on reporting to international human rights bodies;
 - o Norwegian authorities expect high quality comments to draft legislation, and to its reports to international human rights bodies. The National Institution should also provide advisory functions.

C) The multi-faceted challenge of a university institution having the role of National Institution (Chapter 4, “Review Team observations”, Chapter 6, “A University entity as National Institution”)

- In the view of the Review Team, an underlying cause of the NCHR’s limited ability to succeed in its National Institution function may be that it is a complex institution with conflicting or at least not synergetic norms and aims;
- NCHR as National Institution has not become a visible actor in public debates. True to the underlying norm of academic freedom, it is not the National Institution but rather individual NCHR researchers who became known to the public for their expert opinions;
- In setting priorities for research and studies NCHR have taken as a starting point issues that were seen as important and interesting for an academic research community rather than basing itself on a thorough analysis of human rights issues in Norway that needed to be addressed;
- Due to its prioritising of research as its knowledge base, NCHR as National Institution did not have a pro-active role related to civil society during most of the period 2001-2010;
- Administrative costs carried by the University of Oslo are covered by a 55 % overhead on salary costs, explaining the limited number of positions financed by its National Institution allocation (5-6.2 million NOK annually);
- In the view of the Review Team:
 - o A National Institution should be an independent institution with its own institutional identity, not an entity of another institution;
 - o The task of a National Institution to monitor and promote human rights is not compatible with the purpose of the university to conduct scientific research and teaching;
 - o A National Institution should develop its own institutional views and have a strong voice on human rights in the public debate. This is hardly compatible with the request for a university entity to respect the academic freedom of its employees;
 - o A National Institution should address human rights issues on the basis of thorough academic analyses and impact assessments. In that light, the university norm to teach and form views explicitly based on individual academic research becomes an unreasonable restriction;
 - o A National Institution seeks to promote a human rights approach to structures, procedures and perceptions as a unit with a common goal. As employed by a university entity, the academic staff would naturally seek to improve their individual profile by doing research and publishing in ways that give them individual academic merit.

D) NCHR’s observations on performance to date (Chapter 1, “Background”, Chapter 5, “Presentation of results”, Chapter 6, “A university entity as National Institution”)

- In its strategy for NCHR as National Institution (2008-2012), approved by the NCHR Board in December 2007, it states that “NCHR is fulfilling the tasks pursuant to its mandate and the societal needs in Norway, albeit at a minimum level”;

- In several reports by and interviews with staff, frustrations on organisation and results were expressed;
- Elin S. Kjørholt, current head of the National Institution on leave, concludes that: "NCHR has not managed to get the existing model for a National Institution to function satisfactorily. This is clear both from the review presented above, the frequently repeated discussions [among NCHR staff and in the NCHR Board], and in the high turnover of the staff of the National Institution unit. There is need for a real restructuring of the role of National Institution, and the most important concern should be to fulfilling the mandate and the Paris Principles, while resources and the current organisation of the NCHR should be of less importance."³

E) Compatibility of the 2001 Royal Decree with the Paris Principles and ICC Guidelines for Accreditation and Re-Accreditation (Chapter 3, "Review Team observations")

- According to the Royal Decree, the NCHR as Norway's National Institution "shall contribute to increased awareness and the realisation of international human rights in Norway". The main activities are to provide documentation and reports, advice, and education and information on human rights;
- A fundamental "premise is the National Institution's competence and capacity to do research, including basic as well as applied research";
- On 15 February 2005, the Statutes of NCHR were amended to reflect its role as National Institution. An Advisory Committee was established in order to strengthening the relations between the National Institution on the one hand and civil society and the Norwegian Ombud institutions, e.g. the Parliamentary Ombudsman, the Equality and Anti-Discrimination Ombud on the other. In 2010 the Ombudsman for Children became a member of the Advisory Committee. Also the Sami Parliament and a number of human rights organisations are members;
- In order to comply with the Paris Principles, and to maintain an A Accreditation, the funding of the National Institution work was earmarked to ensure independency both from the University and from the Government. Beginning in 2007, the approximately 6 million NOK funding became an earmarked part of the national budget, and it is annually transferred from the Ministry of Foreign Affairs to NCHR;
- In the view of the Review Team:
 - o The weak points of the Royal Decree are its lack of any prescription of financial and organisational set-up ensuring the institutions independence from the authorities; its insistence on a research-based approach, which could seriously limit its interaction with other institutions and organisations outside the University structure, as well as weakening its role as a strong promoter and public voice on human rights issues;

³ Kjørholt, *Rapport om nasjonal institusjon for menneskerettigheter i Norge* (Norwegian only. Review Team translation of quote. "Report on National Institution for Human Rights in Norway"), Norwegian Centre for Human Rights, Oslo 30 January 2010), page 10.

- The unspecified nature of the mandate left a lot of room for the institution itself to decide its priorities, and given that the NCHR was part of a University, the risk was that the research interests of the scientific staff would prevail over a thorough analysis of human rights issues in Norway in setting priorities;
- A more fundamental weakness with the whole arrangement would prove to be that NCHR was already a very complex institution. In providing that “a National Institution ... be organised at the Norwegian Institute of Human Rights”, the Government may have given the NCHR a near impossible task of creating an institutional identity as Norway’s National Institution at the same time as the NCHR was taking care of a range of other tasks and functions, mostly directed at situations outside of Norway;
- Therefore, the NCHR operating in line with the Royal Decree as Norway’s National Institution, could still be underperforming in relation to the requirements of the Paris Principles;
- In addition, a fundamental issue remains that the Royal Decree is not a law adopted by Parliament, which is required by the Paris Principles.

F) Are adjustments in the mandate needed? (Chapter 6, “Need for a law on National Institution”, Appendix 1)

- Yes, there should be a law on Norway’s National Institution, providing the institution with a firm legal base and placing Norway in line with current trends in democratic countries to regulate their National Institutions in legislative texts;
- The law should safeguard the National Institutions independence, resource base and define its composition and main tasks in compliance with the Paris Principles (see appendix 1 to this report for a proposal of key elements of such a law).

G) Documenting NCHR’s organisation and activities in its role as Norway’s National Institution (Chapter 3).

- In becoming Norway’s National Institution, NCHR asked the government for an increase in its resource base in order for the National Institution to become a “research based knowledge producing institution ... the role as National Institution has to be built on a robust research team...”;
- In order to organise its National Institution work, NCHR established a small unit consisting of a Director, two legal advisors, and an education and an information officer (both ½ time position). Several additional resources were provided for by other NCHR staffs, including a librarian (full time position) and access to research time (1/5 time position) from seven researchers;
- In line with the NCHR’s interpretation of the Royal Decree, NCHR developed the following types of activities: (a) *Monitoring*, i.e. publication of a yearbook on human rights in Norway, starting in 2005, providing commentaries to draft legislation and to state reports to international treaty bodies, and drafting its own reports to international human rights bodies; (b) *research projects* on human rights issues in Norway, resulting in several publications and dissertations (however not published as National Institution publications); (c) *Advisory functions and information*; publication

of summaries in Norwegian of judgments of the European Court of Human Rights, arranging seminars, conferences, workshops, giving individual advice on how to deal with potential cases by referring the complainant to other institutions or organisations, and publishing material on its webpage; (d) Cooperation and networking; and (f) Continuing education;

- Among the activities performed by NCHR as National Institution, in particular the publication of the Yearbook, commenting on draft laws, and providing alternative reports to international human rights bodies stands out as most prioritised and prominent. In the view of the Review Team, the overall quality of this work has been good. The Yearbook stands out as a valid resource for public servants, legal practitioners, and non-governmental organisations.

H) Explore alternative organisational models for a strengthened National Institution (Chapter 6).

- The Review Team recommends that a new institution should 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, and being able to assume national monitoring tasks under international conventions;
- 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;
- In combination, the Commission should reflect the pluralism of Norwegian society;
- The Commission should be assisted by an academically strong secretariat with adequate competence and resources to monitor the human rights situation and draft papers and reports advising Government and Parliament on human rights issues.
 - o Secretariat staff should have expert knowledge in human rights law, social and political science, and economics in order to conduct robust analyses and investigations, and to provide recommendations that are perceived as relevant and applicable in the Norwegian context;
 - o The secretariat should assist in carrying out the mandate of education and information, including the production of teaching material for a variety of sectors, and in this endeavour it should be capable of cooperating actively with non-governmental.

RECOMMENDATIONS

The Review Team puts forward the following recommendations. In the view of the team they will increase the likelihood of renewed A-status accreditation, taking into account the increasingly rigorous accreditation process by the ICC Sub-Committee on Accreditation (ICC SCA). The recommendations are directed both to Norwegian authorities and to Norway's National Institution for Human Rights.

More detailed arguments and discussions, underpinning the recommendations are to be found in Chapter 6. The Review Team observations on NCHR as Norway's National Institution to be found in Chapter 3 as well as stakeholder's views presented in Chapter 5 also provides backing for some of the recommendations, pointing at weak points in NCHR's performance and arguing in favour of establishing a new institution outside Oslo university.

NORWEGIAN AUTHORITIES SHOULD:

- Establish a Norwegian Human Rights Commission with three members as Norway's National Human Rights Institution in order to achieve a fully Paris Principle compliant National Institution that is able to promote and protect human rights effectively. The Commission should be vested with a 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;
- Adopt a National Institution Law, providing the institution with a firm legal base, and setting out the institution's main tasks, composition, safeguards for its independence, as well as cooperative organs with Ombud institutions and civil society;⁴
- Consider to include a provision of Norway's National Institution in the Norwegian Constitution;
- Ensure stable and sufficient founding of Norway's National Institution in order for the institution to be able to fulfil its tasks in compliance with the Paris Principles, ensure full respect for human rights in Norway, as well as being able to recruiting staff with strong academic and expert knowledge in human rights and domestic law. As a minimum, the Review Team propose that the institution should be provided with a base founding of 25 million NOK.

⁴ The Review Team proposes key elements of a draft law on a Norwegian Human Rights Commission in Chapter 7.

NORWAY'S NATIONAL HUMAN RIGHTS INSTITUTION SHOULD:

- Apply a *strategic* approach to planning and implementation of activities, leading to the formulation of the overall purpose of the Commission and its strategic goals for a defined period of time. In the planning process it should include:
 - o Analysis of international concerns on Norway's human rights policies and legislation, as well as dialogue with relevant institutions and civil society organisations;
 - o Identification of means to reach these goals, such as activities, staffing, budgets, and of expected results and impact of the Commission's efforts;
- Ensure that it fills the gaps in already existing activities and initiatives in Norway to protect and promote human rights, and serve as a coordinator among relevant institutions;
- Ensure that it pays attention to the situation of the Sami population, national minorities, immigrants, children, as well as other vulnerable groups;
- Ensure that it has the resources to advise individual complainants of human rights violations on how to plan and/or initiate administrative or judicial proceedings, as well as to be able to intervene in emblematic cases;
- Develop media and outreach strategies, enabling the institution to take part in public debates and provide expert advice and statements on human rights issues;
- Establish forums and meetings places for dialogue between authorities, relevant institutions and civil society organisations and representatives.

1. INTRODUCTION

The Norwegian Centre for Human Rights (NCHR), which is a multidisciplinary research centre at the Faculty of Law, University of Oslo, was granted the role as National Institution for Human Rights by Royal Decree in 2001. The Centre has been accredited with A-status according to the standards of the International Coordinating Committee (ICC) of the global network of National Human Rights Institutions (NHRIs) since 2006.⁵

The Norwegian National Institution is due for reaccreditation in 2011. In light of the upcoming reaccreditation process, the NCHR asked the Norwegian Government to conduct a review of its work, organisational structure, and resource base in its role as the National Human Rights Institution of Norway (hereafter 'National Institution'). Given that the institution was established 10 years ago, the situation both in the human rights arena, as well as the standing of National Institutions in the human rights architecture, has changed dramatically.

The Norwegian Ministry of Foreign Affairs responded positively and commissioned a three member team, assisted by a secretary, to conduct the review. The review was to be conducted in collaboration with the NCHR.

The NCHR has participated in initial discussions, and has supported the team throughout the process by providing information, documents, and proposals for important people to hear viewpoints of, as well as by arranging meetings for the team.

The *Terms of Reference* of the review was developed by the Ministry of Foreign Affairs in consultation with the NCHR. Input has been received from various stakeholders including the UN Office of the High Commissioner on Human Rights (OHCHR), the ICC Sub-Committee on Accreditation, the Advisory Committee of the National Institution (composed of various civil society actors, the Sami Parliament and Ombud institutions) and the NCHR's Board.

BACKGROUND

NCHR is one of several actors within the human rights field in Norway, which includes the Parliamentary Ombudsman, the Equality and Anti-discrimination Ombud, the Ombudsman for Children, Gáldu – Resource Centre for the Rights of Indigenous Peoples, as well as a range of other supervisory bodies, civil society organisations, concerned citizens, professionals, etc.

⁵ The International accreditation system is explained in Chapter 2, "Paris Principles and ICC Guidelines for Accreditation and Re-Accreditation".

NCHR was established in 1987 as The Norwegian Institute of Human Rights. In 2003 it was renamed into the Norwegian Centre Human Rights. Since 1995, NCHR has been part of the University of Oslo, first as a five-year program directly under the University Senate, from 2000 as a multidisciplinary research centre under the Faculty of Law. The NCHR's Board of Director's includes representatives from other faculties and the civil society (the Foreign Ministry was represented until NCHR became National Institution).

The designating of NCHR as Norway's National Institution for Human Rights came as a result of one of the recommendations in the Norwegian Government's National Plan of Action for Human Rights 1999-2004.⁶ The mandate of NCHR as the National Institution was formulated in a Royal Decree of 21 September 2001, tasking the Centre to "contribute to increased awareness and improved realisation of human rights in Norway".⁷

The mandate was interpreted by NCHR as being in line with its overall statutes, namely "... to promote the practice of internationally adopted human rights by means of scientific research and assessment, training, counselling/guidance, information and documentation." The NCHR statutes also stated that "(t)he foundation for this activity is the existing international system of norms and institutions for the protection of human rights."

This original promotional role of NCHR was an important factor in the Norwegian Government's decision to designate NCHR as Norway's National Institution. In addition, NCHR founders and staff had already long been active in international human rights bodies as well as in as advising Norwegian authorities on international human rights issues.

A significant decision was that the mandate of the National Institution should *not* include an individual complaints procedure, since the well established Ombud institutions include human rights in their mandates, and two of them are mandated to deal with individual complaints.

Therefore, the decision to delegate the function as Norway's National Institution to the NCHR was basically interpreted as a continuation of the established purposes and practices of NCHR. The new status was reflected in the setting up of a National Institution unit within the NCHR and a new *master plan* was introduced for the strengthening of its capacity and competence in research, education and dissemination of information related to human rights in Norway.⁸

⁶ Menneskeverd I sentrum: Handlingsplan for menneskerettigheter, St.meld.no 21 (1999-2000), p. 48-51. Available at: <http://www.regjeringen.no/nb/dep/ud/dok/regpubl/stmeld/19992000/stmeld-nr-21-1999-2000-.html?id=192704>

⁷ The Royal Decree specifies that: "As a National Institution for human rights, the Centre shall monitor the human rights situation in Norway and, on an independent basis, cooperate with related research centres, voluntary organisations and international and national bodies working in the field of human rights."

⁸ Nils Butenschøn, Director, Norwegian Institute of Human Rights, *Institutt for menneskerettigheter (IMR) som nasjonal institusjon for menneskerettigheter* (NIMR). Bakgrunn, formål, organisering (Norwegian only).

The new activities were made possible by an addition of NOK 5 million to the core funding of the University budget approved by the Norwegian Parliament. The amount has increased slightly over the years, and in 2010 it was NOK 6,287 million. In addition, some activities have been financed by additional funding. Most important among these has been a co-operative project with *Lovdata*,⁹ starting in 2006, presenting summaries in Norwegian of selected judgments of the European Court of Human Rights.

In 2006 the NCHR was found to be in compliance with the Paris Principles and was granted status A accreditation by the ICC. This approval was granted following the realisation of two structural adjustments in response to ICC concerns. These were:

1. Earmarking of the funding of NCHR as the National Institution for Human Rights over the national budget, separating it from the general allocation to the University of Oslo, and
2. Establishing a National Institution Advisory Committee composed of representatives from civil society and the Ombud institutions.

However, over time several issues were put forward, both by external stakeholders and internally by NCHR staff, and in discussions of the NCHR Board, on the role played by NCHR as National Institution.

Firstly, the combined role of being both a university centre and a National Institution was discussed by the NCHR Board and also with the Faculty of Law and the University of Oslo leadership several times during the period. Concerns were raised whether the principle of academic freedom can be honoured by an institution that is obliged to monitor and provide institutional advice and recommendations to the authorities. Another concern was whether a university institution has the necessary independence and integrity to be an effective advocate of human rights in the Norwegian society.

The NCHR's and the University of Oslo's official position at the outset was that the university connection strengthened the National Institution's independence from Norwegian authorities and was securing a high quality of work, in particular as it was founded on a solid academic knowledge base. However, among NCHR staff there have been different opinions voiced, and the NCHR Board remains divided as to the fruitfulness of this combined model.

Hans Petter Graver, the current Dean of the Faculty of Law, of which NCHR is a part, has been clear on the need to separate the National Institution from NCHR in order to

"Institute of Human Rights as National Institution for human rights: Background, purpose, organisation"), Oslo 5 June 2000.

⁹ *Lovdata* is a private foundation established in 1981 by the Royal Ministry of Justice and the Faculty of Law, University of Oslo. Its aim is to run systems of legal information. Its internet site, lovdata.no, presents primary sources of legal information in Norway, including all laws, national and local regulations, Supreme Court and Appeal Court judgments, as well as a selection of judgments of the European Court of Human Rights.

strengthen the role of the NCHR as the primary institution at the University of Oslo focused on academic legal research and competence on human rights.

Secondly, questions have been raised as to the way in which NCHR has organised its National Institution work. Placing National Institution tasks on the NCHR researchers as a part-time activity, giving each a so-called *National Institution work obligation* amounting to 22,5 %, has proved difficult and unfruitful in relation to both the planning and implementation of the work of the National Institution.

In practice, the National Institution has consisted of a small unit of 3-5 staff members at the NCHR. When needed, the Director of the National Institution has asked other NCHR staff members to contribute to specific tasks or projects. Even though the NCHR Director has annually made agreements with the researchers on the way in which their time as National Institution researchers/resources should be managed and implemented, the organisational model has proved ineffective and unclear, and from what has emerged from the review, also appears to have been a source of internal friction and conflict.

The Director of the National Institution has not been in charge of the full economic grant provided to the NCHR in order to conduct its National Institution tasks, and the National Institution director has also been subordinate to the Director of the NCHR in relation to other aspects.¹⁰

Thirdly, civil society organisations and other external stakeholders have had expectations of the National Institution becoming a strong voice for human rights in the public domain, in particular in relation to its mandate as a body promoting and advocating human rights. Expectations were that the National Institution would produce high quality and authoritative human rights analysis as an input to important issues debated in the Norwegian society, such as asylum policies, integration of immigrants, use of force in psychiatric health care, human rights in prisons, discrimination issues, etc. However, NCHR in its role as National Institution has remained a relatively anonymous actor on the public arena, often seen more as an actor on international issues than as a strong advocate in relation to defending and promoting the implementation of international human rights in Norway.

The decision that NCHR should not receive individual complaints on alleged human rights violations has also been questioned. At a minimum, some human rights organisations have argued, the National Institution should work closely with the Ombudsmen institutions in order to identify cases which they have been handling that are raising human rights concerns of a systematic and principal nature and make them subject to analysis and conclusions.

In addition, the National Institution should develop a capacity for conducting fact-finding action and for dealing with human rights issues based on its own first hand documentation.

¹⁰ The NCHR's organisation of its National Institution work is outlined in Chapter 3, "Organisational set-up".

These shortcomings have been at least partly acknowledged by the NCHR, stating in its strategy for NCHR as National Institution (2008-2012), approved by the NCHR Board in December 2007, that:

“(1) NCHR is fulfilling the tasks pursuant to its mandate and the societal needs in Norway, albeit at a minimum level; and (2) that it is desirable to increase activities based on legitimate external expectations, developments nationally and internationally, and own desire to go deeper into questions regarding human rights in Norway.”

The Board also noted that “NCHR has had problems in fulfilling its mandate as ... [National Institution] within the current organisational and financial model” and requested that these issues should be given due consideration in the present National Institution review.

Fourthly, the ICC’s Sub-Committee on Accreditation (SCA) has further developed its interpretation of the Paris Principles since Norway’s National Institution was accredited in 2006. It now emphasizes core protection issues including the relationship between the National Institution and other bodies such as Ombudsmen institutions and equality bodies. Both the protection as well as the promotion aspects of the National Institution mandate will be addressed in the 2011 consideration of NCHR’s application for reaccreditation.

On a similar note, the National Institution Advisory Committee has recommended that the current review emphasizes the National Institution’s advocacy role (“pådriver rolle”) and the division of labour between the National Institution and other stakeholders, in particular the Ombud institutions as well as civil society organisations.

Summing up, the current review is motivated by several concerns, formulated both internally at NCHR, at the University of Oslo and at the Faculty of Law, of which NCHR is a part and by a number of external stakeholders, both within civil society and public sector.

The Norwegian Government has expressed the importance of the review, both from a domestic perspective, with the aim of ensuring that Norway’s National Institution fulfils its mandate and promotes and protects human rights in Norway effectively, and from an international perspective, with the aim of securing a continuation of a National Institution with an A-status.

For the team that has conducted this review, an additional motivation, which we believe is shared by the Norwegian Government, has been to come up with proposals and models that may make the totality of Norway’s complex institutional architecture of human rights promotion, protection, education and information more efficient and better coordinated than it is today.

The goal must be to establish national human rights mechanisms that are able to ensure *full* respect and protection of human rights in Norway.

MANDATE AND COMPOSITION OF REVIEW TEAM

In July 2010 the Norwegian Ministry of Foreign Affairs established a team tasked with reviewing the existing National Institution for Human Rights in Norway and proposing ways to re-organise and strengthen it.

The team worked throughout the autumn of 2010 in order to gather information and viewpoints from important stakeholders on the role and functions of the institution; to study its interaction with relevant institutions, and to discuss ways to re-organise and strengthen the institution.

According to its mandate, five aspects are crucial for the review to focus on, namely:

1. The background for establishing NCHR as Norway's National Institution;
2. NCHR's interpretation of its National Institution mandate and reasonable expectations from stakeholders;
3. The multi-faceted challenge of a university institution having the role of National Institution;
4. NCHR's observations on performance to date;
5. The rigorous international accreditation process of National Institutions by the ICC Sub-Committee on Accreditation.

The review shall, on an objective basis take stock of what the NCHR as National Institution has done, identify results achieved as well as potential shortcomings, examine NCHR's role in the context of the Norwegian human rights architecture and analyse how to improve this work in order to ensure implementation of human rights in Norway.

The review should focus on the period from the establishment of the National Institution in 2001, until the end of 2009. It should provide inputs and suggestions for possible improvements in the organisational set-up of the National Institution in Norway.

The review should specifically contribute to two aims, namely:

- To provide the necessary informational basis for improving the National Institution's work in Norway in line with the Paris Principles and the ICC's Guidelines for Accreditation and Re-Accreditation;
- To explore relevant organisational adjustments and/or organisational models which would enhance the relevance and influence of the National Institution in the Norwegian context.

The review should take into account the concerns raised in the NCHR strategy for National Institution (2008-2012) and in a report by former Acting Director of the National Institution, Elin Saga Kjørholt: *Report on the National Institution for Human Rights in Norway*.¹¹

¹¹ Elin S. Kjørholt, *Rapport om nasjonal institusjon for menneskerettigheter i Norge* (Norwegian only. "Report on National Institution for Human Rights in Norway"), Norwegian Center for Human Rights, Oslo 30 January 2010. The concerns raised in these two documents, include (1) capacity and competence to fulfil a broad mandate faced with higher national and international expectations; (2) NCHR's organisational model and priorities in terms of thematic focus and funding; (3) increased expectations and the possible need for additional resources in terms of capacity and funding; (4) coordination and cooperation with other institutions monitoring human rights in Norway; and (5) the organisational linkage to a university institution.

The present review considers standard evaluation criteria in accordance with the OECD/DAC Evaluation Quality Standards. More specifically the review is mandated to:

- “Assess compatibility of Royal Decree with Paris Principles and ICC Guidelines for Accreditation and Re-Accreditation;
- Assess whether adjustments in mandate are needed;
- Document NCHR activities and assess results in fulfilment of its mandate as National Institution. Key issues are visibility, accessibility and effectiveness in protecting (monitoring, referring complaints etc) and promoting human rights in Norway.
- Identify reasonable expectations and analyse reasons for results above/below these expectations. Comment on additional results expected given international developments in the role of NHRIs;
- Document and assess the NCHR’s organisation of its National Institution work and financial priorities made within available NHRI-funding;
- Document and assess the role played by the NCHR as National Institution in relation to Government and other Norwegian institutions and organisations, including civil society, in promoting human rights in Norway. Particular attention should be given to compatibility of roles and cooperation with entities with individual complaints procedures;
- Document and assess the participation of NCHR as National Institution in international work to promote and protect human rights, including through the ICC, cooperation with other NHRIs and cooperation with OHCHR;
- Explore alternative organisational models for National Institution in Norway which can maximize the potential for impact on human rights implementation;
- Make recommendations that will increase the likelihood of renewed A-status accreditation in 2011 and a more effective National Institution in a longer term perspective.”¹²

The Review Team consists of three members: Nora Sveaass (leader), Ketil Lund and Birgitte Kofoed Olsen. The Secretary of the team was Gunnar M. Ekeløve-Slydal.

The Acting Director of the National Institution, Kristin Høgdahl, participated in initial discussions and also provided the team with valuable information and support.

METHODS OF REVIEW TEAM

The main methods of the review have been to consult documents and reports; conduct interviews with selected stakeholders; hold meetings and open seminars; and explore alternative organisational models in comparable countries.

¹² Royal Ministry of Foreign Affairs, Terms of Reference for the Review of the Norwegian Centre for Human Rights in its Capacity as Norway’s National Human Rights Institution, page 5.

The interviews were analysed in order to establish prevailing views and arguments. The team did not, however, weigh arguments or views in terms of the numbers or position of their proponents; rather it endeavoured to analyse arguments and views in terms of their own power to contribute to and enrich the discussion.

The members of the team and its Secretary have also gathered relevant information and consulted with additional stakeholders individually. The team has conducted several internal debate sessions in order to identify shortcomings, strengths, and solutions.

On 11 January 2011 a public meeting was organised by the team in cooperation with NCHR, presenting international developments related to National Institutions and engaging civil society and other stakeholders in discussions about how to strengthening the Norwegian National Institution.¹³

¹³ Agenda and summary of the public meeting is available (in Norwegian only) at:
<http://www.jus.uio.no/smr/om/aktuelt/arrangementer/2011/ni-eval.html> and
<http://www.jus.uio.no/smr/om/aktuelt/aktuelle-saker/2011/docs/referatopenmeeting.pdf>

2. MANDATE OF THE NORWEGIAN NATIONAL INSTITUTION AND THE PARIS PRINCIPLES

During the 1990s, Norwegian legislation on human rights was substantially strengthened. In 1993, the Norwegian Constitution was amended to include § 110 c, stating that “[i]t is the responsibility of the authorities of the State to respect and ensure human rights. Specific provisions for the implementation of treaties thereon shall be determined by law.”

In 1999, the Human Rights Act was adopted, incorporating The European Convention on Human Rights,¹⁴ The International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights into Norwegian law, and giving these treaties a semi-constitutional status above other laws. Subsequent amendments of the law included the UN Convention on the Rights of the Child, and the UN Convention on the Elimination of all Forms of Discrimination against Women.¹⁵

In debates leading up to these legislative initiatives to strengthen human rights in Norway, the need to strengthen knowledge and competence on human rights in Government and administration at different levels was also frequently raised. The then-Norwegian Institute of Human Rights was established as the main actor responsible for providing quality education and dissemination of information on human rights.

The Norwegian Parliament Standing Committee on Justice summarised this debate in its proposal of the Human Rights Act:

“The Committee wishes to emphasise that information, instruction and education are among the most important tools available for protecting and promoting human rights. An effort must be made to build up a centre of specialised expertise in these areas and it is the view of the Committee that it is natural to give this authority to the Institute of Human Rights ...”¹⁶

The 1999 Governmental Plan of Action on Human Rights further developed on this view, stating both that the Institute needed more resources and that it should be tasked to

¹⁴ The full name of the Convention is: Convention for the Protection of Human Rights and Fundamental Freedoms.

¹⁵ The Law also includes Protocols 1, 4, 6, 7, and 13 to the European Convention on Human Rights, Protocols 1 and 2 to the International Covenant on Civil and Political Rights, the two Optional Protocols to the Convention on the Rights of the Child, as well as the 6 October 1999 Protocol to the Convention on the Elimination of all Forms of Discrimination against Women. The UN Convention on the Elimination of all Forms of Racial Discrimination is incorporated in the 3 June 2005 Law on Discrimination. The UN Convention against Torture has not been incorporated into Norwegian legislation, however, a provision was introduced into the 1902 Penal Code on 25 June 2004, defining and penalizing torture modeled on the Convention.

¹⁶ Innst. O. nr. 51 (1998-99).

become Norway's National Institution for Human Rights.¹⁷ In the Plan of Action, there are two lines of reasoning for the need to strengthen the resource base of the Institute. The first one is based on input from a 1999 evaluation as well as the overall need for strengthening human rights education in Norway as concluded by *inter alia* the Parliament Standing Committee on Justice, while the second one is based on the need for Norway to have a National Institution for Human Rights in order to honour UN General Assembly requests.

In its first line of reasoning, the Plan of Action refers to an evaluation by a committee of Nordic professors commissioned by the Senate of the University of Oslo,¹⁸ which concludes that the Institute "has a sound academic environment with a high level of activity". However,

"The main challenge for the institute, in the view of the committee, lies in its skewed funding which consists of a low basic allocation and over 80 per cent external financing in the form of project funding from the Research Council of Norway and commissions from ministries and other bodies. At present, the institute has approximately the same basic allocation (in the form of permanent positions) as it did when it was established in 1987."¹⁹

The Plan of Action refers to recent measures by the University of Oslo, which the Institute was (and remains) a part of, devoting more resources to it. Nevertheless, it concludes that in order for the Institute to become a national centre of expertise and education in human rights, "a gradual increase in the basic allocation to the Institute of Human Rights as from 2000" will be secured.

The second line of reasoning is referring to UN developments starting with the 1993 World Conference on Human Rights and a subsequent General Assembly resolution requesting UN member states to establish National Institutions for human rights in compliance with the Paris Principles. The Plan of Action concludes,

"There is no National Institution for human rights in Norway, although the current statutes of the Norwegian Institute of Human Rights cover some of the tasks incumbent on a National Institution. The Government intends to follow up the request of the UN General Assembly, and is of the opinion that Norway should have a National Institution for human rights by 2001. The Government finds it natural to achieve this by granting the Institute for human rights the status of a National Institution.

Measures

¹⁷ *Menneskeverd I sentrum: Handlingsplan for menneskerettigheter*, St.meld.no 21 (1999-2000), p. 48-51. Unofficial English translation to be found at: http://www.regjeringen.no/en/dep/ud/Documents/Propositions-and-reports/Reports-to-the-Storting/19992000/report_no-21_to_the_storting_1999-2000.html?id=192507

¹⁸ The evaluation was conducted by professors Hans Petter Graver, Martin Scheinin, Kirsten Hastrup, and Raino Malnes ("Evaluering av Institutt for Menneskerettigheter", Oslo, April 1999), and is only available in Norwegian.

¹⁹ Quotations are taken from the Plan of Action, English (unofficial) version.

- The Government will make resources available to enable the Norwegian Institute of Human Rights to be granted the status of a National Institution for human rights in 2001. In consultation with the ministries and human rights experts, the Ministry of Foreign Affairs will examine more closely which tasks should be assigned to a National Institution and how this may best be organised.”

The two lines of reasoning are separate in the Plan of Action, both leading to the positive outcome of the Government committing itself to increasing its funding of the Institute. However, the implementation of the Plan of Action has been only halfway, it seems. As it seems, only the extra funding for the National Institution tasks materialised fully, while “low basic allocation” remains a problem for the institution to this day.²⁰

Another important point of the evaluation conducted by the Nordic professors is not mentioned in the Action Plan. The main conclusion of the evaluation was that the Norwegian Institute of Human Rights should become a regular entity of the Faculty of Law at the University of Oslo. However, the professors stated, there it might be problematic to incorporate some of the programmes of the Institute into a regular University entity. One should therefore consider, they advised, whether some of the externally financed activities should be separated from the core functions of the Institute, including NORDEM and the planned “Centre of expertise” which would be linked to an already established research program on human rights in Norway.

The Centre of expertise was intended to provide legal information, advice and documentation, as well as education, and was seen by the Norwegian Parliament Standing Committee on Justice as a tool to ensure sufficient knowledge about human rights in Government offices in light of the forthcoming adoption of the Human Rights Act.²¹

In this complex situation, with a well functioning but ill-financed Institute of Human Rights, the advice by the Nordic professors was not heard. Instead of establishing a separate Centre of expertise to enable it to become National Institution, the Plan of Action decided that the Institute of Human Rights should become National Institution.

²⁰ Cfr. Nils Butenschøn, *Norsk senter for menneskerettigheter. Samfunnsoppdrag og rolle som grunnenhet ved Universitetet i Oslo. Notat til møte hos rektor 20. Mai 2010*, [Norwegian Centre for Human Rights: Social Mission and Role as Basic Entity at the University of Oslo], page 3, point 8: “NCHR has in 2010 60-65 staff, including 8 permanent scientific positions. Allocations to permanent scientific positions and University fellows are 2 million NOK, however from this amount only approximately 50 % of a scientific position is covered. All other financing to this group of staff is covered by overhead from externally financed activities, including the allocation for National Institution ...” (Norwegian only. Translation by Review Team).

²¹ See page 10 and 25 of the evaluation.

2001 ROYAL DECREE

Already on 21 September 2001, the Norwegian Government followed-up on the Plan of Action and adopted a so-called Royal Decree that provided “The Foundation of and Mandate for a National Institution for the Protection and Promotion of Human Rights at the Norwegian Institute of Human Rights.”²²

The proposal of the Decree, which also included a mandate for the National Institution, was developed jointly by the Ministry of Church Affairs, Education and Research and the Ministry of Foreign Affairs, and put forward to the Government by the latter. The Government adopted the proposal without any changes or remarks.

The Decree establishes that “a National Institution for the protection and promotion of human rights be organised at the Norwegian Institute of Human Rights”.²³ It refers to the UN General Assembly, which since 1993 “recommended that each state designate a National Institution for the protection and promotion of human rights in accordance with the so-called Paris Principles.”

The Decree underlines that the Paris Principles “allow flexible interpretation, but independence of national authorities is emphasized”. The main purpose of a National Institution is to “assist the general public, non-governmental organisations and individuals by providing advice, documentation, analysis and dissemination of knowledge in the field of human rights”.

The Decree refers both to the Governmental Plan of Action on Human Rights and to the Storting (the Norwegian Parliament), that in a subsequent committee report (Innst. S. No. 23, 2000-2001), “acknowledges that a National Institution for human rights should be organised at the present Norwegian Institute of Human Rights.” Notably, the report states that “the importance of the National Institution’s independence from national authorities and that the institution shall be more than a centre of competence. Research, as well as documentation and analysis, counselling and monitoring must be prioritized.”

The Storting included an additional NOK 5 million to the Norwegian Institute of Human Rights in its 2001 budget, in order to facilitate its new status. The extra funding was, however, not earmarked for the Institute’s role as the National Human Rights Institution.

According to the mandate, the National Institution:

²² Kongelig Resolusjon 21. September 2001, “Etablering av og mandat for nasjonal institusjon for menneskerettigheter ved Institutt for menneskerettigheter”. There exist no official English version of the text, however the NCHR has prepared a translation “for the purpose of communicating the contents of this decree to our international partners.” A Royal Decree is a decree adopted by the King in council, i.e. by the Government.

²³ The Norwegian Institute of Human Rights was renamed the Norwegian Centre for Human rights 1 January 2003.

“[S]hall contribute to increased awareness and the realisation of international human rights in Norway. It shall assist the authorities, organisations, institutions and individuals by providing documentations and reports, advice, education and information on matters that concern human rights, based upon research and research co-operation, internationally as well as nationally.

A fundamental premise is the National Institution’s competence and capacity to do research, including basic as well as applied research. This competence must be the basis for the other tasks that the institution takes on. The National Institution shall monitor the human rights situation in Norway, in particular by initiating research and providing reports. It shall provide consultations for national authorities and organisations. The Institution shall not handle individual complaints, but direct individual claims to existing Ombudsmen institutions, the Judiciary, or to non-Governmental organisations. The National Institution may act on its own initiative or in response to the initiative of others.

The National Institution shall offer human rights education, including continuous education and up-grading courses for certain groups of professionals, including jurists, teachers, and others. The institution shall also provide information on human rights, with relevant target groups including those within the Norwegian education system, media, and organisations.

The National Institution shall co-operate with other experts and relevant non-governmental organisations, nationally and internationally, and contribute to strengthening Norway’s human rights community.”

The mandate is broad and unspecified, making the institution’s own interpretation and prioritisation of tasks within its limited resource base of crucial importance. It focuses on the role of the institution in *assisting* both authorities and society on matters that concern human rights. It is striking that the mandate underlines that *all* activities of the institution should be based on its own scientific research or research co-operation.

Its main categories of activities should be:

- Monitoring, i.e. providing research based reports;
- Providing consultations to authorities and organisations; and
- Providing education and information.

SUBSEQUENT ADJUSTMENTS

Since becoming National Institution in 2001, the NCHR made several adjustments in order to comply effectively with its role as National Institutions. In 2003, NCHR changed its name from Norwegian *Institute* of Human Rights to Norwegian *Centre* for Human Rights. The change was motivated by both the need to signal the role of the institution as a multidisciplinary university centre, as well as its role as Norway’s National Institution.

On 15 February 2005, the Statutes of the NCHR were amended by the University Board in order to reflect its role as National Institution. According to § 1 of the amended Statutes, as a National Institution for human rights “... the Centre shall monitor the human rights situation in Norway and, on an independent basis, cooperate with related research centres, voluntary organisations and international and national bodies working in the field of human

rights. The foundation for this activity is the existing international system of norms and institutions for the protection of human rights.”

The amended Statutes provides for “an Advisory Committee to the Centre in its role as a National Human Rights Institution” (§ 3). According to § 6 (in conjunction with § 5), the Advisory Committee shall nominate two representatives “of the community at large” to the NCHR Board.

The function of the Advisory Committee is regulated by § 14, which states:

“The Norwegian Centre for Human Rights shall have an Advisory Committee as a consultative body for the Centre in its duties and activities as a National Human Rights Institution. The Council²⁴ shall submit its recommendations directly to the Director.

The Advisory Committee shall be composed of representatives from a wide range of organisations and bodies in civil society whose activities are of particular relevance to human rights issues in Norway:

- The Parliamentary Ombudsman for Public Administration
- The Ombudsman for Equality and Non-Discrimination
- Amnesty International Norway
- The Norwegian Helsinki Committee
- The Norwegian Federation of Organisations of Disabled People
- Save the Children Norway
- The Sámediggi (the Parliamentary Assembly for the Sámi People in Norway)
- The Confederation of Norwegian Business and Industry
- The Norwegian Association of Editors
- The Norwegian Confederation of Trade Unions
- The Human Rights Sub-Committee of the Norwegian Bar Association
- The Norwegian Association for Asylum Seekers

Each of the organisations listed above shall elect one representative and one deputy representative. Representatives shall possess special expertise or interest in human rights issues. Representatives shall be adequately authorized to ensure efficient representation of their organisations in the business of the Council.”²⁵

The establishment of the Advisory Committee was one of two adjustments introduced in order to get status A accreditation with the ICC. Although § 14 of the NCHR Statute is not specific on which issues the Advisory Committee should submit its recommendations, it is

²⁴ I.e. the Advisory Committee.

²⁵ Both in the Statutes and in other NCHR documents, the ‘Advisory Committee’ is sometimes referred to as the ‘Advisory Council’. In Norwegian language, ‘Council’ is designated by a word (‘råd’) which also means ‘advice’, indicating the proper role of the entity. For an updated list of Advisory Committee members, see: <http://www.jus.uio.no/smr/om/organisasjon/utvalg/index.html>

clear from other NCHR documents that the Committee is expected to “make statements on strategic questions connected to National Institution work.”²⁶

By establishing the Advisory Committee, NCHR wanted to ensure that it was in regular contact with important civil society organisations as well as with two of the three national Ombud institutions in Norway.²⁷ The establishment of the Advisory Committee was seen by NCHR as “a significant development to ensure pluralist representation of the social forces involved in the promotion and protection of human rights in Norway”.²⁸

A second requirement to get A-status accreditation was to earmark the funding of the National Institution work at the NCHR, in order to ensure the institution’s independency both from the University and from the Government. Beginning in 2007, the approximately NOK 6 million in funding for National Institution work became an earmarked part of the national budget. The amount is annually transferred from the Ministry of Foreign Affairs to NCHR, which also provides a financial report annually to the Ministry.

Several other issues were raised by the ICC during the accreditation process, which ended with a status A accreditation in 2006. In its progress reports, the NCHR responded to questions raised by the ICC. Among the most important questions elaborated on was whether:

- NCHR’s National Institution status eventually would be established through Parliamentary legislation rather than through a Royal Decree;
- NCHR’s linkage to the University of Oslo may have a bearing on its independence financially and *otherwise* (emphasis added);
- The composition of NCHR is sufficiently protected given that its composition is protected by its Statutes rather than by the Royal Decree;
- The process of appointment of two representatives from the community at large ensured plurality and independence of the Centre’s Board;²⁹
- NCHR’s largely academic composition sufficiently “protects and ensures pluralist representation of the social forces involved in the promotion and protection of human rights”.

NCHR’s responses to these concerns were deemed satisfactory by the ICC, resulting in the ICC granting it status A accreditation at its 11-12 April 2006 session. The ICC decision was based on a 12 April 2006 Report and Recommendations of the *ICC Sub-Committee on Accreditation*, which concluded: “The Sub-Committee recommends accreditation status A

²⁶ Nils Butenschøn, Op. cit, page 3, point 7.

²⁷ The Ombudsman for Children was not part of the Advisory Committee until 2010.

²⁸ 2005 Progress report prepared by the Norwegian Centre for Human Rights to the ICC, page 1.

²⁹ The two representatives from the community at large were at the time nominated by a consultative committee for human rights of the Ministry of Foreign Affairs. The 2005 amendments of the NCHR Statutes met this concern by prescribing, as presented above, that these representatives should be nominated by the Advisory Committee for the NCHR’s activities as a National Institution.

and encourages the Centre to advise the ICC should there be concerns in the future with respect to its funding.”

There have not been any amendments of the mandate of the National Institution since 2001; however, its broad and unspecified nature left much to be decided in more detailed plans on how to operate as Norway’s National Institution. The subsequent Chapter will look in more detail into the main types of activities of the NCHR in its capacity as a National Human Rights Institution.

PARIS PRINCIPLES AND ICC GUIDELINES FOR ACCREDITATION AND RE-ACCREDITATION

The question of ensuring respect for human rights at the national level by establishing “information groups or local human rights committees” was first debated in the UN in 1946.³⁰ Since then, the role of such bodies or National Human Rights Institutions, as they were subsequently named, both domestically and in the UN human rights system has been debated repeatedly.³¹

In 1990, the UN Commission on Human Rights requested the UN Secretary General to convene a workshop, to review cooperation between National Institutions and the UN.³² An International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris 7-9 October 1991. Its recommendations were first welcomed by the Commission on Human Rights in 1992,³³ and then adopted as the Paris Principles by the UN General Assembly in 1993.³⁴

The 1993 World Conference on Human Rights also proved important for the development of National Institutions interactions with UN human rights bodies. It granted such institutions “the right to participate in international debates”, and encouraged all states to establish such institutions. Another important development was a speech of the Chair of the

³⁰ ECOSOC resolution 2/9, 21 June 1946.

³¹ The Economic and Social Council, recognized in 1960 the important role that such bodies could play in the promotion and protection of human rights, and invited Governments to establish such bodies (ECOSOC resolution 772 B(XXX), 25 July 1960. In 1978, the Commission on Human Rights arranged a seminar on National and Local Institutions for the Promotion and Protection of Human Rights, which for the first time approved guidelines on the structure and functioning of National Institutions, which were noted by appreciation by the General Assembly (resolution 33/46).

³² Effective Function of Human Rights Mechanisms: National Institutions and Regional Arrangements. Enhancing the participation of national human rights institutions in the work of the Commission on Human Rights and its subsidiary bodies. Report of the Secretary-General, 19 January 2005 (E/CN.4/2005/107), page 2.

³³ UN Commission on Human Rights, resolution 1992/54.

³⁴ UN General Assembly, resolution 48/134.

Commission on Human Rights in 1999, giving National Institutions “the privilege of participating in relevant meetings from a special section of the floor devoted to them”.³⁵

A final breakthrough for a privileged role of National Institutions in the UN context was a 2005 resolution by the Commission on Human Rights, inviting National Institutions to participate in all agenda items of the Commission.³⁶

A subsequent important development was the invitation for National Institutions to take part in the drafting process of the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities. There is also a prevailing view in UN bodies that National Institutions may have a “potential role to play as a national visiting mechanism pursuant to article 18 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”.³⁷

At the regional level there have been parallel developments of involving National Institutions as well as national ombudsmen institutions. In The Council of Europe, the Commissioner for Human Rights is “gradually developing an effective co-operation system with them, to foster the implementation of European human rights standards, in conformity with his mandate and other Council of Europe instruments.”³⁸ Several Council of Europe sponsored workshops and statements points to the role of National Institutions in safeguarding the rights of minorities and in overseeing execution of European Court of Human Rights judgments.

In summing up, National Human Rights Institutions have gained a privileged status both at the international and regional levels. Within the UN, the Council of Europe and in other interstate organisations, there is an increased focus on the effective functioning of National Institutions and the role they should play in both translating international human rights into the national context, and in providing international organs with insights and facts about the state of human rights at the domestic level.

Globally, there are more than 110 National Institutions,³⁹ although only 91 of them are members of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). As of June 2010, there were 67 National Institutions accredited with A-status by the ICC, i.e. being deemed to be in compliance with the Paris Principles. 14 were accredited with B-status, i.e. not fully in compliance with the Paris Principles, while 10 were accredited with C-status, i.e. non-compliance with the Paris Principles.⁴⁰

³⁵ E/CN.4/2005/107, page 3.

³⁶ UN Human Rights Commission, resolution 2005/74.

³⁷ E/CN.4/2005/107, page 3.

³⁸ http://www.coe.int/t/commissioner/Activities/NHRS/default_en.asp

³⁹ http://en.wikipedia.org/wiki/National_institutions_for_human_rights

⁴⁰ A chart of the status of National Institutions with the ICC is available at: http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf

The ICC was established in 1993, with the aim to coordinate the activities of the international network of National Institutions. In 1998, rules of procedures were developed and the ICC resolved to create a process for accrediting National Institutions. The accreditation system became operative in 1999.⁴¹

In 2008, the ICC decided to incorporate itself as a legal entity under Swiss law, with a Bureau of 16 voting members representing the four regions of the ICC (“A status” National Institutions). It also decided to streamline rules of procedures and to clearly define its membership and the role and governance of its annual meeting and international conferences.

General Meetings of the ICC, meetings of the ICC Bureau and of the Sub-Committee on Accreditation (SCA), as well as International Conferences of the ICC are held under the auspices of, and in cooperation with, the Office of the UN High Commissioner for Human Rights (OHCHR).

Reviewing National Institution’s compliance with the Paris Principles, through its accreditation and reaccreditation process, is one of the main functions of the ICC. In accordance with the Statute of the ICC, the SCA has the mandate to consider and review applications for accreditation, reaccreditation and to conduct accreditation reviews (including special reviews) of National Institutions on the basis of written evidence submitted. The ICC Bureau is vested with the power to decide applications for accreditation after considering recommendations from the Sub-Committee (ICC Statute, Art 46).

Among the Nordic countries, Denmark and Norway are currently the only countries to have a national institution accredited by the ICC, while the Governments of both Finland and Sweden are considering proposals to establish national institutions in compliance with the Paris Principles.⁴²

According to a 2010 report by the EU Agency for Fundamental Rights (FRA), as of December 2009, out of the 27 EU Member States, 16 have a recognised National Institution. Out of these, ten have National Institutions accredited as fully compliant with the Paris Principles. Several EU countries are considering establishing national institutions in compliance with the Paris Principles.⁴³

⁴¹ Cf. the website of the National Human Rights Institutions Forum: <http://www.nhri.net/> and the OHCHR main website on National Institutions:

<http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>

⁴² The A-status for the Swedish National Institution (JämO) lapsed in 2008 due to reorganisation of the Ombudsmen institutions in Sweden.

⁴³ *National Human Rights Institutions in the EU Member States: Strengthening the fundamental rights architecture in the EU I*, European Union Agency for Fundamental Rights (FRA), Luxembourg, 2010 (ISBN 978-92-9192-500-1), page11. In addition to Finland and Sweden, the Netherlands, Italy, and Belgium are among EU countries considering to strengthening existing institutions or establish new ones in order to get National Institutions with an ICC A Status. The EU countries having an A-status National Institution are: Denmark,

The Paris Principles consist of three sets of principles dealing with (a) competence and responsibilities of National Institutions; (b) composition and guarantees of independence and pluralism; and (c) methods of operation.⁴⁴

There is also a set of additional principles “concerning the status of commissions with quasi-judicial competence”. These are only relevant for National Institutions that are “authorised to hear and consider complaints and petitions concerning individual situations”. Since the Norwegian National Institution neither at present nor by the proposal for a strengthened institution put forward in this report is given such an authorisation, the additional principles will not be dealt with in this report.

The first set of principles from the Paris Principles sets out that a National Institution shall “be vested with competence to promote and protect human rights” (Principle 1). It 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” (Principle 2).

The third principle of the first part sets out the responsibilities of a National Institution, which could be presented as follows:

- a. Provide opinions, recommendations, proposals and reports to the Government, the Parliament and any other competent body on any matters concerning the promotion and protection of human rights. The institution may do this either on request or on its own decision, and it may decide to publicise its views. There is a set of sub-points indicating areas which the views of the National Institution shall relate, such as legislative or administrative provisions, any situation of violation of human rights, the national situation of human rights, and situations in a part of the country where human rights are violated.
- b. “To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instrument to which the State is a party, and their effective implementation.”
- c. To encourage ratification or accession to human rights instruments, and to ensure their implementation.
- d. To contribute to state reports to UN bodies and committees, and to regional institutions.
- e. To cooperate with the UN, UN and regional organisations, and other National Institutions.
- f. To assist in the formulation of human rights teaching and research and to take part in their execution in schools, universities and professional circles.

France, Germany, Greece, Ireland, Luxembourg, Poland, Portugal, Spain, Great Britain, N. Ireland and Scotland. (N. Ireland and Scotland having their own regional commissions on human rights with A status, but in terms of voting rights there is only one for each country). The report is available online:

http://www.fra.europa.eu/fraWebsite/attachments/NHRI_en.pdf

⁴⁴ Full text of the Paris Principles are available at:

- g. Make use of education, information and media in order to increase public awareness on human rights and to combat all forms of discrimination.

The second set of the principles elaborates on the composition of National Institutions and the guarantees of independence and pluralism of such institutions. The main point is that the composition and appointment of the members of the National Institution “shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation” of civil society involved in the protection and promotion of human rights (Principle 1). Effective cooperation should be established with non-Governmental organisations, “trends in philosophical or religious thought”, universities and experts, and Parliament. Government departments should only cooperate with the institution in “an advisory capacity”.

According to Principle 2, the National Institution shall have an “infrastructure which is suited for the smooth conduct of its activities, in particular adequate funding”. The institution should have its own staff and premises, to safeguard independence. It should not be subject to financial control “which might affect its independence”.

According to Principle 3, the appointment of the members of the National Institution shall be “effected by an official act which shall establish the specific duration of the mandate.” A mandate may be renewable, provided that pluralism of membership is ensured.

The third set of principles sets out methods of operation, namely to:

- a. Freely consider any questions falling within its competence,
- b. “Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence”,
- c. Address public opinion directly or through any press organ,
- d. Meet on a regular basis and whenever necessary,
- e. Establish working groups, and setup regional sections,
- f. Maintain consultations with other relevant bodies,
- g. Develop relations with non-governmental organisations.

Summing up the main requirements set out by the Paris Principles, National Institutions should have broad human rights mandates established by a formal act of Parliament; should function independently from any executive power; and should receive adequate funding from the state. It should be a prestigious, well-staffed institution with its own premises. It should coordinate with other official bodies, and maintain close relationships with civil society actors.

Several General Observations issued by the ICC Sub-Committee on Accreditation (SCA), and formally adopted by the ICC, serve as interpretive tools for the Paris Principles. The 2009 *ICC Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions* is a

major point of reference for National Institutions planning to apply for accreditation or reaccreditation.⁴⁵ It underlines that:

“The accreditation process has progressively become more rigorous and transparent, and now considers the effectiveness of National Institutions and their engagement with the international human rights system. The Sub-Committee assesses a National Institution’s compliance with the Paris Principles in law and in practice. All applications for accreditation under the Paris Principles are decided under the auspices of, and in cooperation with, OHCHR.”

The Guidelines also presents the ICC SCA General Observations. Several of the observations are of particular relevance for this review of the Norwegian National Institution, such as:

- “A National Institution must be established in a constitutional or legal text. Creation by an instrument of the Executive is not adequate to ensure permanency and independence.” (Observations 1.1)
- “The Sub-Committee observes that there are different ways in which pluralism may be achieved through the composition of the National Institution, for example:
 - a. Members of the governing body represent different segments of society...;
 - b. Pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates;
 - c. Pluralism through procedure enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
 - d. Pluralism through diverse staff representing the different societal groups within the society. ...” (Observations 2.1)

Many other ICC SCA observations are also of relevance for this review, and will be referred to in Chapter 6 of this report, which discusses ways to strengthen and ensure compliance the Norwegian National Institution’s compliance with the Paris Principles.

The UN High Commissioner for Human Rights has underlined that a National Institution is a “key component of effective national human rights protection systems”.⁴⁶ The High Commissioner “especially supports National Institutions to centre their work on core protection issues, such as the prevention of torture and degrading treatment, summary executions, arbitrary detention and disappearances, or the protection of human rights defenders. National institutions can, and should, play a role in advancing all aspects of the

⁴⁵ The fourth and latest version of the Guidelines are available at:
<http://www.nhri.net/2009/Guidelines%20for%20accreditation%20application%20June%202009%20ENGLISH%20.pdf>

⁴⁶ UN High Commissioner of Human Rights, Annual Report 2007, A/62/36, pp.5-6, paragraph 15.

rule of law, including with regard to the judiciary, law enforcement agencies and the correctional system.”⁴⁷

UN treaty bodies maintain that National Institutions are crucial partners in “narrowing the implementation gap by monitoring how international human rights treaties are being put into practice”.⁴⁸

According to our view, in order to fulfil these roles effectively, compliance with the Paris Principles should be the minimum standard. The same view is eloquently expressed by the EU Agency for Fundamental Rights,

“All EU Member States should have National Institutions with a sufficient level of independence, powers, and a mandate related to the full spectrum of rights ... National institutions should also be equipped with strong preventive powers, and sufficiently resourced to be able to collect data and conduct research and awareness-raising... [They] must be fully independent and guaranteed a sufficient infrastructure with adequate funding so as to ensure the highest attainable level of operations irrespective of changes in the political leanings of successive Governments, economic downturns, or perceived sensitivity of the matters they address. ... [They should be] equipped for efficient promotion and protection of human rights. The Paris Principles should be taken as the very minimum standard for National Institutions in the European Union.”⁴⁹

The present review takes this as its point of reference.

⁴⁷ <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>

⁴⁸ Quotation from FRA report, page. 18. Several UN treaty bodies have underlined this role by National Institutions, such as the UN Committee on the Elimination of Racial Discrimination (CERD), and the UN Committee on the Rights of the Child.

⁴⁹ FRA 2009 Report (see footnote 33 above for full reference), page 9.

3. ACTIVITIES OF THE NORWEGIAN CENTRE FOR HUMAN RIGHTS (NCHR) AS NATIONAL INSTITUTION

As has been noted, the mandate of Norway's National Institution was interpreted by NCHR as being in line with its overall statutes, namely to contribute to the realisation of international human rights. This original promotional role of NCHR was an important factor in designating NCHR as Norway's National Institution, as were the important roles played by NCHR founders and staff both nationally and internationally.

It was argued that even if the *normative and promotional* role of NCHR was unusual for a University entity, the University of Oslo had raised no objections about this role at the time the Institute became part of it in 1995. Neither the Senate ("Kollegiet"), nor the Evaluations Team of the Senate in 1999 (the evaluation committee of Nordic Professors), nor the Faculty of Law in 2000 when NCHR became part of it had pointed to this role as problematic.⁵⁰ Being a university entity was therefore not seen as an obstacle for becoming Norway's National Institution.

In addition, the NCHR director underlined that by assigning the task of being Norway's National Institution to NCHR, the Norwegian state would save the costs associated with establishing a new institution. It was more cost-effective to build on the existing human rights expertise of the NCHR.⁵¹

Becoming Norway's National Institution was basically interpreted to be a continuation of established purposes and practices of NCHR, and in the thinking of the NCHR leadership *the entire NCHR* was conceived as being the National Institution. In the words of the Strategic plan 2008-2012 for NCHR as the National Institution: "The tasks as National Institution is vested with NCHR has a whole, which comprises activities within research, education, international program activities and documentation."⁵²

However, in order to operate as a National Institution on a daily basis, a separate unit within NCHR and a new master plan was introduced for the strengthening of its capacity and competence in research, education and dissemination related to human rights in Norway.

In interviews conducted by the Review Team with current and former staff members, a view emerged that this way of thinking has been partly or fully abandoned. Instead of viewing the

⁵⁰ Nils Butenschøn, Director, Norwegian Institute of Human Rights, *Institutt for menneskerettigheter (IMR) som nasjonal institusjon for menneskerettigheter* (NIMR). Bakgrunn, formål, organisering (Norwegian only. "Institute of Human Rights as National Institution for human rights: Background, purpose, organisation"), Oslo 5 June 2000, page 3.

⁵¹ Op. cit., page 1.

⁵² Strategi for SMRs oppgaver knyttet til status som Norges nasjonale institusjon for menneskerettigheter (2008-2012), page 3 (Norwegian only. Review team translation).

NCHR in its entirety as National Institution, a more realistic approach has over time prevailed seeing the National Institution function as one of several programs at the NCHR; led by the National Institution director, run by a team of core advisors, and supported by other NCHR staff. This way of thinking has prevailed in NCHR's recent Statement of Compliance with the Paris Principles, which describes the National Institution as "de facto [one of three] ... organisational sub-units in day-to day operations."⁵³

The conception of NCHR in its entirety as National Institution translated into some peculiar organisational arrangements, such as the assigning of a 22,5 % (or 1/5) so-called *National Institution work obligation* to seven of its core researchers.

In this Chapter, the main focus will be on describing how the NCHR has interpreted its mandate as National Institution, what kind of activities it run, how it organised the work, and how it relates to external stakeholders such as the Government, human rights institutions, civil society, and international institutions.

The last section of the Chapter contains the overall Review Team assessment of how NCHR has functioned as National Institution. A presentation of viewpoints on NCHR as National Institution by external stakeholders and former and current staff at the NCHR will be presented in Chapter 5.

NCHR INTERPRETATION OF ITS MANDATE AS NATIONAL INSTITUTION

In discussing the need for Norway to establish a National Institution, a document written in 2000 by the NCHR director points both to international developments as well as to the lack of an independent institution in Norway with "resources to gather and systematize and knowledge material which in particular concerns human rights issues; to educate (...) researchers, investigators and other resource persons (lawyers, judges, teachers, officers and other public servants) with expertise in human rights; to be a resource and documentation base on national human rights issues for individuals, voluntary organisations, public institutions and media."⁵⁴

The document also questions whether Norway has sufficient control and supervisory mechanisms in order to guarantee the rights provided for in international human rights treaties that Norway is bound by. It points to the role of the Ombud institutions, as well as to some of their limitations such as their opinions or statements not being legally binding and that both the Ombudsman on Children and the then Equality Ombud "are part of public administration and should be seen as the administration's own internal control organs

⁵³ *Statement of Compliance with the Paris Principles of the Norwegian Centre for Human Rights*, 21 January 2011, page 7.

⁵⁴ Nils Butenschøn, Op. cit. 2000, page 4 (Norwegian only. Quotations from the Director's note has been translated by the Review Team.)

without full independence from executive power”.⁵⁵ It does not however argue in favour of NCHR as National Institution supplementing and strengthening the existing supervisory mechanisms.

The emphasis is rather on research, advice, and education as well as on NCHR as an information and documentation centre.

Even though NCHR initially had prioritised research on international issues, the Director’s document points to initiatives to strengthen research and competence on human rights issues in Norway. In 1998-1999 there were internal discussions at NCHR on establishing a “competence unit on human rights in Norway”, which were presented to the Norwegian Parliament Standing Committee on Justice. The background of this initiative was the forthcoming adoption of the Human Rights Act, which created a need for strengthening overall knowledge of human rights in the Government and public administration.

There had also been another initiative, in cooperation with the Norwegian Research Council, to establish a “multidisciplinary research program with a focus on human rights in Norway. This measure is the foundation of a knowledge-based National Institution.”⁵⁶

The Research Council advised that a “core research team with strong and stable competence on human rights in Norway” should be established at NCHR. An amount of 8-10 millions NOK should annually be made available for this research program.

NCHR agreed on the recommendations by the Research Council and linked them to the possible assigning of NCHR as Norway’s National Institution, underlining that it will only “take upon itself the professional responsibility of the role as National Institution for Human Rights if resources are provided to enable a core, permanent scientific staff body specializing in the field of human rights in Norway.” In making the demand clear in terms of numbers of scientific employees, NCHR stated that “two researchers is a minimum in order to establish a national core research team”.⁵⁷ Around the core research team a group of fellows and research assistants may be created.

The research team should also play an important role in developing advice and education. According to the Director’s document, Norway at the time (in 2000) only had very few highly qualified human rights experts. In order to provide for a new generation of experts, focus has to be on nurturing human rights research programs. Similarly, providing high quality advice and comments on draft legislation requires that the advisers stay in close consultation with the core research team.

The Director’s document discusses the problem of giving institutional advice and at the same time respecting the academic freedom of each research employee. Academic freedom

⁵⁵ Ibid.

⁵⁶ Op. cit., page 5.

⁵⁷ Op. cit., page 6.

means that statements and conclusions by a scientific employee are not “perceived as binding on other employees at the institution or for the institution itself.”⁵⁸

The solution of this contradiction according to the Director is that:

“[A]dvisory professional statements of ... [NCHR] as National Institution – in cases of considerable internal disagreement – has to reflect this disagreement. ... In extreme cases such a document would look like a “committee recommendation” containing both majority and minority considerations. This should, however, not be seen as a problem. On the contrary: in such cases there is no clear professional blueprint. It is therefore important for relevant authorities to get to know the alternative premises for the conclusions to be drawn, and that the authorities – ultimately the Parliament – on their own have to decide on which premises to base the evaluation of the case.”⁵⁹

In addition, the Director’s document also refers to experiences at the Danish Centre (now Institute) for Human Rights, where internal disagreements hardly occur which should be of minor concern.

NCHR as National Institution should develop some capacity of informing educational institutions, vulnerable groups such as immigrants and national minorities, as well as the wider public about NCHR activities. It should also provide library services.

In discussing the scale of these functions, the Director’s document concludes that NCHR needs to hire an information officer, a librarian, and an IT employee.⁶⁰

In conclusion, the Director’s document states that NCHR is ready/prepared to take upon itself the task of becoming Norway’s National Institution since such a role is within the aim of NCHR as defined in its statutes. However, NCHR can only fulfil its role as National Institution if its resource base of permanent scientific research staff is strengthened.

Furthermore, the fundamental premise for NCHR being Norway’s National Institution is that it should be a “research based knowledge producing institution and that the role as National Institution has to be built on a robust research team. Only in that way can ... [NCHR] as a university unit take upon itself the professional responsibility”.⁶¹

The Director maintains that the National Institution component of NCHR’s work would require some extra staffing, including a minimum two scientific positions, a legal adviser, a librarian, an educational officer, an information officer, and an IT employee, as well as some extra administrative personnel (a secretary and a finance officer) and compensation for

⁵⁸ Ibid.

⁵⁹ Op. cit. page 7.

⁶⁰ Op. cit., page 9.

⁶¹ Ibid.

extra office space and other related expenses. In accordance with the prescribed model, NCHR would need NOK 5 million.⁶²

The model prescribed by the NCHR Director was accepted by the Government, which can be clearly seen in the Royal Decree's description of the tasks of Norway's National Institution: "A fundamental premise is the National Institution's competence and capacity to do research, including basic as well as applied research. This competence must be the basis for the other tasks that the institution takes on."

Also in terms of its resource base, the Government accepted to provide a support of NOK 5 million to enable NCHR to function as National Institution.

In interpreting the Royal Decree and its mandate as National Institution, NCHR could build on the Director's document on how it should operate. The academic profile of its mission is clearly stated. The knowledge base for its promotional and protective activities should be established through its own scientific research.

The Government also accepted that NCHR as National Institution should "not handle individual complaints, but direct individual claims to existing Ombudsmen institutions, the Judiciary, or to non-Governmental organisations", as stated by the Royal Decree.

In developing its role as National Institution, NCHR focused on activities of Norwegian authorities although other actors could also be evaluated in terms of their human rights performance, such as businesses and organisations. Even though the main focus is on activities on Norwegian territory, activities of Norwegian authorities in foreign countries may also be evaluated (such as military engagement or development assistance).

Being part of the Faculty of Law at the University of Oslo has meant that the fundamental method of NCHR is legal analysis. However also other scientific methods could be applied in line with NCHR's overall multidisciplinary approach. According to the Strategic plan 2008-2012, NCHR should also study the function of human rights in society, among other things by applying social science methods of investigating the situation of vulnerable groups.⁶³

In short, NCHR was mandated and has interpreted its mandate to become a leading centre for university level research on human rights issues in Norway. It should become a recognised actor in strengthening knowledge and promoting respect for human rights in Norway. And it should be an actor in international cooperation among National Institutions.

⁶² Op. cit., pages 9-10.

⁶³ *Strategi for SMRs oppgaver knyttet til status som Norges nasjonale institusjon for menneskerettigheter (2008-2012)*, page 3 (Norwegian only. Review team translation).

ORGANISATIONAL SET-UP

NCHR is a multidisciplinary centre at the University of Oslo, headed by a Centre Director, which is supported by a Chief of Staff and Administration ("Kontorsjef"). The management team ("lederguppen") consists of the Director, the Chief of Staff and the Director's of the three core areas of engagement: 1) Research and education; b) International programmes, and c) National Institution.

NCHR has about 60 full-time positions, including 30 in the research and education section; 20 in the international programmes section; 5 in the administration, library and information section; and 5 in the National Institutions unit.

The National Institution unit consists of the:

- Director of the National Institution;
- Legal advisor (permanent position)
- Legal advisor (non permanent, partially funded by Lovdata)
- Education officer (1/2 time position, shared with core administration)
- Information officer (1/2 time position, shared with core administration)

There are several additional resources for the National Institution unit at NCHR, including a librarian (full time position) and access to research time (1/5 time position or 22,5 %) from seven in-house researchers, as well as time from Director, Deputy and other core administrative staff.

From 2001 until 2010, the budget for NCHR as National Institution increased from NOK 5 million to 6,287 million. According to NCHR, this amount only covers salaries for 2 researchers, 1 Director, 1 legal advisor and 1 librarian, part-time education officer (50 percent), part-time information officer (50 percent), and 1-2 part-time research assistants. Only a very small amount of the budget (3 %) is set aside for travel and other incidental expenses.

Administrative costs carried by the University of Oslo are covered by a 55 % overhead on salary costs, explaining the limited number of positions financed by its National Institution allocation.

MAIN TYPES OF ACTIVITIES

During its 10 years of functioning as National Institution for human rights, NCHR's activities have mainly fallen into the following categories:

A) MONITORING

There are several sub-categories of this type of activities, such as *Publication of a yearbook on human rights in Norway*, starting in 2005 (covering 2004). As a result of input from the Advisory Committee as well as from internal debates, the Yearbook format has been

expanded several times, in particular in 2006, including thematic and analytical material as well as NCHR recommendations.

The Yearbook comprise the following main sections: 1) a preface, introducing NCHR as National Institution; 2) overview of Yearbook sources, such as legislation, treaty obligations, court decisions, opinions by the Parliamentary Ombudsman, statements of other Ombud institutions, Norwegian reports to treaty bodies, recommendations of treaty bodies or international political bodies, views on individual complaints against Norway by treaty bodies, and media and research reports; 3) thematic section including NCHR recommendations; and 4) a descriptive overview of cases under specific civil, political, economic, social and cultural rights, prohibition against discrimination and protection of vulnerable groups, and corporate social responsibility. Each right is introduced and explained. The Yearbook for 2009 had 204 pages.⁶⁴

NCHR has used the launching seminar of the Yearbook, sometimes very successfully, to raise important human rights concerns related to specific policy areas.

A second sub-category of monitoring activities is *providing commentaries to draft legislation and to state reports to international treaty bodies*. Over time NCHR has submitted a large number of commentaries to draft laws. In the annual plan for 2007, it is stated that priority should be given to providing fewer though more extensive commentaries. Annually NCHR submits 5 to 10 commentaries to draft laws.⁶⁵

NCHR decided that providing such comments was a strategic way of strengthening human rights. Criteria for selecting draft legislation to be commented on included human rights relevance, Government consideration of relevant human rights aspects in its proposal, whether NCHR comments would contribute to human rights awareness among Governmental officials, as well as National Institution capacity and available expertise.⁶⁶

However, NCHR did not in a systematic way follow-up on how its comments and recommendations were taken into account in the further legislative process.

NCHR also comments on Norway's reports to treaty bodies, as well as following up on Norway's implementation of treaty body recommendations. On 22 December 2003, NCHR first drafted a comprehensive report on international supervisory organ's views on Norway's

⁶⁴ A document to the NCHR Board, to the Advisory Committee and to the NCHR Board of Director's by the then National Institution director, Njål Høstmælingen in 2007 gives insight into the main discussions and changes made in the Yearbook: "Årbok om menneskerettigheter", Notat 23.10.2007.

⁶⁵ In Norway, all draft laws are presented to the public for comments. Relevant institutions and civil society organisations are in particular invited to submit comments.

⁶⁶ Statement of Compliance with the Paris Principles of the Norwegian Centre for Human Rights, 21 January 2011, page 13.

follow-up on its international human rights obligations.⁶⁷ Summarising views and recommendations of international treaty bodies then became a part of the Yearbook.

However, the NCHR seems not to have systematically followed-up on important and principled issues raised by the international criticism, including by monitoring how Norwegian authorities followed-up and initiated changes to amend legislation and/or correct practices.

A third sub-category of monitoring activities to be found described in the annual plans of NCHR is *to publish research based report on human rights issues in Norway*.

Since the NCHR became National Institution in 2001, one of its primary goals has been to conduct research on human rights issues in Norway by applying legal and social science methods. In a strategic document from 2007, a clearly indicated goal is to “identify, develop and lay the foundations of research reports/studies on current human rights issues”, including the rights of asylum seeking children.⁶⁸

In the material made available to the Review Team as well as on the National Institution website, the only official publications available are the Yearbooks 2004-2010.⁶⁹

B) RESEARCH AND PUBLICATION

In the period, NCHR had several relevant research projects, including the research program “Human Rights in Norway” supported by the Norwegian Research Council. The program included research and research based activities applying international human rights standards on issues in Norway. According to information received from NCHR, the program included approximately 10 PhD candidates.

Several other research programs were also relevant, such as current programs on “The Convention on the Rights of the Child and Sami Culture” and “Should States Ratify Human Rights Conventions?”

⁶⁷ *Internasjonale tilsynsorganers synspunkter på Norges oppfølging av internasjonale menneskerettighetsforpliktelser*. Rapport utarbeidet av Senter for menneskerettigheter, Det juridiske fakultet, Universitetet i Oslo. (“International treaty bodies’ views on Norway’s follow-up on its international human rights obligations. Report prepared by the Centre for Human Rights, Juridical Faculty, University of Oslo”)

⁶⁸ Årsplan for 2007. Nasjonal institusjon, punkt 5.2.1 (Norwegian only. Annual plan 2007. National Institution, point 5.2.1).

⁶⁹ However, a few seminars arranged by the NCHR led to publications of monographs on specific issues, such as legal and other issues related to the use of Hijab and the position and role of the protestant church in Norway: Njål Høstmælingen, *Hijab i Norge: trussel eller menneskerett?* (Hijab in Norway: Threat or human rights?), Abstrakt forlag, 2004, and Njål Høstmælingen, Tore Lindholm and I. T Plessner (red), *Stat, kirke og menneskerettigheter* (State, Church and Human Rights), Abstrakt forlag 2006. However, these were not NCHR/National Institution publications.

In addition, NCHR has over time issued a few thematic reports on human rights issues in Norway.⁷⁰ However, neither the dissertations nor the reports are officially published by the National Institution, nor do they contain institutional recommendations. They are not listed as National Institution publications on its website. The dissertations are published at the University of Oslo database for research publications (Frida).

C) ADVISORY FUNCTION AND INFORMATION

There are several sub-categories of this type of activities, such as providing *Norwegian-language summaries of judgments of the European Court of Human Rights*. This has been done in cooperation with *Lovdata*, which is the most important web-based portal for dissemination of legal material in Norway.⁷¹ In addition, some of the judgments were presented and discussed by NCHR employees in the Norwegian media.

A second sub-category of activities was arranging of seminars, conferences, and workshops, as well as NCHR employees holding lectures and taking part in seminars, workshops, etc. organised by other institutions. In the period under discussion, NCHR established a Human Rights Forum, arranging 6-8 meetings annually. In some stages of the period under review, the Human Rights Forum addressed only jurists. Currently, the Forum is open to other professional groups as well as to civil society and the wider public.

A third sub-category of activities was giving individual advice in specific cases. The general rule adopted by the NCHR has been to inform individuals seeking advice about the different institutions that could give assistance in the case, such as the Parliamentary Ombudsman or non-governmental organisations.

A fourth sub-category of activities was developing the webpage of the National Institution, as well as publishing articles and taking part in discussions in national media.

The webpage of NCHR as National Institution is available as a link on the front page of the NCHR web page, which is a part of the overall University of Oslo web page. If one searches for 'National Institution' in Norwegian language ("nasjonal institusjon") using Google, Yahoo or Norwegian search engines, one comes directly to the NCHR National Institution webpage.⁷² The web page provides for the following categories of information:

- Monitoring ("overvåkning")
- Network and cooperation ("Nettverk og samarbeid")

⁷⁰ Examples include *Human rights aspects of female circumcision and medical examination* (2008), and *Human rights situation of children in Norway* (2008).

⁷¹ www.lovdato.no

⁷² The address is: <http://www.jus.uio.no/smr/om/nasjonal-institusjon/>

- Summaries of judgments by the European Court of Human Rights in Norwegian (“Sammendrag av dommer fra EMD”)⁷³
- Advisory Function (“Rådgivning”)
- On National Institution (“Om nasjonal institusjon”)
- Current issues (“Aktuelle saker”)
- Publications (“Publikasjoner”)

D) COOPERATION AND NETWORKING

In 2005, the NCHR established an Advisory Committee which meets 2-4 times a year. Its function is to advise on priorities for the NHCR in its National Institution-related work, as well as to nominate two external members of the NCHR Board.

NCHR also occasionally takes cooperates on specific issues with Ministries, public institutions as well as civil society. Recent examples include lobbying campaigns for incorporation of the International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) into the Human Rights Act (2008), national consultations on measures for reforming the European Court of Human Rights (2009), and recommendations for ratification of international treaties (ongoing).

NCHR takes part in regional and international meetings with other National Institutions, within the Council of Europe, and within the UN--in particular the office of the UN High Commissioner for Human Rights. In recent years it has cooperated with the Egypt National Human Rights Council and with the Arab-European Human Rights Dialogue.

NCHR has not taken on any roles on behalf of any networks of National Institutions.

Parts of NCHR international efforts are linked to keeping its A-status with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).

NCHR runs several international programs, the majority of which are financed by the Norwegian Ministry of Foreign Affairs. The programs include:

- International Criminal Court Legal Tools;
- The Indonesia program;
- The China Autonomy Program;
- The China program (connected to Norway’s official human rights dialogue with China);
- Norwegian Resource Bank for Democracy and Human Rights (NORDEM);
- The Oslo Coalition for Freedom of Religion or Belief;

⁷³ The service both provides for summaries of judgments of high importance (Category 1 judgments) as well as all judgments against Norway.

- The Program for Socio-Economic Rights;
- The South Africa Program;
- The Vietnam Program (connected to Norway’s official dialogue with Vietnam)

Each of the international programs includes both research and administrative capacity, and both external and in house expertise. Activities include applied research, analysis, education, and workshops and conferences. Cooperating partners include academic institutions, as well as individual researchers.

There does not seem to be any systematic efforts or established forums with NCHR in order to exchange experiences or otherwise make use of synergic effects between these programs and NCHR as National Institution.

E) CONTINUING EDUCATION

According to its mandate as National Institution, NCHR is committed to arranging continuing education for professional groups, such as jurists, teachers, journalists, social workers, as well as employees in public administration, etc. Courses have been held annually for the Norwegian Directorate of Immigration (UDI) and the Norwegian Immigration Appeals Board (UNE), while a range of tailored courses for specific professional groups have been held in co-operation with other institutions. Teachers and public servants are the main target groups.

NCHR may provide courses when requested, and courses may be tailored to meet the needs of different professional groups. According to its webpage description, courses may include subjects such as children’s rights, democracy and human rights, discrimination, how to file a complaint to the European Court of Human Rights, introduction into human rights, religion and human rights, indigenous peoples rights, development and human rights, and freedom of expression.⁷⁴

NCHR also arranges an annual National Forum for Human Rights Education, which functions as a network meeting and an arena for competence building for teachers and human rights trainers.⁷⁵

⁷⁴ There is a webpage providing information about courses provided by NCHR:

<http://www.jus.uio.no/smr/studier/evu/>

⁷⁵ There is a webpage for the National Forum for Human Rights Education:

<http://www.jus.uio.no/smr/studier/nasjonalt-forum/>

NCHR has extensive library functions, providing students, researchers, professionals and civil society with access to extensive collections of human rights books, periodicals, as well as UN and Council of Europe human rights documents.

NCHR runs several educational programs that are not specifically linked to its National Institution status, but that could nevertheless have positive effects on the level of awareness and competence in Norway. The most prominent of these programs is a two year Masters program in “The Theory and practice of human rights”, which is attended by both Norwegian as well as international students.

The NCHR also offers an annual six week summer course and a one week basic course, taught in English for international and Norwegian participants.

RELATIONSHIP WITH THE GOVERNMENT

NCHR operates independently from the Government and any other public authority. Its decision making body is the NCHR Board, and ultimately, the University of Oslo Board. Strategic plans of the National Institution are approved by the NCHR Board. The NCHR is financially accountable to the Ministry of Foreign Affairs for its use of the National Institution allocation. The NCHR consequently submits annual administrative and financial reports to the Ministry.

NCHR’s independence is both guaranteed by the Royal Decree, and according to the NCHR’s view, additionally secured by its role as an entity at the University of Oslo. In Norway, academic freedom of universities as well as that of any university employee is in general respected.⁷⁶

In order to develop views as a National Institution, “all policy recommendations in connection with public hearings of draft provisions are normally signed by the head of the NHRI [National Institution] unit, not by the Director of the Centre”.⁷⁷ In this way, the National Institution’s comments and recommendations are not seen as infringing on the academic freedom of individual researchers.

The NCHR has not developed any systematic approach towards influencing the Government, the Parliament or any other authority. Its main channel of giving advice is its comments to draft laws. However, representatives from the NCHR occasionally meet with Government representatives, and National Institution representatives also occasionally submit articles to newspapers and journals in order to argue in favour of human rights .

⁷⁶ Cfr. *Statement of Compliance with the Paris Principles of the Norwegian Centre for Human Rights*, 21 January 2011, page 4.

⁷⁷ *Statement of Compliance with the Paris Principles of the Norwegian Centre for Human Rights*, 21 January 2011, page 4.

In seminars and Human Rights Forum meetings, public servants regularly participate, listening to presentations and taking part in discussions.⁷⁸

RELATIONSHIP WITH OTHER HUMAN RIGHTS INSTITUTIONS

NCHR cooperates with the Ombud institutions in different ways. Since the establishment of the Advisory Committee in 2005, two of the three national Ombud institutions have been among its members. In 2010, the Ombudsman for Children was included as a member. The main functioning of the Advisory Committee is to provide strategic advice for NCHR.

In addition, the Ombud institutions are invited annually to contribute information on their human rights related cases, statements and reports as part of the sources used in the Yearbook on human rights in Norway.

A third way NCHR works with the Ombud institutions is by advising individuals to raise their complaints with one of the institutions (or with other relevant institutions).

Fourthly, NCHR has cooperated with some of the Ombud institutions on ad hoc basis on reporting to international treaty bodies.

A policy shift took place in 2010, when the first separate meeting between NCHR and the Ombud institutions were held and they agreed to have consultative meetings 3-4 times per year.⁷⁹

RELATIONSHIP WITH CIVIL SOCIETY

There are several ways NCHR gets input and engages with civil society organisations. Firstly, in 2005 NCHR established an Advisory Committee, currently including three Ombud institutions, six non-Governmental organisations,⁸⁰ the Norwegian Confederation of Trade Unions (LO), the Confederation of Norwegian Enterprises (NHO), the Sami Parliament and the Editors Association. Each organisation is represented by one representative whom they freely choose. The organisational membership is permanent, and has been unchanged since 2005, with the exception of the Ombudsman for Children who became member in 2010.

⁷⁸ In general, however, public servants would be cautious to take positions in public debates due to their main role being to implement the Government's policy. They would mainly participate by asking questions and referring to current policies, as well as making notes of prevailing viewpoints and arguments.

⁷⁹ *Statement of Compliance with the Paris Principles of the Norwegian Centre for Human Rights*, 21 January 2011, page 21.

⁸⁰ Amnesty International Norway, Norwegian Organisation for Asylum Seekers (NOAS), the Bar Association, Norwegian Federation of Organisations of Disabled People (NFF), the Norwegian Helsinki Committee, and Save the Children.

The Advisory Committee nominates two members of the NCHR Board.

NCHR also gets input from documents and discussions in the Norwegian NGO Forum for Human Rights, a group of about 25 organisations cooperating on providing recommendations to Norwegian authorities on policies in the UN Human Rights Council and other international forums. The Norwegian Helsinki Committee takes care of secretarial functions of the NGO Forum.

NGO Forum member organisations may also join forces in developing alternative reports to international human rights bodies. NCHR is seen as an important and competent dialogue partner for the organisations in order to discuss viewpoints, and to coordinate and get advice.

Finally, the Yearbook and seminars and meetings arranged by NCHR provide non-governmental organisations with important input to their work. Occasionally, non-governmental organisations are asked to prepare statements and take part in panel discussions arranged by NCHR.

INTERNATIONAL ROLE

NCHR takes part in meetings organised by both the international and the European coordinating committees of National Institutions. Due to limited capacity, however, NCHR's engagement has been limited, and it has not taken on any roles on behalf of these networks.

NCHR cooperates with treaty bodies and the Human Rights Council in providing alternative reports. It has participated in most of the hearings of Norway by UN human rights bodies. It occasionally arranges meetings and seminars with UN experts and rapporteurs visiting Norway.

NCHR plays important international roles in its international programs, research projects and educational programs. However, this is not linked, or is linked only to a very limited degree, to its functioning as Norway's National Institution.

REVIEW TEAM OBSERVATIONS

Based on the presentation of NCHR as Norway's National Institution in this and the previous Chapters, the Review Team presents a few observations.

1) *Royal Decree and the Paris Principles*. Even though the Royal Decree does not claim explicitly that the mandate is in compliance with the Paris Principles, the fact that it points to the Principles as allowing "flexible interpretations" make it reasonable to conclude that the two Ministries drafting the Mandate and the Government adopting it assumed it to be in compliance.

The Review Team does not agree with this assumption. The weak points of the Royal Decree are obviously its lack of any prescription of financial and organisational set-up ensuring the institutions independence from the authorities. Its insistence on a research-based approach

seems natural in light of the institution being a University entity, but could also seriously limit its interaction with other institutions and organisations outside the University structure as well as its role as a strong promoter and public voice on human rights issues. A National Institution must be able to take a stand on issues based on its general high level of competence on human rights, not necessarily only on issues being subject of its scientific research.

In addition, the unspecified nature of the mandate left a lot of room for the institution itself to decide its priorities in its role as National Institution. This could be seen as a strength (ensuring independence), but given that the Institute/Centre was part of a University, the risk was that the research interests of its scientific staff would prevail over a thorough analysis of human rights issues in Norway in setting priorities.

A more fundamental weakness with the whole arrangement would prove to be that the Norwegian Institute of Human Rights/NCHR was already a very complex institution. In providing that “a National Institution ... be organised at the Norwegian Institute of Human Rights”, the Government may have given the Institute/Centre a near impossible task of creating an institutional identity as Norway’s National Institution at the same time as the Institute was taking care of a range of other tasks and function’s, mostly directed at situations outside of Norway.

In conclusion, the NCHR operating in line with the Royal Decree as Norway’s National Institution, could still be underperforming in relation to the requirements of the Paris Principles. In addition, a fundamental issue remains that the Royal Decree is not a law adopted by Parliament, which is required by the Paris Principles.

2) *NCHR represents great capacity and competence* in conducting research, education and in running international programs on human rights. In its function as National Institution, however, this capacity has produced limited results. In reality, the tasks of the National Institution have been delegated to a small team with limited ability to draw on resources and in influencing decisions at NCHR.

Some of the problems of limited output are due to a) the way NCHR has organised its National Institution work, and b) limited funding. However, a fundamental issue remains whether a university entity can function effectively as a Paris Principle compliant institution.

Among the activities performed by NCHR as National Institution, publication of the Yearbook, commenting on draft laws, and providing alternative reports to international human rights bodies stands out as most prioritised and prominent. The overall quality of this work has been good, in the view of the Review Team. The Yearbook stands out as a valid resource for public servants, legal practitioners, and non-governmental organisations.

3) *Being a university entity National Institution.* Given the Royal Decree’s general and unspecified nature, it is only to be expected that the NCHR would take some time to define its role as National Institution in more detail. It is however striking that due to its fundamental choice of basing its functioning as Norway’s National Institution on scientific research and research cooperation, it has (in practice) restricted itself from interacting with institutions and civil society organisations that are outside the realm of scientific research and does not have strong academic credentials.

It was only in 2005, due to its aspirations of getting status-A accreditation with the ICC that NCHR started to engage more systematically with civil society organisations and the Ombud institutions. And it was only as late as 2009 that it started to engage more pro-actively in coordinating and cooperating with the NGO Forum for Human Rights.

Of equal importance, because of its ineffective organisation of its research resources on human rights issues in Norway, it became difficult to provide a comprehensive knowledge base. Dividing research capacity amongst seven researchers, each expected to contribute 1/5 of a full time position on research for the National Institution, proved not to be effective and created frustrations and conflicts within NCHR.⁸¹

From documents made available to the Review Team, it is striking that directors of the National Institution unit at times presented ambitious plans on conducting research projects that could broaden the knowledge base of the institution.⁸² However, the NCHR did only to a very limited extent succeed in conducting such research.

According to the NCHR *Statement of Compliance with the Paris Principles of the Norwegian Centre for Human Rights* (21 January 2011), only “the first three positions listed are dedicated to the core priorities in our work to protect and promote human rights in Norway by way of monitoring, advocacy and national and international cooperation in addition to administrative tasks” (page 7).

The statement clearly underlines the limited capacity of the National Institution unit, making the contributions and support of other parts of NCHR vital to the overall functioning as National Institution. In particular, the functioning of its researchers in providing for the knowledge base of the National Institution was essential.

The National Institution unit was not in a position to search for persons with the required competence in order to broaden its knowledge base on human rights in Norway. Instead, it had to try to engage one or more of the seven researchers, some of them having their academic interest in other countries and with other themes that were most relevant for the National Institution.

An additional problem was that the academic freedom norm of the university, which indeed serves as a safeguard against Government interference, also functioned as an impediment of

⁸¹ Cfr. Elin S. Kjørholt, *Rapport om nasjonal institusjon for menneskerettigheter i Norge* (Norwegian only. “Report on National Institution for Human Rights in Norway”), Norwegian Center for Human Rights, Oslo 30 January 2010, page 11.

⁸² In concluding an overview of international treaty bodies views on Norway, a report by the then Director of the National Institution unit, Marius Emberland, states that NCHR should function as a centre for research on human rights issues in Norway, following up on treaty bodies commenting on the lack of such research *Internasjonale tilsynsorganers synspunkter på Norges oppfølging av internasjonale menneskerettighetsforpliktelser*. Rapport utarbeidet av Senter for menneskerettigheter, Det juridiske fakultet, Universitetet i Oslo. (“International treaty bodies’ views on Norway’s follow-up on its international human rights obligations. Report prepared by the Centre for Human Rights, Juridical Faculty, University of Oslo”), page 45.

developing a strong institutional voice. Based on NCHR's lack of media strategy,⁸³ lack of thematic studies with recommendations, and its cautious role in engaging with civil society, the Review Team concludes that even if there are few examples of internal conflicts related to official National Institution views, the main problem is that NCHR has been very cautious in developing official views on human rights issues in Norway.

An example of lack of institutional identity and a consistent voice of the National Institution is its stand related to ratification of international human rights treaties. According to the Statement of compliance with the Paris Principles, "NCHR has consistently advocated implementation of human rights instruments ratified by Norway. The NCHR has been more ambiguous when it comes to encouraging ratification of new international human rights instruments. The approach has varied depending who has held the position of NCHR Director. The difference in approach is in large linked to the conflict of roles as National Institution and research centre"⁸⁴

In conclusion, The Review Team has made several critical observations related to the National Institution being a unit within a university entity:

- Due to its prioritising of research as its knowledge base, NCHR as National Institution did not have a pro-active role related to civil society during most of the period 2001-2010. Only in 2009 did the NCHR initiate more cooperation with non-governmental organisations with regard to preparing reports to the UN Human Rights Council Universal Periodic Review (UPR) of Norway. The NCHR and the NGO Forum submitted separate reports, but discussed and coordinated their inputs;
- The complex functions of NCHR, including its core university functions, international programs financed by the Ministry of Foreign Affairs as well as its role as Norway's National Institution, have led the NCHR Director to question the 'ownership' of NCHR. About 80 % of the financing of NCHR activities, including its role as National Institution, comes from Governmental sources. Its funding through the University of Oslo is limited, and this imbalance has led to some problems for NCHR. According to the Director, the University leadership should clarify its ownership of NCHR both in terms of financing and in terms of the roles the Norwegian Government has vested with NCHR;⁸⁵

⁸³ In the documents made available to the Review Team, there is an interesting paper on the National Institution and information activities (Nasjonal institusjon og informasjonsvirksomheten, 06.02,2004), written by the NCHR head of information, Christan Boe Astrup. He concludes that there have been few efforts to develop an information strategy for the National Institution, and that "campaign work has been accidental, and characterized by lack of system and structure."

⁸⁴ According to *Statement of Compliance with the Paris Principles of the Norwegian Centre for Human Rights*, 21 January 2011, page 14.

⁸⁵ Nils Butenschøn, Director, NCHR, Norsk senter for menneskerettigheter: samfunnsoppdrag og rolle som grunnenhet ved Universitetet i Oslo. 12. Mai 2010

- In the view of the Review Team, an underlying cause of the NCHR's problem of succeeding in its National Institution function may be that it is a complex institution with conflicting or at least not synergetic norms and aims. It is only recently that systematic efforts exists within NCHR to exchange experiences or otherwise make use of synergetic effects between the research projects, the international programs and NCHR as National Institution;⁸⁶
- Administrative costs carried by the University of Oslo are covered by a 55 % overhead on salary costs, explaining the limited number of positions financed by its National Institution allocation;
- NCHR has not in a systematic way followed up on how its draft law comments and recommendations have been taken into account in the further legislative process. Nor has it followed up the observations and views of UN and Council of Europe human rights bodies;
- NCHR as National Institution did not become a visible actor in public debates. True to the underlying norm of academic freedom, it is not the National Institution but rather individual NCHR researchers that over time have become known to the public for their expertise in commenting on human rights issues.

4) *Compliance with the Paris Principles.* Based on documents made available for the review, the Review Team concludes that there are several weak points in NCHR's performance as National Institution, in relation to the Paris Principles:

- As will be argued in more detail in Chapter 6, Norway's National Institution should be established by law and/or a constitutional provision, not by a Royal Decree. There is clearly a need for a law on the National Institution in order to ensure compliance with Principle 2 on competence and responsibilities;
- Due to its limited capacity, weak institutional identity and underdeveloped institutional voice, NCHR as National Institution is not fully living up to its responsibilities under Principle 3(a) to submit "to the Government, Parliament and any other competent body" opinions, recommendations, proposals and reports. It is:
 - o *quite strong* on Principle 3(a)i, commenting on legislative or administrative provisions;
 - o and on 3(d), contributing to the reports which States are required to submit to UN bodies and committees, and to regional institutions;
 - o and on parts of 3(c), to ensure implementation of international treaties ratified by Norway, where NCHR has played an increasingly strong role;
 - o and *partly strong* on 3(a)iii, reports on the national human rights situation, which is covered to an extent by the Yearbook);

⁸⁶ Lack of synergies was addressed by the Organisational Review of NCHR 2009-2010, which has led to a major reorganisations in 2010 in order to enhance synergetic effects.

- and on 3(b), promoting harmonisation of national legislation, regulations and practices with international human rights, which it does in particular on legislation, but less systematic on regulations and practices;
 - on parts of 3(c), to encourage ratification of international treaties (not fully consistent over time);
 - and on 3(e), cooperating internationally;
 - and on 3(f), assisting in the formulation of programmes for teaching and researching, and taking part in teaching in schools, universities and professional circles (the weakest point being lack of strategic prioritising of strengthening human rights components of various professional educations);
 - but *weak* on 3(a)ii, reporting on any situation of violation of human rights which it decides to take up;
 - and 3(a)iv, drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to it;
 - and 3(g), to publicise human rights and efforts to combat discrimination, by increasing public awareness, through information and making use of media.
- When it comes to Principles on *composition and guarantees of independence and pluralism*, the Review Team concludes that NCHR should strengthen *pluralism*. In the period under review, there was little attention paid to the situation of the Sami population, the situation of national minorities, and on the situation of immigrants and refugees residing in the country. Nor the NCHR ensure that the composition of staff or its Advisory Committee reflected the composition of the Norwegian population.
- The 2005 establishment of an Advisory Committee helped to strengthen relations with civil society and the Ombud institutions, but this could be further developed. NCHR failed to include the institution Galdú, as well as organisations advocating for the rights of national minorities and immigrants (Principle 1);
 - The funding of the National Institution is, in the view of the Review Committee, too small to enable effective functioning. The University of Oslo requirement of 55 % overhead on salaries adds to this problem. The limited base funding, although supplemented to some extent by project funding, contributes to the small size of the National Institution unit at NCHR. Adding the problem has been the ineffective use of research resources at NCHR.
- When it comes to Principles on *Methods of operation*, the Review Team concludes that the NCHR is weak on:
- Addressing public opinion (c);
 - Establishing working groups and regional sections (d);
 - Maintaining consultation with other relevant bodies (f) (although currently improving);
 - Developing relations with non-governmental organisations (g) (although currently improving).

Based on these observations, the Review Team is of the view that Norway's National Institution of Human Rights has to be significantly strengthened. In the following Chapter, some basic trends of the human rights situation in Norway will be presented, while Chapter 5 will give an overview of stakeholder's views on NCHR's performance as National Institution as well as on how a strengthened institution could be organised.

Final conclusions and proposals will be presented and discussed in Chapter 6.

4. HUMAN RIGHTS ISSUES IN NORWAY

The primary task of a National Institution for Human Rights is to promote and protect international human rights in a national setting. Sovereign states decide themselves which international human rights treaties to ratify and consequently, the tasks of National Institutions may differ. This Chapter presents an overview of which human rights conventions and protocols Norway has ratified, points raised in debates concerning not yet ratified human rights instruments, and presents an overview of international views on human rights in Norway.

The Chapter presents the legal as well as the factual human rights landscape that a Norwegian National Institution has to operate within. The centrality of human rights in a range of important and controversial issues debated in Norway constitutes a powerful argument for a strong, agile and visible National Institution. It thus underpins arguments for a strengthened National Institution presented in the Chapter 6 of this report.

STATUS OF RATIFICATIONS

As pointed out in Chapter 2, Norwegian legislation on human rights was substantially strengthened during the 1990s. The 1999 Human Rights Act represented a breakthrough in incorporating core international human rights treaties into Norwegian legislation. After amendments, the law incorporates the following treaties and gives them a semi-constitutional status above other laws:⁸⁷

- The European Convention on Human Rights;
- The International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The UN Convention on the Rights of the Child;
- The UN Convention on the Elimination of all Forms of Discrimination against Women.

Norway has ratified several other human rights conventions, which have not been included in the Human Rights Act, such as:

⁸⁷ The Law also includes Protocols 1, 4, 6, 7, and 13 to the European Convention on Human Rights, Protocols 1 and 2 to the International Covenant on Civil and Political Rights, the two Optional Protocols to the Convention on the Rights of the Child, as well as the 6 October 1999 Protocol to the Convention on the Elimination of all Forms of Discrimination against Women. The UN Convention on the Elimination of all Forms of Racial Discrimination is incorporated in the 3 June 2005 Law on Discrimination. The UN Convention against Torture has not been incorporated into Norwegian legislation, however, a provision was introduced into the 1902 Penal Code on 25 June 2004 (§ 117a), defining and penalizing torture, modeled on the Convention.

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment;
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- The European Framework Convention for the Protection of National Minorities;
- The European Social Charter;
- The International Convention on the Elimination of All Forms of Racial Discrimination.

While the Convention against Torture has not been incorporated into Norwegian law, a provision framed on its definition of torture has been introduced in the Norwegian Penal Code, Section 117 a. The International Convention on the Elimination of All Forms of Racial Discrimination has been incorporated by the Act on Prohibition of Discrimination Based on Ethnicity, Religion, etc - the anti-discrimination act § 2.

Norway has also ratified a range of other more specialised human rights conventions and protocols adopted by the UN, the Council of Europe and the International Labour Organisation (ILO), including ILO conventions nos. 87 (Freedom of Association and Protection of the Right to Organise Convention), 98 (Right to Organise and Collective Bargaining Convention), 100 (Equal Remuneration Convention), 111 (Discrimination Employment and Occupation Convention), 138 (Minimum Age Convention), 169 (Indigenous and Tribal Peoples Convention), and 182 (Worst Forms of Child Labour Convention).

In recent years there has been a slowing down of the pace of ratifying new treaties. This may partly be to ensure that Norwegian legislation is in compliance with a treaty and elaborating on its domestic consequences before ratifying it. However, it is also the result of an increasingly sceptic attitude among institutions, authorities and politicians towards international human rights scrutiny of Norwegian policies and practices.

Both the NCHR and civil society organisations have repeatedly asked the Government for more speedy processes of ratification of several recently adopted human rights treaties, including:

- The Optional Protocol of i.a establishing national torture-preventive mechanisms to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Norway signed 24 September 2003;
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (instituting an individual complaints mechanism), which Norway has yet to sign;
- The Convention on the Rights of Persons with Disabilities, which Norway signed 30 March 2007;
- The International Convention for the Protection of All Persons from Enforced Disappearance, which Norway signed 21 December 2007;
- Protocol No. 12 to the European Convention on Human Rights.

Norway has, like other Western countries, not acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Jonas Gahr Støre, Foreign Minister of Norway, has argued in favour of Norway's sceptical attitude towards the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, by pointing to principal difficulties of a complaints mechanism for

violations of this category of rights. — “That is why Norway, in the negotiations on the Protocol, made efforts to ensure that the text included a reference to state’s margin of appreciation. However, Norway did not succeed in the negotiations on this point.” The Government has recently engaged a private practice lawyer to prepare an expert opinion on the implications of committing Norway to the protocol.

According to the foreign minister, concerns on limiting democratic political space are also relevant for the ongoing negotiations on a new Protocol to the Convention on the Rights of the Child which would create a complaints mechanism for individuals and groups on violations of the Convention or its two optional Protocols. — “Norway will, during the negotiations, signal fundamental concerns related to this complaints mechanism.”⁸⁸

ONGOING DEBATES

In 1998 the Norwegian Parliament established an expert committee to study power relations and threats to democratic rule in Norway. In its concluding report, presented in 2003, the committee pointed to several developments threatening popular participation in decision making.⁸⁹ Among the threats was *judicialisation* of politics due in large part to international organisations, courts and other legally oriented supervisory bodies limiting the space of political decision making.

The committee maintained that the distinction between adopting laws and applying laws has been undermined as part of these developments. In addition, it argued that local self-rule at the municipality level has equally been undermined by an increasing number of laws providing the population or specific groups with a large spectrum of rights.

Among the perceived threats to popular democracy were international regimes, such as the UN and Council of Europe human rights conventions and their supervisory bodies. On this point, however, the committee of experts was divided, as one of its members maintained a somewhat more positive view of international human rights regimes. In particular, she

⁸⁸ Foreign Minister Jonas Gahr Støre’s reply to a question by Parliamentarian Øyvind Håbrekke (Krf) on 1 December 2010, available at: <http://www.stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=48435> (in Norwegian only. Translations into English was done by the authors of this report). A draft text prepared by the Chairperson-Rapporteur of the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure is available at: <http://www.crin.org/docs/A-HRC-WG-7-2-4.pdf>

⁸⁹ The expert committee itself, its members as well as other researchers contributing to its work published about 50 books, 77 reports and a large number of articles and lectures on issues within the scope of their study. A final report, *Makt og demokrati: Sluttrapporten fra makt- og demokratiutredningen* (“Power and democracy: Final report of the power- and democracy study”), was published 26 August 2003. The report is available at: <http://www.regjeringen.no/nb/dep/fad/dok/nouer/2003/nou-2003-019.html?id=118893> (Norwegian only).

pointed at the role of international norms on women's rights as leading to empowerment of women and their inclusion in political decision making.

In her view, majority rule has to be based on a system of basic rights ensuring that minorities and vulnerable parts of the population are protected and empowered. "Individuals and groups need protection by rights going beyond majority voting. ... And majorities need to know their democratic limitations. What is new is a judicialisation of such democratic principles through internationally binding treaties and conventions. In established democracies they may provide new reasons for why and how majorities need to question their own convictions. In a Norwegian context the politicisation of the rights of indigenous populations is a nearby example."⁹⁰

The Government responded to the report stating that democracy is not only about the majority having its way, but also about the minority having protection of its basic rights. On the other hand, it also expressed concern about judicialisation of politics. International commitments and obligations limit political space and the Parliament's freedom to take decisions.⁹¹ The Parliament expressed the view that the incorporation of human rights conventions had predominantly contributed to strengthening the Norwegian democracy.⁹²

The sceptical attitude presented by the expert committee has been shared by influential and high ranking legal experts in the administration, by the Attorney General and others pointing *inter alia* to the dynamic interpretation of human rights instruments by international human rights organs as representing a problematic limitation of democratic rule. In particular, the practice of the European Court of Human Rights in later years is seen as having been far too expansionist.

As demonstrated by the reluctance to ratify new human rights instrument, this sceptical attitude has been adopted by the Norwegian authorities. As to the practise of the European Court of Human Rights, the argument was expressly put forward by the Government in relation to a judgment by the court in the TV Vest and Rogaland Pensjonistparti case concerning political advertisement in television (11 December 2008), which is prohibited in Norwegian law. According to a Government comment, "Political advertisement is regulated in different ways among the countries that have acceded to the European Convention on Human Rights. In its TV Vest judgment, the European Court on Human Rights, in the view of the Government, goes too far in prescribing the framework for political debates in the pre-election period in specific countries." (Review Team translation)⁹³

⁹⁰ "Makt og demokrati" (see previous footnote), Chapter 14.2.1 ("Democracy, power, and human rights").

⁹¹ St. meld.nr. 17 (2004-2005), available at:

<http://www.regjeringen.no/nb/dep/smk/dok/regpubl/stmeld/20042005/stmeld-nr-17-2004-2005-/3.html?id=406435> ((Norwegian only).

⁹² Innst. S nr. 252 (2004-2005).

⁹³ Comment available at:

The argument that decisions by the European Court of Human Rights – and other international treaty bodies – may represent an unacceptable interference in democratic decision-making, thereby limiting the scope for democratically elected organs to change their views, refers to the judicialisation of international human rights. A main purpose behind international judicialisation is precisely to make it more difficult for shifting majorities at the national level to restrict or terminate human rights. The argument therefore questions the functioning of one of the most fundamental aspects of post-Second World War human rights efforts.

The scepticism is widespread among many of the members of the Council of Europe, and in some countries proposals for outright withdrawal from the jurisdiction of the European Court of Human Rights are gaining influential support.⁹⁴

It has to be underlined, though, that in Norway the context of this debate is the breakthrough of human rights concerns in almost any sphere of Norwegian debate and policy making. Norway has very active civil society organisations, often arguing for viewpoints and policies based on human rights. Also Norwegian media focuses considerable attention to human rights-based viewpoints, referring to international criticism of Norway, and advocating rights-based approaches in general.

On the other hand, it may be said that as a consequence of the way the Human Rights Act makes international treaties part of Norwegian legislation – by incorporating the treaties themselves, rather than transforming them into Norwegian legal language – human rights still remains a rather general and unspecified foreign concept for many and is not seen as an integrated part of the domestic legal setup. This situation may be affected by the report of a Parliament Human Rights Committee – planned to be presented this year – assessing if and to what extent international human rights should be incorporated into the Norwegian Constitution.

With regard to some of the most controversial topics in Norwegian public debate, human rights concerns form a vital part of the arguments. Many of these issues are linked with refugee and immigration policies, such as debates as to whether it is acceptable to return asylum seekers to Greece under the Dublin II regulation, *regularisation* of “undocumented” or “irregular” immigrants residing in Norway, as well as a range of issues on integration policies of non-Western refugees and immigrants.

<http://www.regjeringen.no/nb/dep/kud/pressesenter/pressemeldinger/2009/fortsatt-forbud-mot-politisk-tv-reklame-.html?id=548607> (Norwegian only). The ECtHR judgment in *TV Vest and Rogaland Pensjonistparty v. Norway* is available at:

<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=65642402&skin=hudoc-en&action=request>

⁹⁴ Michael Pinto-Duschinsky, “Bringing Rights Back Home: Making human rights compatible with Parliamentary democracy in the UK”, Foreword by The Rt Hon Lord Hoffmann, PC, –

http://www.globalgovernancewatch.org/docLib/20110216_PX_Keeping_Human_Rights.pdf

As will be shown in the last section of this Chapter, there are a range of other human rights issues raised by international human rights bodies, which a National Institution have to take into account in making strategic plans for its activities.

NATIONAL SUPERVISORY MECHANISMS

As has been pointed out, NCHR is only one of several actors within the human rights field in Norway, which includes the Parliamentary Ombudsman, the Equality and Anti-discrimination Ombud, the Ombudsman for Children, Gáldu – Resource Centre for the Rights of Indigenous Peoples, as well as a range of supervisory bodies, civil society organisations, concerned citizens, professionals, etc.

A discussion of the relationship and role of NCHR related to this complex architecture of institutions is included in the next Chapter. In the following section, a brief presentation of the system is presented, pointing to some of its weaknesses. Among the conclusions of the team is the need for a National Institution playing a strong coordinating role, as well as providing a easy accessible services to persons needing advice on how to deal with human rights related cases and which of the existing institutions could play an effective role in remedying violations.

Norway has extensive state supervision of different parts of public administration, health services, social services, etc. The main purpose of the supervision is to ensure that legislation and regulations are complied with in both public and private institutions. There are almost 40 state supervisory mechanisms, covering a wide range of areas. In addition, some types of supervision are also conducted by county and municipality institutions.

The State Health Supervision (“Statens helsetilsyn”), the County Governor (“Fylkesmannen”) and the County Health Supervision (“Helsetilsynet i fylket”) have the main responsibility for supervision of health and social services.

Only if a person has utilized all possible avenues of complaints to state, county or municipal level supervisory bodies, may she or he submit a complaint in a specific case to the Parliamentary Ombudsman. There is a time limit of one year after a final decision in the case by a competent organ.

The Ombudsman will then handle the case free of charge, and render an opinion on whether violations of laws or regulations have occurred in the case or not. Even though the opinion of the Ombudsman is not legally binding, Norwegian authorities normally abide by them.

The Parliamentary Ombudsman is setup by a provision of the 1814 Norwegian Constitution, § 75 letter I. The more detailed functioning of the Parliamentary Ombudsman is regulated by

the 1962 Act concerning the Storting's Ombudsman for Public Administration.⁹⁵ According to § 3, "[t]he task of the Ombudsman is, as the Storting's representative and in the manner prescribed in this Act and in the Directive to him, to endeavour to ensure that injustice is not committed against the individual citizen by the public administration and help to ensure that human rights are respected."

According to § 4, "[t]he scope of the Ombudsman's powers embraces the public administration and all persons engaged in its service." Excluded from the Ombudsman's mandate is Parliament decisions, decisions adopted by the Government ("the King in council of the State"), the functions of the Courts of Law, the activities of the Auditor General, matters which fall under the Ombudsman for National Defence and the Ombudsman's Board or the Ombudsman for Civilian Conscripts, and "decisions which, as provided by statute, may only be made by the municipal council or the county council itself, unless the decisions is made by the municipal board of aldermen, county board of aldermen, a standing committee, the municipal executive board or the county executive board pursuant to § 13 of Act of 25 September 1992 No. 107 concerning Municipalities and County Municipalities."⁹⁶ Consequently, even if the Ombudsman's mandate is "to ensure that human rights are respected", important parts of the power structure of the Norwegian Society are excluded from it.

Traditionally, the Ombudsman is perceived to be a primarily "reactive" mechanism, proceeding to deal with individual cases following a complaint. However, the law (§ 5) also mandates him to deal with cases on "his own initiative". Even so, his public role in promoting and advocating human rights will be limited.

The functioning of the two other national Ombud institutions in Norway – *the Equality and Anti-Discrimination Ombud* and *the Ombudsman for Children* – are also regulated by law. The Equality and Anti-Discrimination Ombud was established on 1 January 2006 by the Anti-Discrimination Ombud Act, while the Ombudsman for Children is established by the 1981 Law on the Ombudsman for Children.

The Equality and Anti-discrimination Ombud has a much narrower mandate than the Parliamentary Ombudsman. It shall oppose discrimination and promote equality regardless of factors such as gender, ethnicity, functional ability, language, religion, sexual orientation and age.⁹⁷ The Ombud is professionally independent, while administratively placed under the Ministry of Children and Equality. It is mandated to conduct promotional work, such as pointing out conditions that counteract equality and equal treatment, contributing to

⁹⁵ Available at: <http://www.ub.uio.no/ujur/ulovdata/lov-19620622-008-eng.pdf>. For more info, see the English section of the website of the Ombudsman: http://www.sivilombudsmannen.no/?lang=en_GB

⁹⁶ However, decisions by municipal or county councils "may nevertheless be investigated by the Ombudsman on his own initiative if he considers that regard for the rule of law or other special reasons so indicate."

⁹⁷ <http://www.ldo.no/en/About-the-Ombud/Facts-about-the-Equality-and-Anti-Discrimination-Ombud/>

increased awareness and pushing for changes in attitudes and behaviour in different spheres of society. It may also document discrimination and provide advice on ethnic diversity.

The Ombud also has an important role as law enforcer of the Gender Equality Act, the Anti-Discrimination Act, the Chapter on equal opportunities in the Working Environment Act, the non-discrimination clauses in the housing legislation, the Tenancy Act, the Housing Association Act, and the Residential Building Association Act. This role of the Ombud includes making decisions on individual complaints. There is no requirement that other avenues of complaining have to be exhausted before complaining to this Ombud. The Ombud may arrange for an interpreter if that is required. The Ombud's statement may be appealed to the Equality and Anti-Discrimination Tribunal.

Different from the Parliamentary Ombud, statements of the Equality and Anti-Discrimination Ombud may be appealed. If the Equality and Anti-Discrimination Tribunal upholds the statement of the Ombud that discrimination has taken place, it may issue an order that the discriminatory practice must end. In some cases it may also impose daily penalties on a party not following its decisions. However, this competence is limited when it comes to decisions taken by public administration and in employment cases.⁹⁸

Finally, the Ombud is mandated to ensure that the UN Convention on the Elimination of Discrimination against Women and the UN Convention on the Elimination of Racial Discrimination are complied with in law and practice.

The Ombudsman for Children is mandated to promote the interests of children in relation to both public and private institutions as well as in relation to adult persons. Among its main tasks are to promote children's interest in planning and studies in any field, ensure that the UN Convention on Rights of the Child is complied with in law and practice, propose measures to strengthening the legal status of children, contribute to preventing and solving conflicts between children and the society, and supervise that public and private institutions have sufficient information about children's rights.

The Ombudsman for Children may not handle individual complaints, but rather has a more supervisory role. However, all requests from children and young people to the Ombudsman are responded to in order to facilitate guidance and advice.

Seen in their totality, the Ombud institutions represent important alternatives to the courts. Handling of complaints is free and is normally swifter than taking a case to the court. They may both handle cases regarding decisions and actions.

In particular, the Equality and Anti-Discrimination Ombud have a strong promotional and guidance role regarding anti-discrimination measures. The fact that the Government does not always follow up on the Ombud's statements – e.g. when both the Ombud and the

⁹⁸ <http://www.ido.no/en/Your-rights/Consequences-for-those-who-break-the-law/>

Tribunal concluded in 2010 that female police should be permitted to use hijab together with the police uniform – has led to debates about the status and efficiency of the equality and anti-discrimination Ombud and Tribunal. The current Ombud maintains that anti-discrimination work is a long-term process and that it is to be expected that some statements are met by negative reactions; there are, however, indications that over time the work of the Ombud will lead to positive results.

The Gáldu – Resource Centre for the Rights of Indigenous Peoples was established by the Government in order to increase knowledge and understanding of the rights of Sami and other indigenous populations. It is funded by the Norwegian Ministry of Labour and Social Inclusions and by the Ministry of Foreign Affairs, but is professionally independent. It is located in Kautokeino in Finnmark County.

Even though the main function of the Centre is to provide information about the rights of indigenous populations, it might also initiate research and conduct studies and thereby promote strengthening of the rights of the Sami population. It also takes part in international work to promote the rights of indigenous populations.⁹⁹

In conclusion, Norway has a well developed system of supervisory and complaints mechanisms which may address specific human rights issues. Even though, in theory any case on alleged human rights violations may be taken to court, this is costly and may take a long time. The comprehensiveness, efficiency and quality in terms of human rights of this quasi-legal protection system are therefore of crucial importance in order to ensure easy accessible remedies to correct violations for everyone. There are however, as noted, several limitations both in terms of the mandates and practice of the different mechanisms.

Cases where supervisory bodies refer to human rights seem to be very rare. An overview presented by the Parliamentary Ombudsman's website show that in the period 2007-2009 the Ombudsman issued 599 critical opinions, among which only 12 cases where the Ombudsman argued in terms of human rights in order to reach his conclusion.¹⁰⁰

As for discrimination related cases, the Equality and Anti-Discrimination Ombud receives and deals with hundreds of cases of cases which might amount to human rights violations.

There is some concern that because of scarce coordination and expertise among the different actors, important issues might be overseen or ignored in supervisory and complaints mechanisms. In principle, the Ombud institutions represent important avenues for Sami persons wanting to complain about discrimination or other human rights issues. However, for different reasons the institutions might be considered to be more relevant by

⁹⁹ For more information, see the centre's website: www.galdu.org. On administrative and financial issues, see also:

http://www.regjeringen.no/upload/FAD/Vedlegg/Statsforvaltning/Tildelingsbrev/Tildelingsbrev_2010_Galdu.pdf (in Norwegian only)

¹⁰⁰ <http://www.sivilombudsmannen.no/menneskerettigheter/category1564.html>

ethnic Norwegians than by persons belonging to the Sami indigenous population or to one of the five national minorities residing in Norway (Jews, Kvens, Skogfinns, Rom and Romani/Tater).

In addition to the Sami population and the national minorities, categories of vulnerable groups may also find it hard to have their cases heard in a way they can accept. The Review Team heard many examples of persons having experienced what they perceived to be human rights violations in psychiatric care not being able to find easy accessible easy accessible ways of having their cases reviewed.

HUMAN RIGHTS AWARENESS AND COMPETENCE

According to the 1999 Governmental Plan of Action on Human Rights, employees in public administration need to be trained in human rights. The plan includes a range of measures in order to facilitate such training.¹⁰¹

According to the plan, knowledge in the central Government administration about human rights and complaints mechanisms is important “in order to prevent human rights violations and promote protection of the rights of individuals. This knowledge, combined with insight into their own field of work, will increase their awareness of human rights obligations in their own sector and is thus important for both management and executive officers.”

According to the plan, all employees in public administration should be aware of both the existence and the relevance of human rights in their field, while institutions should also have employees with in-depth human rights knowledge.

Importantly, the plan underlines that since human rights are subject to development, education and building of competence are an ongoing tasks.

In interviews with stakeholders, the Review Team has repeatedly been reminded of the need for strengthened awareness and knowledge of human rights in the central administration as well as on the county and municipal level. In particular, many pointed to the challenge of making human rights understood in its implications for practical policies and action plans. Often human rights remain theoretic concepts, executive officers failing to consider their application in concrete situations.

It was also pointed out that the teaching of human rights to health workers, police, medical doctors or nurses or personnel handling asylum applications has to be done in very different ways in order for the teaching to be seen and understood as relevant to these professions. In

¹⁰¹ Menneskeverd I sentrum: Handlingsplan for menneskerettigheter, St.meld.no 21 (1999-2000), p. 48-51. Unofficial English translation to be found at: http://www.regjeringen.no/en/dep/ud/Documents/Propositions-and-reports/Reports-to-the-Storting/19992000/report_no-21_to_the_storting_1999-2000.html?id=192507

order to adapt the training to the needs of specific professions, human rights experts have to enter into long-term cooperation with educational institutions and engaged teachers. The Review Team heard well-documented statements that many high school teachers felt that they had insufficient knowledge to teach human rights professionally.¹⁰²

The Review Team takes note of one of the central conclusions of the Delegation for Human Rights in Sweden, namely that it is

“important that awareness of human rights, and the custom of using the conventions as a guide in Swedish administration and justice, should be raised. This may, for example, mean using the conventions and the pronouncements of the convention bodies in interpreting national law in areas in which Sweden has repeatedly had to take opinions from the convention bodies.”¹⁰³

The Delegation maintains that the aim should be *full* respect of human rights in Sweden, and that in order to prevent violations, “the work of protecting human rights needs to be continuous and present at every stage of the legislative and judicial process”.¹⁰⁴

INTERNATIONAL VIEWS ON HUMAN RIGHTS IN NORWAY

During the period from 2005 to 2010, several international and regional monitoring organs assessed the fulfilment of human rights obligations and standards by Norway. In a number of reports human rights issues and problems have been identified and recommendations given aimed at ensuring effective protection of the rights enshrined in the conventions ratified by Norway.

During the period, six UN treaty bodies published reports on Norway, including the Committee on Economic, Social and Cultural Rights, ICESCR (2005), the Committee on the Rights of the Child, CRC (2005), the Human Rights Committee, ICCPR (2006), the Committee on the Elimination of Racial Discrimination, ICERD (2006), the Committee on the Elimination of Discrimination against Women, ICEDAW (2007) and the Committee against Torture, ICAT (2008).

Council of Europe organs and monitoring functions have published five reports during the same period on the protection and promotion of human rights derived from Council of Europe instruments ratified by Norway. They encompass reports from the Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC

¹⁰² See next Chapter for more information on the input the Review Team has received from stakeholders.

¹⁰³ Ny struktur för skydd av mänskliga rättigheter: Slutbetänkande från delegationen för mänskliga rättigheter i Sverige, SOU 2010: 70. (New structure for protection of human rights: Conclusions of the Delegation for Human Rights in Sweden), page 34. A summary in English is available at:

<http://www.regeringen.se/content/1/c6/15/40/40/cf32b985.pdf>

¹⁰⁴ Ibid.

(2006), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT (2006), the Commissioner for Human Rights, CommHR (2006), the European Commission against Racism and Intolerance, ECRI (2009), and on the European Charter for Regional or Minority Languages, ECRML (2010).

As additional sources, the annual US state reports on the human rights situation in Norway serve as valuable documents in order to follow ongoing public debates, legal case law and administrative initiatives.

On the basis of these reports, it is possible to identify certain areas in which the protection and promotion of human rights represents a challenge for the legislator as well as for the administrative authorities, the judiciary, the labour market and other sectors of the Norwegian society.

As such, these reports serve as important tools for the National Institution, and contribute to its strategic planning and prioritizing of tasks and commitment. These key areas therefore flesh out the functions laid down in the UN Paris Principles and guide the National Institution in its efforts to translate international standards into local practices, as well as in their advice to the Government on how to achieve effective protection via legal and administrative measures, education and information initiatives, cooperation, and dialogue.

It should be noted that the purpose of the following presentation of international views is not to assess whether Norway complies with international standards or not, or whether Norway has amended legislation or practices subsequent to international recommendations, but simply to reflect the perception of international and regional organs and present their expectations to and understanding of effective measures to protect human rights in Norway.

In the following section, some of the key areas of concern will be presented.

DEPRIVATION OF LIBERTY

The use of deprivation of liberty and the treatment of deprived persons have been the focus of several reports in relation to custody, pre-trial detention and solitary confinement

The international bodies have expressed concern about the length of *police custody*, the lack of a maximum limit for the period of custody, the practice of accommodating remand prisoners in police establishments and the use of restrictions during custody. Regarding the latter, it has been emphasized that restrictions must not be maintained for the purpose of pressuring a person remanded in custody to co-operate in the police investigation. Concern

has also been raised in relation to non-citizens that may be remanded in custody on mere suspicion of having provided false identity.¹⁰⁵

The use of *pre-trial detention* for excessive periods of time has also been raised as an issue of concern, as has the lack of statistics on the effectiveness of measures to reduce the length of pre-trial detention.¹⁰⁶

On *solitary confinement*, concern has been expressed about the relevant legal basis. The access to unlimited extension of pre-trial confinement and the possibility for combining it with far-reaching restrictions on the access to visitors have been pointed to as additional areas of concern. Another point of concern is the lack of adequate statistics validating the effectiveness of measures to reduce the length of solitary confinement.¹⁰⁷

In this regard a review legislation and practice has been suggested, including setting a limit on the duration of solitary confinement of remand prisoners by court order.¹⁰⁸

Overall concerns have been raised in relation to the *safeguards against ill-treatment*, e.g. the right of all persons to inform a close relative or a third party of one's detention, access to a lawyer from the very outset of deprivation, access to a doctor and to medical examination out of the hearing and sight of police, and information on rights in writing and in a language which the person understands. This has led to a recommendation to increase the capacity of psychological and psychiatric services, and to ensure access to interpretation services.

¹⁰⁵ See UN Committee against Torture, Conclusions and recommendations of the Committee against Torture – Norway, CAT/C/NOR/CO/5, 5 February 2008, Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 3 to 10 October 2005, Strasbourg, 11 April 2006 and UN Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination – Norway, CERD/C/NOR/CO/18, 18 August 2006.

¹⁰⁶ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006 and UN Committee against Torture, Conclusions and recommendations of the Committee against Torture – Norway, CAT/C/NOR/CO/5, 5 February 2008.

¹⁰⁷ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006, UN Committee against Torture, Conclusions and recommendations of the Committee against Torture – Norway, CAT/C/NOR/CO/5, 5 February 2008, Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 3 to 10 October 2005, Strasbourg, 11 April 2006 and Follow-up Report on Norway (2001-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, CommDH(2006)10, Strasbourg, 29 March 2006.

¹⁰⁸ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006 and Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 3 to 10 October 2005, Strasbourg, 11 April 2006

Moreover, it has been noted that minimum conditions of detention must include mattresses, blankets and food at normal mealtimes.¹⁰⁹

RACIAL AND ETHNIC DISCRIMINATION

In general, UN and Council of Europe bodies point at racial and ethnic discrimination as an area of concern in several sectors of society and more specifically at instances of intolerance and discrimination towards persons of immigrant backgrounds. As a response to these developments, these bodies call for effective legislation and other measures, including the strengthening of constitutional protection against racial discrimination, and the introduction of a general duty on public authorities and private employers to promote equality and prevent discrimination.¹¹⁰

In relation to *racially motivated offences*, Norway is encouraged to strengthen its focus on the issue, including by providing training and measures to raise awareness.¹¹¹ The number of reported hate crimes from 2007-2009 was 257, and led to a recommendation in the US State Department report to introduce a new reporting system, including a hate crime unit to train police officers to detect, raise awareness of, and inform the public about hate crimes.¹¹²

As discrimination against persons with an immigrant background seems to occur in relation to *work and housing*, the bodies encourage combating such discrimination through effective measures, including legislation, to ensure access to the labour market for persons with immigrant background, in particular for women, to reduce the high unemployment rate among immigrants, and to tackle discrimination in housing. Such measures should be effectively monitored. Concerns are also raised about the strictness of the language requirements for acquiring Norwegian citizenship and recommendations are given as to ensuring availability and use of professional interpretation.¹¹³

¹⁰⁹ See Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 3 to 10 October 2005, Strasbourg, 11 April 2006 and UN Committee against Torture, Conclusions and recommendations of the Committee against Torture – Norway, CAT/C/NOR/CO/5, 5 February 2008.

¹¹⁰ See especially Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Norway, adopted 5 October 2006, ACFC/OP/II(2006)006, Strasbourg, 16 November 2006 and European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009.

¹¹¹ European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009.

¹¹² United States Department of State, 2010 Report of International Religious Freedom – Norway, 17 November 2010.

¹¹³ See UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee of Economic, Social and Cultural Rights – Norway, E/C.12/Add.109, 13 May 2005, UN Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination – Norway, CERD/C/NOR/CO/18, 18 August 2006 and European Commission against Racism and

Another area of concern is *education* where the Committee on the Elimination of Racial Discrimination (ICERD) notes a high dropout rate of immigrant children in upper secondary school.

Administration of Justice and the approach to racial and ethnic discrimination in the legal system as such are also mentioned as areas of concern. E.g. the European Commission against Racism and Intolerance (ECRI) points to the need for research aimed at identifying possible patterns of racial discrimination or situations of disadvantage affecting ethnic minority groups.

Closely linked to this area is *racial profiling*, i.e. discriminatory treatment by law enforcement officers, customs and immigration officials. It also includes the risk of impartiality in subsequent investigations. Hence, the bodies note with concern reports on a high incidence of discriminatory police stops of persons based on their apparent ethnic origin, incidents of excessive use of force by the police, and discriminatory treatment based on ethnicity. To address the issue and ensure effective measures against it, these bodies stress the need for ensuring that police stop and search operations are not discriminatory or excessive, and suggest the putting in place of a system to monitor the incidence of such stops to assure that there is no discrimination; and to introduce specific training and education programmes to raise police awareness.¹¹⁴

Discriminatory effects are also seen in relation to legislation and practice on the granting of *family reunification*. It is noted by the bodies that the possibilities for person of immigrant background to benefit from family reunification are still limited for many and that there are de facto restrictions on family reunion due to the subsistence requirement for foreigners. To this end it is recommended to ease the restrictions on family reunification. In relation to cases of family reunification involving children, it is stressed that the best interest of the child must guide all decisions taken in these cases.¹¹⁵

Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009.

¹¹⁴ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006, UN Committee against Torture, Conclusions and recommendations of the Committee against Torture – Norway, CAT/C/NOR/CO/5, 5 February 2008 and European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009.

¹¹⁵ See UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee of Economic, Social and Cultural Rights – Norway, E/C.12/Add.109, 13 May 2005, European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009 and Follow-up Report on Norway (2001-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, CommDH(2006)10, Strasbourg, 29 March 2006.

NATIONAL MINORITIES

Insufficient *participation* of national minority representatives in decision making functions has been raised as a general concern in relation to national minorities in Norway, together with insufficient regard for the specific minority cultures and identities in *media* and *education*.

This has led to a recommendation on enhancement of initiatives in these areas, including information and awareness raising on minority issues and support to national minority cultures, as well as efforts to support use of minority languages with administrative authorities, and to promote and support the learning of minority languages. Furthermore, reliable data on the situation of minorities in various sectors has been called for.¹¹⁶

In relation to specific minority groups, further steps should to be taken to ensure the rights of the East Saami people, and to clarify the status of Lule and South Sámi in relation to the rights set forth in part III of the Charter on Minority and Regional Languages. Efforts should also be continued to provide teaching in/of Lule and South Sámi and to promote the Kven language in education and media, and to ensure that social and health care institutions within the Sámi Administrative district offer services in North Sámi.¹¹⁷

Concerning the rights of Roma and Romani, steps should be taken to eliminate the difficulties and discrimination encountered by Roma and Romani people (“taters”) in the labour market and in access to housing and education, and to develop language education in Romani and Romanes.¹¹⁸

WOMEN’S RIGHTS

The bodies share an overall concern about the fact that *domestic violence* still is a widespread problem that persists despite legislation. They point at the need for reinforcement and proper police investigations, and for more effective preventive measures.

¹¹⁶ See Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Norway, adopted 5 October 2006, ACFC/OP/II(2006)006, Strasbourg, 16 November 2006 and European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009.

¹¹⁷ See UN Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination – Norway, CERD/C/NOR/CO/18, 18 August 2006 and European Charter for Regional or Minority Languages, Application of the Charter in Norway, 4th monitoring cycle, ECRML(2010)3, Strasbourg, 10 March 2010.

¹¹⁸ See Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Norway, adopted 5 October 2006, ACFC/OP/II(2006)006, Strasbourg, 16 November 2006, European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009 and European Charter for Regional or Minority Languages, Application of the Charter in Norway, 4th monitoring cycle, ECRML(2010)3, Strasbourg, 10 March 2010.

The need for assistance to the victims and particular attention to immigrant women is stressed, and also for adequate statistics on domestic violence against women.¹¹⁹

Female genital mutilation is another area of concern within the field of violence against women that is raised by some of the bodies. They are concerned about the incidents and practice of female genital mutilation and recommend that these practices are prevented and eradicated. Similar concern is raised in the report by the Committee on Elimination of Discrimination against Women (CEDAW) with regard to forced marriages.¹²⁰

Full and *equal participation in the labour market and political and public life* is of concern from a women's rights perspective. Thus, the Committee is concerned about the persistence of stereotypical cultural attitudes that are reflected in women's position in the labour market, e.g. as a wage gap, as well as in the political and public life, and points specifically at the low numbers of women mayors, professors and judges, and the lack of migrant and minority women in politics, public life and academia.

Concerning the status of women in the private sphere, the committee points to the lack of the necessary legal framework to ensure women equal rights to *property* and assets accumulated during domestic relationships. The Committee recommends campaigns, and encourages media to project a positive image of women and of the equal status and responsibilities of men and women in the private and public spheres.¹²¹

CHILDREN'S RIGHTS

Placement of children away from their parents and families is an issue raised by two bodies.

Concern is raised about the high number of children who are removed from their families and placed in institutions and the committees recommend strengthening provisions of

¹¹⁹ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006, UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee of Economic, Social and Cultural Rights – Norway, E/C.12/Add.109, 13 May 2005, UN Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee the Elimination of Discrimination against Women: Norway, CEDAW/C/NOR/CO/7, 10 August 2007 and Follow-up Report on Norway (2001-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, CommDH(2006)10, Strasbourg, 29 March 2006. See also United States Department of State, 2009 Country Reports on Human Rights Practices – Norway, 11 March 2010.

¹²⁰ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006 and UN Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee the Elimination of Discrimination against Women: Norway, CEDAW/C/NOR/CO/7, 10 August 2007 and Follow-up Report on Norway (2001-2005).

¹²¹ See UN Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee the Elimination of Discrimination against Women: Norway, CEDAW/C/NOR/CO/7, 10 August 2007 and Follow-up Report on Norway (2001-2005).

providing necessary assistance and support to enable parents to exercise their parental role. Also, they call for disaggregated data on the number and ethnic origin of children placed in institutions or foster homes.¹²²

The Committee on the Rights of the Child (ICRC) raises concern about *violence and abuse* of children and points to the need for strengthened efforts to provide adequate assistance to children who are exposed to violence within the family. It also expresses concern about the lack of recent studies on incidences of sexual abuse of children and young people.¹²³

Other areas of concern raised by the Committee on the Rights of the Child encompass the limitations for *children with disabilities* to participate in cultural and recreational activities, *discrimination* of children due to their religious or ethnic background, and high incidence of *eating disorders, obesity*, a high level of *suicide* among adolescents, as well as high number of children who consume *drugs and alcohol*.

In this regard, the committee points at the need to speed up mental health care for children.¹²⁴

The Council of Europe Commissioner for Human Rights has specifically addressed the issue of *juveniles in prisons*, and expresses concern about the practice in some Norwegian prisons to hold juveniles together with adults.¹²⁵

PERSONS IN PSYCHIATRIC CARE

The Committee against Torture examined the legal framework for involuntary placement of psychiatric patients and stressed in its report that decisions on involuntary placement should always remain exclusively in the hands of a qualified psychiatrist.

Ill-treatment of psychiatric patients was also focused upon. Thus, the committee found that the use of handcuffs on wrists and ankles of persons having to be escorted from home to psychiatric clinics gave rise to concerns.

With regard to mentally ill prisoners, the committee recommended that they were transferred to hospital facilities in order to provide for necessary mental and medical care.¹²⁶

¹²² See UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee of Economic, Social and Cultural Rights – Norway, E/C.12/Add.109, 13 May 2005 and UN Committee on the Rights of the Child, Concluding observations: Norway, CSR/15/Add.262 3 June 2005.

¹²³ See UN Committee on the Rights of the Child, Concluding observations: Norway, CSR/15/Add.262 3 June 2005.

¹²⁴ Ibid.

¹²⁵ Follow-up Report on Norway (2001-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, CommDH(2006)10, Strasbourg, 29 March 2006.

ASYLUM SEEKERS

In relation to the practice of *denial of asylum requests*, the Committee on Civil and Political Rights raised concern about rejection on the basis of the assumption that the persons concerned can find protection in a different part of their country of origin, even in cases where United Nations High Commissioner for Refugees (UNHCR) documentation indicates that such alternatives might not be available in the specific case or country. It called for restrictions to be placed on the consideration of such internal relocation alternatives in deciding asylum cases. Similar concern was expressed by the Council of Europe Commissioner for Human Rights.¹²⁷

Disappearing children was an issue raised by the Committee on the Rights of the Child. It pointed at the large number of unaccompanied children who disappear from reception centres and called for measures to tackle the problem.¹²⁸

The daily life in asylum centres, including the access to *education and health and medical care* services was focused upon in several reports. It was, for example, highlighted that restrictions are placed on the access to education of asylum seekers, and that there are examples of foreign nationals who do not receive appropriate access to nursing staff, and psychological and/or psychiatric services. Concern was also raised over the fact that municipalities do not provide for sufficient protection from disease in the health service system for asylum seekers.¹²⁹

RIGHT TO AN ADEQUATE STANDARD OF LIVING

The Committee on Economic, Social and Cultural Rights pointed at an increasing number of *evictions* due to unpaid rent and found that disadvantaged and marginalized groups are particularly affected by the privatisation of social housing and rising house prices. It thus urged Norway to ensure that evictions comply with the committee's General Comment No. 7

¹²⁶ UN Committee against Torture, Conclusions and recommendations of the Committee against Torture – Norway, CAT/C/NOR/CO/5, 5 February 2008.

¹²⁷ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006 and Follow-up Report on Norway (2001-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, CommDH(2006)10, Strasbourg, 29 March 2006.

¹²⁸ See UN Committee on the Rights of the Child, Concluding observations: Norway, CSR/15/Add.262 3 June 2005.

¹²⁹ See UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee of Economic, Social and Cultural Rights – Norway, E/C.12/Add.109, 13 May 2005, UN Committee against Torture, Conclusions and recommendations of the Committee against Torture – Norway, CAT/C/NOR/CO/5, 5 February 2008 and UN Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination – Norway, CERD/C/NOR/CO/18, 18 August 2006.

on the right to adequate housing and General Comment No. 4 to provide sufficient numbers of housing to cater for the needs of low-income families.

In relation to the same area, the Committee on the Rights of the Child expressed concern about the fact that a high proportion of *immigrant children* live in households with persistently low income.

The Committee on Economic, Social and Cultural Rights also expressed concern about the 5,200 people who are *homeless*, including rejected asylum seekers who cannot be sent to their countries of origin and are not afforded adequate assistance.¹³⁰

TRAFFICKING IN PERSONS

Trafficking in persons was raised as an issue of concern by most UN committees. They shared the concern that Norway is a destination for trafficking in women for the purpose of *sexual exploitation* and called for effective measures to prevent and eradicate trafficking, inter alia by granting *residence permits* on the basis of humanitarian considerations. Moreover, they pointed at lack of statistics and data on trafficked women and girls and asked for provision of information on progress achieved and difficulties encountered in the implementation of the National Plan of Action to combat trafficking.¹³¹

Trafficking for the purpose of *forced labour* was mentioned in the US State Department report, which also stressed the need for strengthened *prosecution and conviction* of both sex and labour trafficking offenders, as well as analyses of the reasons for suspension of criminal investigations of human trafficking offences or downgrading the charge to pimping. Other proposed initiatives included improved partnerships between anti-trafficking authorities, local police and child welfare officers, increased training, awareness-raising campaigns, and the establishment of a national anti-trafficking Rapporteur to address human trafficking.¹³²

¹³⁰ See UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee of Economic, Social and Cultural Rights – Norway, E/C.12/Add.109, 13 May 2005 and UN Committee on the Rights of the Child, Concluding observations: Norway, CSR/15/Add.262 3 June 2005.

¹³¹ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006, UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee of Economic, Social and Cultural Rights – Norway, E/C.12/Add.109, 13 May 2005, UN Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee the Elimination of Discrimination against Women: Norway, CEDAW/C/NOR/CO/7, 10 August 2007 and UN Committee on the Rights of the Child, Concluding observations: Norway, CSR/15/Add.262 3 June 2005.

¹³² See United States Department of State, *Trafficking in Person Report 2010 – Norway*, 14 June 2010.

TERRORISM

The Committee on Civil and Political Rights raised concerns about the potentially overbroad reach of the definition of terrorism in article 147b of the Penal Code and recommended it to be limited to crimes that deserve to attract the grave consequences associated with terrorism.¹³³

FREEDOM OF RELIGION

In relation to freedom of religion, the Committee on Civil and Political Rights has recommended that Norway repeal article 2 of the Constitution which provides that individuals professing the Evangelical-Lutheran religion are required to bring up their children in the same faith.¹³⁴

The European Commission against Racism and Intolerance suggests in its report to monitor the situation as concerns *islamophobia and anti-Semitism* and encourage taking swift action to counter any such manifestations.¹³⁵

OTHER THEMATIC ISSUES

In its report from 2009, the European Commission against Racism and Intolerance urges Norway to continue efforts to improve protection provided by legislation against racist expression and to raise awareness among the police, public prosecutors, and judges, of the international standards against racist expression and the need to take all instances of racist expression seriously.¹³⁶

The Committee on Economic, Social and Cultural Rights has raised concern as to the high number of accidents in the fishing and off-shore petroleum industry and encouraged to ensure safe working conditions.

In relation to the right to health, the Committee on the Elimination of Discrimination against Women (CEDAW) has regretted the lack of data on HIV/AIDS.

¹³³ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006.

¹³⁴ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006.

¹³⁵ See European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009.

¹³⁶ See European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009.

As human rights are important standards for assessing the fulfilment of the UN Millennium Development Goals (MDG), the committees may focus on the State Parties efforts to integrate these goals in their action plans for implementing human rights; or vice versa as done by the ICEDAW when mentioning that full and effective implementation of the Convention on the Elimination of Discrimination against Women is indispensable for achieving the goals.¹³⁷

Subsequent to the entry into force of the UN Convention on the Rights of Disabled Persons in 2008, it is envisaged that issues in relation to the effective protection and safeguards for persons with disabilities will be highlighted under provisions contained in other human rights instruments. Future reports of both international and regional monitoring organs may point to special concerns related to disabled persons even though the Convention itself has not been ratified by Norway.

LEGAL AND STRUCTURAL ISSUES

Ratification and incorporation of international and regional conventions: A number of committees point at the need for ratification of international human rights instruments.

Thus, the Committee on Economic, Social and Cultural Rights (ICESCR), the Committee on the Elimination of Racial Discrimination (ICERD), the Committee on the Elimination of Discrimination against Women (ICEDAW) and the European Commission against Racism and Intolerance (ECRI) encourage ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the Committee against Torture (ICAT) urges Norway to ratify the CAT optional protocol which Norway signed in 2003.¹³⁸

At the European level, ECRI encourage ratification of Protocol No. 12 to the European Convention on Human Rights.¹³⁹

¹³⁷ See UN Committee on the Elimination of Discrimination against Women: Norway, CEDAW/C/NOR/CO/7, 10 August 2007

¹³⁸ See UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights – Norway, E/C.12/Add.109, 13 May 2005, UN Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination – Norway, CERD/C/NOR/CO/18, 18 August 2006.

UN Committee on the Elimination of Discrimination against Women: Norway, CEDAW/C/NOR/CO/7, 10 August 2007 and Follow-up Report on Norway (2001-2005) and European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009.

¹³⁹ European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009.

The Committee on Civil and Political Rights regrets that Norway maintains its reservations to article 10, para. 2 (b), and 3, Article 14 and to article 20, para. 1 of the International Convention on Civil and Political Rights. The committee urges Norway to continue to review the possibility of withdrawing the reservations.¹⁴⁰

The inconsistency in methods of implementation of international treaties into Norwegian law is addressed by several committees. Thus, the ICEDAW and ECRI recommend incorporation of CEDAW in the Human Rights Act, and similarly, ECRI suggests incorporation of CERD and ICAT recommends incorporation of CAT.¹⁴¹

To this end, and with specific reference to the Supreme Court ruling in the KLR case in 2001, the ICESCR has reaffirmed the principle of the interdependence and indivisibility of all human rights and that all economic, social and cultural rights are justiciable.¹⁴²

In light of the lack of ratification by Norway of the UN Convention on the Rights of Disabled persons and its Optional Protocol, it is expected that ratification will be raised as an issue by the international and regional monitoring organs.

Human rights structures: The independence of National Institutions serving as part of an overall human rights structure has been addressed by some of the committees.

The ICESCR recommends the State party to pursue efforts to ensure the full independence of the Norwegian Centre for Human Rights, and the ICRC encourages enhancing independence of the Ombudsman for Children.¹⁴³

ECRI points at the need for strengthening the powers of the Equality and Anti-Discrimination Tribunal by ensuring the competence to award redress to victims of racial discrimination.¹⁴⁴

¹⁴⁰ See UN Human Rights Committee, Concluding observations of the Human Rights Committee – Norway, CCPR/C/NOR/CO/5, 25 April 2006.

¹⁴¹ UN Committee on the Elimination of Discrimination against Women: Norway, CEDAW/C/NOR/CO/7, 10 August 2007 and Follow-up Report on Norway (2001-2005), European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009 and UN Committee against Torture, Conclusions and recommendations of the Committee against Torture – Norway, CAT/C/NOR/CO/5, 5 February 2008. CEDAW was incorporated by a law of 19 June 2009, including it in the 1999 Human Rights Act.

¹⁴² See UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee of Economic, Social and Cultural Rights – Norway, E/C.12/Add.109, 13 May 2005.

¹⁴³ See UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee of Economic, Social and Cultural Rights – Norway, E/C.12/Add.109, 13 May 2005 and UN Committee on the Rights of the Child, Concluding observations: Norway, CSR/15/Add.262 3 June 2005.

¹⁴⁴ See European Commission against Racism and Intolerance, ECRI report on Norway (fourth monitoring cycle), CRI(2009)4, adopted on 20 June 2008, Published on 24 February 2009.

5. PRESENTATION OF FINDINGS

METHODS OF DATA COLLECTION

In the period from September 2010 to February 2011, the Review Team carried out more than 50 interviews. The participants include persons from public administration, researchers, resource persons related to the National Institution, non-governmental organisations, professionals in health and social care, and persons affiliated with the UN. The Review Team also conducted a meeting with the NCHR Advisory Committee, as well as an open meeting with civil society in cooperation with NCHR (11 January 2011).¹⁴⁵

During interviews and meetings, engaged individuals and representatives of organisations and institutions were also invited to submit written input to the team. In this way, the team received considerable input both on the functioning of the NCHR as a National Institution as well as proposals on how to strengthen the National Institution.

In addition, team members have had access to all documents related to the National Institution function of the NCHR, including strategic plans, annual reports, summaries of discussions in the NCHR Board, correspondence with ICC, etc. (cf. Chapter 3).

In the following, we present a systematized rendering of different viewpoints. The presentation does not indicate which persons or institutions are behind a viewpoint. Rather it indicates whether there were few or many supporters of a viewpoint, or whether there was near or total consensus.

ISSUES RAISED

The interviews were conducted with an open approach leaving space for the interviewees to elaborate on issues they considered important. However a framework of the review had been presented to them in advance, informing them about the background for the study, the mandate of the Review Team and giving an overview of the main questions to be dealt with by the review, namely:

1. Which tasks should Norway's National Institution have, bearing in mind both the particularities peculiarities of Norway and the requirements of the Paris Principles?
2. How do you assess the NCHR fulfilling its role as National Institution?

¹⁴⁵ A presentation of main viewpoints of the 11 January 2011 Open Meeting is available at the NHCR webpage: <http://www.jus.uio.no/smr/om/aktuelt/aktuelle-saker/2011/docs/referatopenmeeting.pdf> (Norwegian only)

3. Which specific challenges do you see for the National Institution given Norway's complex architecture of supervisory and complaints mechanisms (Ombud institutions, Gáldu, etc.).
 - What kind of role should the National Institution play in relation to these other institutions?
 - How to avoid unwanted overlap of mandates?
 - Should the National Institution handle individual complaints on violations of human rights?
4. Which role should the National Institution play in relation to civil society and non-Governmental organisations?
5. What kind of alternative models of organizing the National Institution do you see?
6. How to ensure the National Institution's independence, visibility and authority?
 - Should it be based on a law instead of the 21 September Royal Decree which is currently its legal base?

Comprehensive notes were taken based on the interviews. The participants are not listed in the report or in any other document, beyond the working papers only available to the Review Team itself. The participants are drawn from a wide range of resource persons/stakeholders and groups, including public servants, ombudspersons, researchers and professionals involved with the NCHR, the University of Oslo, non-Governmental organisations and other civil society representatives. At the open meeting organised by the Review Team and NCHR on 11 January 2011, providing written comments to the Review Team was encouraged. Also these are included in this overview.

The following presentation of findings is based on a thorough review of the material gathered during the process of interviewing stakeholders both in individual settings and in group settings. Based on an analysis of the information, a so-called SWOT analyses was undertaken, in order to highlight and identify Strengths (S), Weaknesses (W), Opportunities (O) and Threats (T). These dimensions are seen in relation to the following criteria, *Visibility and Accessibility, Effectiveness, Efficiency, Impact and Sustainability*. These criteria are based on OECD principles and the Paris Principles as they are applied in the accreditation procedure.

In the following the results will be presented according to this categorisation. It is the participants' views and reflections on the National Institution as it functions today, and perspectives on needs and further development, that form the basis for the presentation.

PRESENTATION OF RESULTS

Visibility and accessibility

Strengths

The Yearbook on human rights in Norway was highlighted by most participants as one of the most important contributions from the NCHR in terms of visibility, providing an overview of relevant information and a review of pressing human rights issues in Norway.

Likewise the Human Rights Forum has been pointed to as a way of reaching out to a larger audience. This forum was initially an open forum, but was for a period restricted to jurists, and has now been opened to a wider public again. The Forum is organised on a regular basis.

In the area of visibility, publication of summaries in Norwegian of judgments of the European Court of Human Rights was pointed to as an important initiative. Likewise meetings organised in connection to Norwegian reporting to international bodies were referred to as important contributions.

The Advisory Committee, established in 2005, consists of a range of civil society organisations and representatives of the Ombud institutions, representing the clearest and best organised meeting place for contact and collaboration with important stakeholders.

Participants pointed out that an important development had taken place in relation to strengthening cooperation between the National Institution and the Ombud institutions, and consequently also among the Ombud institutions themselves, through the 2010 initiative whereby regular meetings for coordination and information sharing was established.

The library and its availability both to the general public and in particular to students and researchers, was emphasized as an important asset which must be carried on regardless of future reorganisation.

Weaknesses

The general lack of visibility of the National Institution in the Norwegian society was pointed to by the great majority of the participants. References were also made to the fact that there had been no strategy developed where visibility and being present in the public and the media had been included as matters of priority. On the contrary, there seems to be an avoidance of press initiatives and media contact. It was pointed out that the threshold for presenting public statements and input in the general debate is very high.

The general observation was that the priority at the NCHR is on dissemination of research results and research publications, rather than alternative forms of information or evaluations on human rights issues in Norway, except for the Yearbook. Lack of reviews, overviews, and self-initiated investigations were particularly pointed to in light of the fact that this has been referred to as the working model of the National Institution.

Nevertheless, many participants stressed the fact that the NCHR is known for high quality research and competence on human rights issues, but that limited focus has been on the

situation in Norway, and that there was probably a limited specialisation on this area of research and assessments. It was also argued that there was little support for presenting publications, comments or statements that are not based on research in the academic sense of the word. This meant that policy documents, statements based on analysis and inquiry, but not necessarily according to university standards, have been downgraded on the list of priorities.

A weakness with respect to visibility and accessibility is that there is no system for the handling of complaints. Most of the participants emphasized that it was not necessarily desirable or recommended to establish a complaints system at the National Institution, but it was underlined that a system to register and systematize requests and inquiries to the institution should be put in place. There has hardly been any organised way of analyzing or getting some information out of the many requests to the NCHR. When persons call NCHR they are informed of alternative places to approach. The requests coming as e-mails are responded with some form of advice and recommendations. There are no specific opening hours for the National Institution, and no defined time frame during which the public can visit or approach the NCHR in a context of presenting complaints, violations etc.

Several participants pointed to the need for developing a system where one could work with the requests, use them as bases for further investigations and information gathering, and follow up on important cases as a way of obtaining more information and understanding. The term “emblematic cases” was used to refer to a system where one looks more deeply into certain cases with a view to learn from them and base further investigations on them.

There was little mention of the web-pages as a source of visibility. Those who commented did point to the quality of the pages, but it was often mentioned that it could be complicated to access the pages, and that the National Institution information is influenced by the fact that it appears on a university web.

Furthermore it has been underlined that there should be a lot more material provided in Norwegian, and that the information available there could be elaborated and edited in a way to make it more accessible to the general public. In particular, the lack of translated UN documents has been pointed to. These reflections feed into the argument frequently raised that the National Institution is not widely known and for those interested, the threshold for looking into its work or actively seeking information or advice is high. This reduces the availability of the institution in relation to civil society and the wider public.

The fact that there seems to be a large distance between the institution and the grassroots levels of the Norwegian society was pointed to by many. Persons and institutions involved in human rights advocacy in different ways, underlined that the only way to get a sense of what is going on and what kinds of problems are experienced by different groups in the Norwegian society with respect to violations of human rights, is by travelling, meeting, interviewing and assessing challenges and difficulties.

One point raised by many is that there seems to be some lack of clarity as to the relationship between the NCHR and the National Institution. On the one hand there seems to be no clear distinction between the two, on the other hand, it was commented that it also seems to be a clear division between the two. The general observation that it has been complicated to understand and deal with this “two in one” type of institution, with the same mandate in

some respects, but quite distinct mandates at the same time. That is, on the one hand to monitor and to promote human rights as a National Institution, and on the other to research and teach as a university entity (NCHR). This lack of clarity may account for some insecurity as to how the institution may in fact implement acts of monitoring and strengthening human rights.

Participants frequently referred to the fact that there are structural conditions and thus structural limitations to pro-activeness and advocacy. At the same time there seems to be lack of pro-active management at the institution. Most participants questioned the organisational solution that was chosen when the National Institution was established as part of a university centre.

Opportunities

A number of options and expressed wishes for improvement in the area of visibility and accessibility were pointed to. Priority should be given to greater responsiveness and alertness to current issues, as well as to develop a clear profile in advocacy of human rights.

One point that was raised by several participants was the lack of a good documentation or knowledge basis as source for action and further planning. The need for robust documentation on violations is evident and such documentation should be established as a matter of urgency. In particular the need for building up empirical documentation of violations within psychiatric care was pointed to.

There should be good options for a new start for the National Institution. This should include a strategic approach to defining institutional identity and a thorough planning of activities and priorities. In this work, “emblematic cases” may form a basis for further investigation, proposed interventions and the development of policy papers on special issues within the human rights area.

There are many indications of the need to improve human rights awareness in public administration. In general the need to strengthen training and competency building on all levels in the society was pointed to as one of the main options for future work.

Threats

University affiliation with the researchers jeopardizes National institutional identity. Individual research and academic interests represent the guiding principle for the National Institution activities rather than current and ongoing problems in the Norwegian society. The agenda is set by other interests than by pressing human rights issues in Norway. And as one informant said, with little clarity as to the priorities, how can we know whether the chosen areas for research are decided or informed by current academic interests or by actual human rights issues in the society?

The National Institution was frequently described as passive and limited in responsiveness as to requests and appeals for action or involvement. This was also related to the lack of ongoing contact with the situation on the ground. Many described the institution as a typical

university unit with focus on research and academic achievements rather than on ongoing monitoring, advocacy, protection and promotion of human rights.

It was also pointed out that from a university perspective, monitoring and advocacy aimed at strengthening compliance with international human rights, in itself may be regarded as a threat to academic freedom. This is so because themes of engagement and areas of work may be decided by other motives and objectives than those related to pure academic research.

Effectiveness and efficiency

Strengths

As for effectiveness and efficiency, the Yearbook was referred to as one of the ways in which the National Institution fulfils the requirements of the Paris Principles in relation to dissemination. The Yearbook represents an overview and an in depth analyses of vital issues within the field of human rights.

Weaknesses

It was pointed out that the funding NCHR receives for its National Institution functioning is not fully exploited for this function. The lack of control of economic resources was also mentioned.

A problem that was raised by many was the ineffectiveness of the 1/5 time position (or 22, 5%) National Institution work obligation. The system defines that some of the researchers at the NCHR have part of their time tied up with tasks related to the National Institution, reducing their compulsory teaching time correspondingly. The system has been in place for a long time, but there has never been any evaluation of it that has concluded that it functions effectively. On the contrary, it seems not to have worked in a satisfactory way, neither for the researchers nor for the National Institution.

The model has been underpinned by a contract between the NCHR Director and the researchers, a contract that according to the plans has to be renewed annually. Despite of this, the contract was not renewed with the researchers in 2010. This must, according to the participants be understood as an acknowledgement of the problematic character of this model.

The use of the NCHR research resources has been somewhat ad hoc, some participants maintained. The researchers with National Institution work obligations in some cases also have expertise of limited relevance for the National Institution. There has been a long-lasting and internally acknowledged problem with the system, without any real efforts to find a solution.

A clear position that was raised in the interviews, in particular based upon this experience, is that National Institution work has to be based on personal engagement and dedication to the field rather than as a duty measured in a percentage of the full working time.

Weakness in relation to efficiency may also be related to lack of systematic collaboration and cooperation with other stakeholders. The Advisory Committee has represented an important step forward. Several participants referred to human rights work in Norway, and in particular monitoring and advocacy, as fragmented and poorly coordinated. Strengthening the role of the National Institution in this respect would be a great bonus.

There were also references to what has been regarded as a large gap between the different parts of the NCHR, namely research and education, the international programs and the National Institution with monitoring and promotion as main objectives. Participants from both within and outside the organisation made the point that there is no clear and effective contact or mutual enriching collaboration, despite the fact that the different parts of NCHR easily could enrich each other in many ways.

As mentioned, the view that there are unclear lines has been presented, and this may seem to counter the first argument. But as it is presented it seems that the lack of efficiency as well as visibility is linked to the rather blurred picture of how and in what ways an effective National Institution with a pro-active mandate can co-habit and exist within the parameters of a university entity with its particular objectives and methods for determining good outcome and outreach.

The lack of staff committed to the National Institution function is seen as a problem by many; as a hindrance to monitoring and advocacy, including independent investigations and analysis of ongoing problems or complaints. Some participants referred to the National Institution as the “step-child” of the NHCR, referring to it as an institution endowed with a wide mandate and large expectations, but that in practice there was little enthusiasm or support for the actual work that needs to be done. Likewise, the National Institution’s successes were seen more as “despite of” than “because of” its organisation and surroundings.

On thematic areas not sufficiently covered, despite that there might be major concerns related to human rights in these areas, several issues were raised. Firstly, the Yearbook did not contain information on Sami rights or on issues related to national minorities until its 2010 edition (covering 2009). Furthermore reference was made to the lack of focus on children rights, on freedom of expression, asylum law and refugee protection and the rights of psychiatric patients, in particular with regard to involuntary treatment or placement and legal safeguards.

The material shows that there were different opinions on advocacy of the NCHR in relation to ratification of human rights conventions. Whereas some were of the opinion that there has been an active agenda aimed at encouraging ratification, other participants criticized that not enough emphasis and advocacy were placed on having ratifications sped up and finalized. Examples were the optional protocol to the UN Convention against Torture, the UN Convention for the Rights of Persons with Disabilities, and the optional protocol to The Covenant on Economic, Social and Cultural Rights.

Strong administrative control as well as university bureaucratic regulations and work methods, was described by many as ways of reducing and slowing down a more pro-active and out-spoken role of NCHR as National Institution, especially in relation to monitoring and independent investigations.

Opportunities

There are clear challenges for a National Institution in Norway, and many encouraged a more pro-active approach than is currently in place. Dealing with the fragmentation of the human rights field was highlighted, as well as being in a position to improve coordination among human rights actors. Also there is need to have one institution, as an independent body, to monitor and have as full an overview as possible over ongoing work to defend and protect human rights in Norway. It would also be of interest to have a body that could keep track on complaints and problems, and what happens in response to these, from civil society as well as from the state. Some participants also underlined that a National Institution also could function as a watch-dog not only in relation to state action but also in relation to non-Governmental organisations.

There is also a need to fill in the gaps in protection and promotion of human rights. Despite the elaborate system on Ombud institutions, complaint mechanisms in the administration as well as civil society, there are many gaps in the system with regard to protection and promotion. Some civil society organisations underlined that there is a serious lack of willingness in the Norwegian society, in particular by the authorities, to admit that human rights violations take place. As a consequence, willingness to taking such arguments is often seriously limited.

Some argued in favor of the National Institution creating a forum where civil society, authorities and academia can meet and discuss human rights issues.

There were also opportunities involved in strengthening the profile of economic, social and cultural rights, as well on indigenous and minority rights.

Threats

The greatest threats to the system as it is today seem to be linked to the University linkage, despite the fact that this also could be seen as a positive. The fact that the “negotiation” between two vital foci has not resulted in clarity and communicable solutions as to how it should be managed are regarded as the main problem by many. The interesting aspect is that based on the interviews, it seems that the way in which this state of affairs is evaluated, may have moved from feelings of regret to possible alleviation.

Most participants indicated clearly participants that the “umbilical cord” between the two institutions should be severed, and that “it is high time that this happens”.

The argument is linked to what has been mentioned already: the university requirement for scientific research and teaching, the importance of academic freedom, and research plans based on evaluations and knowledge needs other than what should be expected from a National Institution. Mutual limitations, and the practical fact that there has been no clear common ground or common interest defined, are points raised in this respect.

The idea of having researchers on a part-time National Institution work obligation has been criticized by all those aware of it. It has created a constant sense of uneasiness in the system,

tension and at times open friction, and all parties involved have referred to lack of satisfaction, both from the “delivery” side and the “receiving” side of the National Institution work.

What is often stated as a “must” in order to be able to move beyond the situation of today is that the National Institution is equipped with dedicated staff, clearly engaged in the objectives of a National Institution, which is allowed to develop a strong institutional identity.

Impact and sustainability

Strengths

There is a high level of competence affiliated to the National Institution according to the participants. There seems to be a general consensus that reports and statements from the NCHR are in general of high quality and are listened to. NCHR comments to draft laws and state reports are also generally of a high quality and valuable. In cooperative or coordinated efforts of drafting alternative reports to UN and Council of Europe human rights bodies, NCHR at times assisted and advised other institutions and organisations.

The regular meetings between the National Institutions and the Ombud institutions starting in 2010 were described as an important initiative in strengthening collaboration, and also laying better ground for statements and reports.

Weaknesses

Impact is closely related to thematic monitoring. Lack of such monitoring is therefore a weakness. Since the establishment of NCHR as Norway’s National Institution very few reports based on investigations of situations, trends, or cases or analyses of human rights patterns have been produced. This lack of thematic reporting has also resulted in the limited fulfilment of NCHR’s advisory function, beyond commenting on draft laws. Likewise initiatives with respect to closing gaps and clarifying grey areas have not been followed up on, nor have they contributed to raise awareness, acknowledgements or public debates about the human rights situation in Norway.

Sustainability is weakened by the above mentioned conflict between academic freedom of a university entity and the monitoring and pro-active functions that a National institution is endowed with. The priorities may as such have been on academic impact rather than on impact stemming from human rights monitoring and awareness-raising.

A point that seems to have been a problem for a long time is related to the limited number of legal experts among NCHR’s researchers, leading to a weakening of the functioning of the National Institution. Many participants pointed to the need for a strong unit providing in-depth analysis of draft laws as well as implementation. A National Institution could also provide impact assessment in relation to rights and laws, but due to its limited resources NCHR is not able to do that.

Many participants reiterated that the requirement that all presentations and public statements must be research based limits the NCHR in its advisory, advocacy and monitoring functions. Some claimed that the National Institution function was never fully integrated into NCHR activities. The National Institution task was considered “like a project among other projects”, or as a mandatory duty, something that did not create the ground for creative and out-reaching initiatives.

An observation voiced by some participants was that despite the Advisory Committee being a valuable forum for exchange of views, it was without any particular significance for the ordinary work of the NCHR.

Finally the need for more a systematic and strategic approach to strengthening human rights education in the school system and providing targeted training to professional groups was raised by many as important for improving implementation of and compliance with international human rights. It could also provide NCHR with ways of clarifying its impact.

Opportunities

Improving human rights assessment prior to adopting new legislation and strengthening the assessment of the impact of existing legislation were pointed to as major challenges.

Furthermore, many pointed to an active dialogue and engagement with civil society as necessary in order to follow up on reports or information on possible violations or gaps in the system.

The enhancing of human rights competence on all levels and sectors was frequently referred to as a major challenge for a National Institution, and in particular collaborating with the Parliament with respect to human rights education and in providing expertise to Parliamentarians.

Threats

The problem most frequently referred to with respect to impact and sustainability was limited control by the National Institution unit over resources in order to prioritise production of thematic reports or independent investigations. Such reports could make a difference in public debates on human rights issues.

Some pointed to problems arising if NCHR and the National Institution are separated, weakening the resource base of both institutions. A separation might jeopardize the financial sustainability of the NCHR, and a separated National Institution might end up as a very small institution if resources were not substantially increased from its current level.

There was a concern that Norway could end up with having two weakened professional environments. Some participants pointed to the importance of securing both institutions in terms of financing and academic professionalism, NCHR as an entity at the University Of Oslo Faculty Of Law and the National Institution as an autonomous institution outside the University structure.

DISCUSSION OF FINDINGS

There was high level of agreement among the participants on several of the fundamental issues raised. Based on the information and viewpoints gathered during the interviews, the Review Team wants to make a few comments.

Organisational set-up has to be changed

There was a clear view among many participants that despite good intentions of organizing the National Institution as part of a university unit, it is high time to find better solutions. Although there were nuances in views regarding whether combining the task of being a university entity while at the same time functioning as a National Institution is feasible, the Review Team heard strong overall support for separation. In separating NCHR and the National Institution, however, it is important to ensure that the two institutions enters into cooperation, on library services, research, etc. An official agreement between the two institutions should be entered into, allowing the National Institution to purchase services from NCHR if needed.

Need of a visible and clear spoken National Institution

Many participants spoke about the need to develop an institution conducting effective monitoring and having clear public positions on human rights issues. The National Institution should have a pro-active role, in relation to commenting on and evaluating draft laws and other state initiatives, a clear combined advisory and advocacy function, and a “whistle blower” function on gaps in protection and on violations of rights. For a country like Norway, that wants to keep a high human rights profile there is a constant need for public education and for having meeting places to discuss and learn about human rights.

Participants frequently referred to NCHR as not having its focus on the situation in Norway. In the view of the Review Team, the current organisation of the research base of the National Institution is a major problem in this respect. A National Institution has to be allowed to recruit its own personnel with the expertise it needs in order to fulfill its duties.

Human rights knowledge and competence a major challenge

Human rights education and training on all levels were pointed to as a major challenge in ensuring full respect for human rights in Norway. In particular, different professionals have to be trained in applying human rights within their professional duties.

The Review Team holds the view that if full respect of human rights is to be achieved in Norway, there has to be systematic efforts by Government and administration over time to ensuring that laws and regulations as well as their application in policies and action plans are in compliance with human rights. It shares the position of the 1999 Government plan of

actions on human rights that the central Government administration must have sufficient knowledge of the implications of human rights for their fields.

Even though Norway has a well developed system of including civil society and academia in developing policies and drafting legislation, the central administration should itself take a systematic approach towards safeguarding human rights.

Despite the fact that the NCHR as well as a range of other educational institutions and civil society organisations provide training and courses in human rights for a wide range of professionals, there is still a need to do more. In particular, there is a need for the training to be tailored to the specific needs of different professions. The main task is to ensure that education of professionals dealing with human beings includes high quality and relevant training in human rights. This is a demanding task in itself. In addition, the National Institution should initiate projects (or run the projects itself) of producing target group-tailored training material. It should play an active role in providing and ensuring sufficient overall capacity in Norway for continuing education of different professions in human rights.

In a Norwegian setting where, differently from Sweden which has only incorporated the European Convention on Human Rights into national legislation, a range of core international human rights treaties have been incorporated into the legislation, there have to be ongoing efforts to ensuring the application of the treaties by the public administration as well as by professional institutions.

The adoption of the 1999 Human Rights Act signalled a strong political will to make human rights part of policies and legal practise, but results will not come automatically and not all at once. The role to be played by an active National Institution in following up and monitoring that this happens is quite obvious.

Monitoring as planning base: getting info from advice and existing complaints mechanisms

Related to this is the need of the National Institution to know how human rights are integrated into practical measures, and to have an overview of the human rights situation on the ground, including by conduction investigations based on analyses of cases and complaints.

The importance of establishing systematic knowledge, such as developing documentation based on cases and reports on violations cannot be underestimated. A National Institution providing a easy accessible advice service and a “desk function with opening hours”, will both improve protection and give the institution valuable input on problems to be further addressed.

In the view of the Review Team, systematic assessment of information presented to the National Institution in complaints must be an important part of its activity, but this does not imply that it has to provide a complaint mechanism. Even if existing complaints mechanisms may be incomplete and insufficient related to human rights, the main functioning of the National Institution should be to contribute to improving these mechanisms, and to ensure that gather information on trends and principled issues arising from the handling of complaints in the different mechanisms.

Better information

Many participants pointed to the importance of the National Institution having its own web page, and developing that web page into a high quality source of easily accessible human rights information. The institution should also have an ambitious schedule of open meetings, hearings and conferences where academia, civil society and state authorities can meet and discuss human rights issues. Such activities will help the institution to develop high quality strategic plans.

Keeping academic standards

One of the great values of NCHR is its high level of academic competence. The Review Team echoes the view of many participants on the importance of a National Institution keeping high academic standards. However, this should not be an end in itself but rather a means of ensuring that the National Institution may conduct its different tasks with high level of quality and earn respect from authorities as well as from academia and civil society.

In order to publish policy papers and statements that may make a difference, the institution is totally dependent on keeping high standards and having in-house expert knowledge on human rights and on Norwegian society.

At the same time, academic standards must be combined with the ability to communicate and disseminate knowledge and analysis to the wider public, including politicians and media.

Acting effectively on a broad mandate means prioritizing vulnerable groups

NCHR has not been able to focus sufficiently on several important human rights areas and issues, such as the rights of the Sami indigenous population and national minorities, issues related to handling of asylum applications, children rights, the rights of persons in psychiatric care, as well as the use of long term isolation in pre-trial detention, to name a few examples.

In the view of the Review Team, the National Institution should install effective strategic planning by analyzing its own thematic studies and concerns raised by international human rights bodies, as well as by conducting dialogue with civil society organisations. In this way it will have a strong basis for choosing which vulnerable groups to prioritize.

In order to become an effective institution, its plans should include making concerns raised by international human rights bodies known to a wider public in an easy accessible language, and also to follow up on them by monitoring Norwegian authorities' follow up on international criticism.

By monitoring follow-up, the National Institution will become a valuable partner for the international bodies in giving well-documented input on whether their observations has been implemented.

The Review Team concludes, based on its own finding and on the many concerns raised in the interviews it has conducted, that there is need for a strengthened National Institution, including with an alternative structure and organisation.

In the following chapter, a proposal for such a strengthened institution will presented.

6. ORGANISATIONAL MODEL OF A STRENGTHENED NATIONAL INSTITUTION

Looking at National Institutions with A-status in EU countries, we find that they mainly fall into three categories:¹⁴⁶

- Commissions (including Advisory commissions): Ireland, Northern Ireland, Great Britain, Scotland, France, Luxembourg, and Greece
- Ombudsmen: Poland, Spain, and Portugal
- Institutes: Denmark and Germany

NCHR as Norway's National Institution would fall into the third category. However, in contrast to both the German and the Danish human rights institutes, it is part of a university. Both the German and the Danish institutes are autonomous institutions financed directly by Government ministries as well as other public sources of project financing.

They both have strong academic bases for their work, but at the same time act as visible and clear spoken promoters of human rights, endeavouring to shape human rights policies in important fields. Similar to the NCHR, they focus on publishing high quality reports, including recommendations to the authorities.

Neither the German, the Danish nor the Norwegian National Institutions provide individual complaints mechanisms. However, the German Institute of Human Rights provides free of charge advice (although at a limited capacity) and is a national monitoring body for the UN Convention on the Rights of Persons with Disabilities.

Different from the traditional Nordic model of National Institution, a Swedish committee (Delegation) in 2010 proposed a Commission type National Institution in compliance with the Paris Principles. Currently Sweden does not have an ICC accredited National Institution.¹⁴⁷

The proposal to establish a Swedish Human Rights Commission is backed by comprehensive and thorough analysis of current human rights challenges and the need to strengthen capacity and competence in Swedish Governmental and administrative structures in order to ensure full respect for human rights in the country, in compliance with international obligations stemming from UN, Council of Europe as well as EU treaties that the state is bound by.

The Review Team is of the conviction that the Swedish proposal reflects a forward looking and well founded approach to developing sufficient capacity to ensure respect and

¹⁴⁶ FRA 2010 report, page 24 (see footnote 33 for full reference).

¹⁴⁷ Ny struktur för skydd av mänskliga rättigheter: Slutbetänkande från delegationen för mänskliga rättigheter i Sverige, SOU 2010: 70.

protection of human rights in a Nordic democratic setting. Sweden has like Norway a well developed system of Ombud institutions. However, the proposal argues convincingly that due to their setup and limited role as mainly reactive complaints mechanisms with limited mandates and part of the parliamentary control power, none of these institutions stand out as a candidate for being appointed as a fully fledged Paris Principles compliant National Institution.¹⁴⁸

Referring to a Finnish proposal to establish a National Institution as an independent unit (a human rights centre) in the Finnish Justice Ombud institution's Registry,¹⁴⁹ the Swedish proposal strongly argues against a similar solution:

“It may be considered whether a similar solution [as the Finnish proposal] could be relevant in Sweden. The Justice Ombud's supervision in order to ensure that public administration operates in compliance with laws and regulations and in particular that fundamental freedoms and rights are not violated by the administration as well as the Ombud's handling of complaints from the public, should then be combined with the tasks of a National Institution for human rights. Such a solution could not be appropriate for several reasons. The [Swedish] Justice Ombud has a particular Constitutional position as the Parliaments Ombud and has been part of the Parliament's controlling power for 200 years. The Justice Ombud is an extraordinary supervisory body which is not intended to replace ordinary supervision and application of the laws which other community agencies are tasked to conduct. The role of the Justice Ombud is therefore to stand next to other community agencies and conduct its supervision based on its independent position. Its task is primary reactive.”¹⁵⁰

As in Norway, Sweden has separate Ombuds for discrimination and for children, as well as a range of other supervisory agencies. Due to their limited mandates, these institutions are also not suitable candidates for becoming Sweden's National Institution, the committee concludes.¹⁵¹

Even though there is limited tradition in the Nordic countries for a Commission-style permanent organ,¹⁵² the Swedish proposal makes a strong case for establishing a permanent human rights commission similar to Sweden's National Institution.

If both the Swedish and the Finnish proposals are followed through, the Nordic countries might end up with all three main types of National Institutions:

1. Institute type in Denmark;

¹⁴⁸ Op. cit., page 344.

¹⁴⁹ Kansallisen ihmisoikeusinstituution perustaminen, Betänkanden og utlåtanden 45/2010, Justitieministeriet, s 57 f. (summary in Swedish).

¹⁵⁰ Ny struktur, op.cit., page 344 (Translation into English is by the authors of this report).

¹⁵¹ Op. Cit., pages 345-348.

¹⁵² Examples of permanent commission, however, do exist, like “Den rettsmedisinske kommisjon” (The Forensic Commission) in Norway.

2. Ombud type in Finland; and
3. Commission type in Sweden.

This Nordic pluralism of models, it could be argued, leaves Norway with a free choice to decide which model suits best, and at the same time try to learn from the debates surrounding National Institutions in its Nordic neighbours.

A UNIVERSITY ENTITY AS NATIONAL INSTITUTION

The Paris Principles do not provide for an organisational model of National Institutions. Norway selected an academic institution at the University of Oslo to become its National Institution. Based on the findings of this review, the Review Team has concluded that the current model has not provided the necessary framework for the performance of the many activities expected from a National Institution.

The NCHR as an entity at the University of Oslo has led to frequent discussions both internally at the NCHR and with other stakeholders as to whether a University entity is well-suited to take upon itself the tasks of a National Institution. In particular, the role of being a strong promoter of human rights may seem incompatible with the purpose of a University entity.

As has been presented in Chapter 3, the NCHR organised its National Institution work by establishing a small National Institution unit and then giving seven of its researchers each a 22,5 % so-called *National Institution work obligation*. In addition a librarian, an information officer and an education officer have been wholly or partly funded by the National Institution funding.

In discussions with a large number of stakeholders, there was near consensus on the conclusion that this model has not functioned well (Chapter 5). In her report on the National Institution for human rights in Norway, Elin S. Kjørholt, current head of the National Institution on leave, concludes that:

“NCHR has not managed to get the existing model for a National Institution to function satisfactorily. This is clear both from the review presented above, the frequently repeated discussions [among NCHR staff and in the NCHR Board], and in the high turnover of the staff of the National Institution unit. There is need for a real restructuring of the role of National Institution, and the most important concern should be to fulfilling the mandate and the Paris Principles, while resources and the current organisation of the NCHR should be of less importance.”¹⁵³

¹⁵³ Kjørholt, *op.cit.*, page 10.

The current Review Team shares this assessment. As a matter of principles, it moreover finds that a university entity is not suited to carry out the functions of a National Institution. The main arguments for this conclusion are:

- A National Institution should be an independent institution with its own institutional identity, not an entity of another institution;
- The task of a National Institution to monitor and promote human rights is not compatible with the purpose of the university to conduct scientific research and teaching;
- A National Institution should develop its own institutional views and have a strong voice on human rights in the public debate. This is hardly compatible with the request for a university entity to respect the academic freedom of its employees;
- A National Institution should address human rights issues on the basis of thorough academic analyses and impact assessments. In that light, the university norm to teach and form views explicitly based on individual academic research becomes an unreasonable restriction;
- A National Institution seeks to promote a human rights approach to structures, procedures and perceptions as a unit with a common goal. As employed by a university entity, the academic staff would naturally seek to improve their individual profile by doing research and publishing in ways that give them individual academic merit.

NEED FOR A NEW STRUCTURE FOR A NATIONAL INSTITUTION

Seeing the need for a new structure for the National Institution in Norway, the Review Team has assessed whether existing institutions, especially the Ombud institutions, may serve as a National Institution in the future.

The Parliamentary Ombud institution has been established in a uniquely national setting and context, and it is not seen today in a role of promoting and protecting internationally recognised human rights. The well established identity of the Parliamentary Ombudsman is as a protector against injustice in administrative proceedings and in the case handling of the public administration. The role of the Ombud is thus closely linked to the role of the Parliament as legislative and controlling authority.

The Review Team also sees it as a risk that the Parliamentary Ombudsman will face challenges because of his already well established role and roots. As such he may easily find himself in a situation similar to that of the NCHR. The Ombud may as such fail in establishing an identity and role as a strong public voice for human rights.

In addition and very important, the Parliamentary Ombudsman is not mandated to evaluate decisions by the Parliament and the Government. Nor does it have a strong link to civil society, which is essential in fulfilling the Paris Principles.

The Review Team identifies similar challenges if the role of National Institution is shifted to any other existing institution in Norway, especially the two national Ombud institutions,

even though parts of human rights protection is included in their mandates. Both the Equality and Anti-Discrimination Ombud and the Ombud for Children have too narrow mandates in terms of human rights protection to be assigned this role. Moreover, the task of promoting human rights through education and information cannot be easily fulfilled by these institutions.

While the Ombud institutions have been developed over time to be guardians of *national* legislation, the primary characteristic of a National Institution for human rights is that it is a guardian of *international* human rights norms. In a way, it is the “extended arm” of international human rights into a national context. It consequently has to focus on translating international standards into national practices via monitoring and advising on the implementation of human rights into national legislation, education, competence building, information and other promotional activities. Furthermore, it should be pro-active more than reactive, detecting on its own initiative important human rights issues and make efforts to address them in an efficient way.

As has been noticed in Chapter 2, a National Institution also has important roles to play at the international level, both in preparing and presenting human rights reports, giving advice to the Government on such reports, taking part in international debates and even contributing to international standard setting.

As a consequence, the Review Team concludes that neither the Parliamentary Ombud nor the thematic Ombud institutions are adequately suited and sufficiently agile to be assigned as Norway’s National Institution.

ESTABLISHING A HUMAN RIGHTS COMMISSION

Considering the points made by external stakeholders as described in Chapter 5 above, as well as its own findings and assessment, the Review Team sees a need for a Norwegian National Institution that is qualified, agile and adequately resourced to fulfil the requirement of thorough monitoring and advising the Government, Parliament, and public authorities. The institution should provide high quality and accessible teaching material on human rights to a variety of sectors as well as engage in information and awareness-raising on relevant human rights issues in Norway.

To this end, the Review Team has given strong weight to certain points made by external stakeholders. Hence, one of the weak points of NCHR as National Institution, discussed in several of the interviews conducted by the Review Team, is that it neither in its organisational setup nor in its activities are Norway’s ethnically diverse population, including the Sami indigenous population, the five national minorities, and immigrants and refugees, sufficiently reflected.

On several occasions it has been mentioned that there is a need for an institution that can address issues of vulnerable groups, especially detainees, psychiatric patients and women subjected to violence.

Apart from a focus on civil rights, several stakeholders have also asked for intensified efforts to promote economic, social and cultural rights.

The major part of these issues are highlighted by the international monitoring organs within the UN and the Council of Europe as areas of concern with respect to fulfilment of the obligations laid down in international human rights documents.¹⁵⁴

To ensure an effective National Institution with competence and agility to accommodate these needs, the Review Team argues in favour of establishing a Norwegian Commission for Human Rights, as an autonomous and independent institution with its own secretariat and institutional identity.

The Review Team *finds that a commission has strong advantages:*

1. *It is independent* from the University and other existing institutions and/or authorities;
2. Its purpose and profile as promoter of human rights is clear;
3. The task of promoting human rights in the public debate as well as among the legislative, the judiciary, the labour market and civil society is more efficiently fulfilled when divided amongst more commissioners;
4. Non-bias, integrity and independence can be ensured by appointment of commissioners with high skills and moral standing, and a requirement for no affiliation with any other actor in the field of human rights, e.g. a non-governmental organisation, an authority or a company;
5. A commission may possess a high degree of agility, i.e. an ability to transform international norms into local practices in a way that accommodates the needs and perceptions in the Norwegian context;
6. A commission serves as a collective unit, and is thus based on more perspectives on human rights issues rather than of a single person, e.g. an executive director. This may ensure plurality in decision-making on strategies, priorities and plans of action;
7. The vulnerability of the institution is reduced as it is not dependent on a single person representing the institution. Both tasks, burdens and risks are divided within the team of commissioners;
8. It also makes it possible to include members with expertise on Sami and minority issues, which also could be nominated by the Sami Parliament in order to ensure that the person has the backing and trust of the Sami population.

It should be noted that several of these arguments for a commission type National Institution, also serves as counter arguments against an institute type institution headed by a Director, in particular arguments 2, 3, 4, 6, 7 and 8. In addition, to create a new institute type National Institution might create confusion related to the existing National Institute, the NCHR.

¹⁵⁴ See Chapter 4 above.

The Review Team therefore recommends that a new type of institution should 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 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 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.

To ensure that the pluralism of the Norwegian society forms an integrated part of the strategic planning of the work of the Commission, an Advisory Council should be established by law. The Advisory Council should represent:

- Non-Governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organisations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- Trends in philosophical or religious thought;
- Universities and qualified experts;

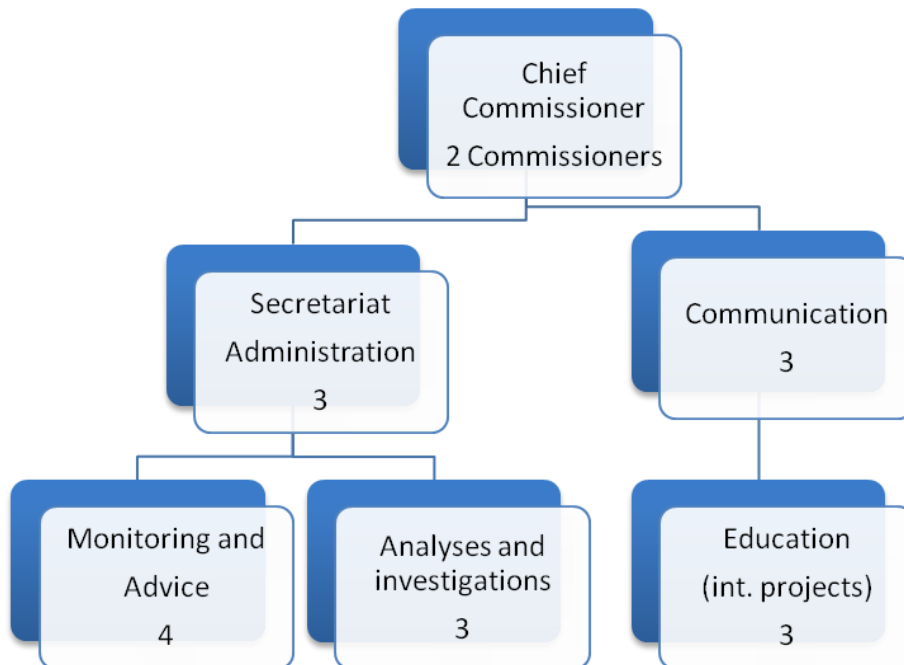
- Parliament;
- Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

In addition, the Commission could establish informal or more formalised meeting places, such as a Human Rights Forum for dialogue between authorities, relevant institutions and civil society organisations and representatives.

To support the Commission, the Review Team suggests an academically strong secretariat with adequate competence and resources to monitor the human rights situation and draft papers and reports advising Government and Parliament on human rights issues. Secretariat staff should have expert knowledge in human rights law, social and political science, and economics in order to conduct robust analyses and investigations, and to provide recommendations that are perceived as relevant and applicable in the Norwegian context.

The secretariat should assist in carrying out the mandate of education and information, including the production of teaching material for a variety of sectors, and in this endeavour being capable of cooperating actively with non-governmental organisations, authorities and media.

Organisation



The Review Team proposes that the Commission applies a strategic approach to the planning of activities, and as part of this sees monitoring as its planning base.

The choice of monitoring as planning base ensures that the point of departure is based on concerns raised by UN and Council of Europe human rights bodies and that these are seen as guiding in setting strategic priorities and plans of actions of the Commission in terms of monitoring, advice, analyses, investigations, education and information.

An important part of such an approach is an active dialogue and inclusion of civil society in discussions of the relevance of the international concerns. This may pave the way for national actors to provide input to the Commission's prioritisation of initiatives.

Adequate resources must be allocated to the Commission for it to be able to operate in full compliance with the Paris Principles as well as to contribute effectively to full respect of human rights in Norway.

It must *inter alia*:

- Map important human rights issues in Norway, which it then could deal with in a systematic manner;
- Play a strong coordinating and competence building role related to other institutions;
- Work together with the Ombud institutions in improving competence and capacity within their mandates to:
 - handle complaints on human rights violations, and
 - detecting and evaluating human rights components of cases which are not presented to the Ombud as violations of human rights but still might represent such violations or merit to be evaluated in terms of human rights;
- Provide easy accessible advice to persons with a potential case to ensure that the person in an easy way finds the relevant institution which will deal most effectively with the case;
- Make sure that it gets empirically based input from other institutions and that there are forums to discuss strategic and principled questions;
- Ensure that it fills the gaps in already existing activities and initiatives to protect and promote human rights;
- Monitor the human rights situation;
- Draft papers and reports advising Government and Parliament on human rights issues;
- conduct robust analyses and investigations;
- Provide recommendations that are perceived as relevant and applicable in the Norwegian context;
- carrying out the mandate of education and information;
- Produce of teaching material for a variety of sectors;
- Cooperate actively with non-governmental organisations, authorities and media;
- Coordinate human rights initiatives among these groups.

To flesh out the structure described above, the Review Team suggests as a minimum that the secretariat is ensured 21 staff members and 4 interns in addition to the three full time commissioners, including:

- 1 head of secretariat, 1 administrator, 1 secretary
- 1 senior communication officers, 2 junior officer, 1 intern
- 2 senior monitoring officers, 3 junior officers, 1 intern
- 2 senior researcher, 3 junior researchers, 1 intern

- 2 senior education officer, 3 junior officer, 1 intern

To ensure an infrastructure which is suited to the smooth conduct of its activities, the Commission should receive adequate public funding. The purpose of this funding should enable it to have its own staff and premises, and to operate independently of the Government and without being subjected to financial control which might affect its independence.¹⁵⁵

To cover expenses of salaries, activities, publications, domicile and administration, the Review Teams suggests a budget of minimum NOK 25 millions.¹⁵⁶

PLANNING AND IMPLEMENTATION

To ensure effective and sustainable results and impact of the Commission, the Review Team suggests that a strategic approach is applied to planning and implementation of activities.

A strategic approach shall facilitate the full and effective operationalisation of the tasks and functions of the Commission as spelled out in the Paris Principles. If applied to planning, the approach should lead to formulation of the overall purpose of the Commission and its strategic goals for a defined period of time. In addition, it should include identification of means to reach these goals, such as activities, staffing, budgets, and of expected results and impact of the Commission's efforts.

A vital part of the planning process is for the Commission to ensure that it fills the gaps in already existing activities and initiatives to protect and promote human rights. In order to ensure that, it needs the involvement of relevant non-governmental organisations, academia, public authorities and other actors within the field of human rights in an active dialogue and cooperation with the Commission and its secretariat. The task of coordinating human rights initiatives among these groups would also form an important part of such dialogue and institutional cooperation.

To this end, it should be highlighted that the Review Team does not propose that the Commission is vested with a mandate to receive individual complaints. It should however have the resources to advise individual victims of human rights violations on how to plan

¹⁵⁵ See the Paris Principles, para. 5.

¹⁵⁶ Commissioners' salaries about 700 000 (=2,1 million); Head of secretariat's salary about 650 000; senior researcher's and senior officers (7) salary about 600 000; 13 positions averaging 500 000; while intern's only have their living expenses covered at 200 000 each. This gives 14,25 million in net salary expenses; including social costs of 25 % gives a total sum of 17,8 million. In order to rent premises, and provide for office equipment an additional 2,2 million is needed. The Commission should have a travel budget of at least 700 000. Its communication and publication budget would add 500 000. Running a human rights library or purchasing library services from NCHR will add another 800 000. 3 millions should be available for purchasing needed research, etc. Total budget estimate: 25 million NOK.

and/or initiate administrative or judicial proceedings. Also, it should be possible for the Commission to intervene in emblematic cases where possible and relevant. As part of the advice to Government and Parliament, the Commission should include decisions from the Ombud institutions in its analytical work and in investigations. Such activity presupposes a strong cooperation with lawyers, the bar association, non-governmental organisations and the Ombud institutions.

The strategic approach to planning and operationalisation of the tasks and functions of the Commission may be organised as depicted in the model below:

Monitoring as planning base



Using monitoring as planning base for identification of strategic goals and decisions on priorities, plans of action and activities may provide a Commission with the means to ensure that international criticism and national debates form an active part of strategic planning.

In order for this strategic approach to accommodate the National Institution functions defined in the Paris Principles, it should embrace the following components;

External input

1. Concerns from UN and Council of Europe human rights bodies are analysed.
2. The concerns are disseminated to civil society and other relevant actors. These actors are invited to participate in a dialogue on the relevance of the raised concerns, e.g. in the form of seminars or roundtables.

The inclusion of external actors in a dialogue process is pivotal for the National Institution's ability to assess how international standards and concerns can be combined with the perspective of national stakeholders on current debates and issues in Norway. It moreover facilitates the integration of human rights norms in local practices and creates broader ownership to this endeavour.

Internal planning

3. Based on international concerns and stakeholder dialogue with relevant Norwegian civil society actors and authorities, the Commission decides on its strategic priorities and plans of actions concerning topics for analysis, investigation, education and pro-active projects, e.g. campaigns, cooperation with stakeholders etc.

A strategic approach is applied to planning, including formulation of the overall purpose of the Commission and strategic goals for a defined period of time, as well as identification of means to reach the goals, i.e. activities, staffing, budgets, and of expected results and impact of the Commission's efforts.

Output

4. As part of the National Institution monitoring function, comments are given to draft legislation, either upon request or ex officio, and impact assessments are made of existing legislation and practice. Also, investigations may be initiated as well as training in relevant sectors and groups, etc.

Findings and results are published as statements, reports, policy papers, books, pamphlets, etc. Media coverage of output should be considered throughout the process in a pro-active way, including through press releases, press meetings, the webpage and ongoing contacts with radio and television journalists.

5. Knowledge and documentation generated from monitoring is used as guiding for and included in alternative reports to and dialogue processes with UN and Council of Europe human rights bodies and delegations.

FINDING ITS ROLE IN A COMPLEX INSTITUTIONAL ARCHITECTURE

An important issue in establishing a new National Institution is its relationship with NCHR, the Ombud institutions, Gáldu and other supervisory mechanisms. On this issue, the situation in Norway is similar to many EU countries, where there are rather fragmented systems of monitoring compliance with various human rights guarantees. As we have seen, even if the Ombud institutions may hear individual cases related to human rights, their mandates and competence may leave significant gaps (as discussed in Chapter 4).

In safeguarding what has been achieved by the NCHR as a National Institution, a new National Institution could enter into an agreement with NCHR and the University of Oslo in order for it to be able to use facilities, contract researchers and make use of library facilities.

The NCHR will remain a strong academic actor on human rights as an entity at the University of Oslo, focusing on research and education as well as running its international programs. A

Norwegian Human Rights Commission therefore will have to find ways to cooperate with NCHR, and make use of its resources. To this end, it is important that the Commission has sufficient financial resources in order to make use of external experts, library services, etc. For example, the Commission budget should allow for purchasing library capacity from the NCHR, and allow for purchasing research capacity from NCHR or other academic institutions.

The Parliamentary Ombudsman is the only Ombud institution with a broad mandate including respect for human rights, while the two other institutions focus on monitoring and protecting the rights of certain vulnerable groups, such as children, women, religious, linguistic, ethnic or sexual minorities.

As has been shown, however, the actual handling of complaints rarely refers to human rights, important parts of the Norwegian decision making system are exempted from its mandate, and it plays a rather limited promotional role.

In discrimination cases which amount to human rights violations, the Equality and Anti-Discrimination Tribunal may have a final say on some of these cases, thereby rectifying wrongdoing.

The fact that few human rights cases end up in Norwegian courts and that the Ombud institutions do not provide a comprehensive complaints system for all types of human rights violations, have led some human rights organisations to argue in favour of the National Institution to provide a comprehensive human rights complaints procedure.

As its main approach, the Review Team holds that the best way forward is to have the National Institution playing a dual role in:

1. Working together with the Ombud institutions in improving competence and capacity within their mandates to (a) handle complaints on human rights violations, and (b) detecting and evaluating human rights components of cases which are not presented to the Ombud as violations of human rights but still might represent such violations or merit to be evaluated in terms of human rights;
2. Providing easy accessible advice to persons with a potential case to ensure that the person in an easy way finds the relevant institution which will deal most effectively with the case.

By establishing such advice capacity, the National Institution may contribute to strengthening the overall human rights protection system in Norway.

The National Institution establishing a easy accessible advice capacity may make it possible for persons with few resources to have their case evaluated in terms of human rights. As one of the Review Teams interviewees stated, so far the Norwegian Human Rights Act functions as a "class law". Only those with considerable resources can use it, or draw advantages from it, with the help of good lawyers. To others the law is rather inaccessible.

The advisory function would also help the National Institution to map important human rights issues in Norway, which it then could deal with in a systematic manner. In developing its mapping capacity, the institution should, however, also develop an efficient system of

communicating and exchanging information and strategic viewpoints with the Ombud institutions.

Finally, the National Institution may in this way contribute to less international criticism of Norway in terms of human rights violations and set good examples for other countries.

Gáldu mainly plays a role as a centre of competence and information on the situation and rights of the Sami population in Norway, as well as on indigenous populations in other countries. It is not linked to the Sami Parliament, but to the Ministry of Government Administration, Reform and Church Affairs. In addition, it receives funding from the Ministry of Foreign Affairs for its international work.

Gáldu should become an important partner of the National Institution, based on a formal agreement, enabling the institution to involve Gáldu in strategic discussions and detecting issues of particular concern to the Sami population.

The co-existence of these institutions with the National Institution also creates several other challenges, such as:

1. How to clarify responsibilities within overlapping parts of their mandates?
2. How to ensure that there are no gaps in the complaints mechanisms?
3. How to ensure that the National Institution gets information on patterns of complaints, cases raising systematic or principled issues from the different complaints mechanisms?

In our view, the National Institution should play a strong coordinating and competence building role related to the other institutions. However, it should also make sure that it gets empirically based input from the other institutions and that there are forums to discuss strategic and principled questions.

Based on its broad human rights mandate, the National Institution should serve as an “overarching body that can ensure that all issues are addressed by some entity, that gaps are covered and that human ... rights are given due attention in their entirety”.¹⁵⁷

NEED FOR A LAW ON NATIONAL INSTITUTION

In the view of the Review Team, there are compelling arguments in favour of the Parliament adopting a law on National Institution by amendments to the Human Rights Act, preferably supplemented by a Constitutional provision giving the institution its ultimate legal foundation and referring to the law on National Institution for more specific regulation.

¹⁵⁷ FRA 2010 report, page 7.

Firstly, the Paris Principles clearly states that National Institutions 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” (Principle 2). Even though it might be argued that a Royal Decree has considerable weight and might only be changed by another Royal Decree or by Law, it is neither a constitutional nor a legislative text.¹⁵⁸

A National Institution which is not regulated by a constitutional or legislative text is not in compliance with the Paris Principles. The Review Team advocates that the Parliament Human Rights Committee, currently evaluating the need for a rights catalogue to be introduced in the Norwegian constitution, should also discuss introducing a Constitutional provision on Norway’s National Institution for human rights to be regulated in more detail by law in full compliance with the Paris Principles.

Secondly, an argument may be based on the need to give the institution a firm base. All Ombud institutions are provided for by specific laws, and it is only natural that a National Institution, playing important roles both internally and at the international level is provided for by legislation.

Thirdly, a National Institution may play important roles for the Parliament, providing advice and input to draft legislation and to amendments in order to safeguard human rights. The Parliament, as some of the stakeholders interviewed for this report maintained, might benefit from independent advice based on expert knowledge on human rights in order to ensure that the Parliament is not too dependent on the Government apparatus for such input. The Parliament should be the “owner” of the institution, underlining the important role of human rights in order to strengthening inclusive democratic rule.

Fourthly, the trend in democratic countries is to regulate their National Institutions in legislative texts. By doing so Norway would send a message of its willingness to provide for the best possible model of securing independence and strength of its National Institution, and by some doing also influencing other countries to strengthening its national human rights mechanisms.

HONOURING ICC GUIDELINES FOR ACCREDITATION AND RE-ACCREDITATION

As has been referred to in Chapter 3, “Paris Principles and ICC Guidelines for Accreditation and Re-Accreditation”, the accreditation process has “become more rigorous and

¹⁵⁸ Cf. NCHR’s explanation in one of its Progress Reports to the ICC: “A Royal Decree is an executive decree prepared by a unanimous Government Cabinet and formally authorized by the King in Council. It is a prominent expression of political and legal commitment. A constitutional arrangement in which the King’s signature serves as the final sanction of an act of legislation, the King personally cannot influence the decree. A Royal Decree enjoys status on par with a legislative act adopted by Parliament insofar as it can only be repealed by an act of Parliament or a new Royal Decree.” Progress Report of the Norwegian Centre for Human Rights 2004, page 1.

transparent”. It is not sufficient that the mandate of a National Institution is in compliance with the Paris Principles; also its practice has to be in compliance.

Given these developments, the Review Team is of the opinion that in order to ensure re-accreditation with an A-status, Norway has to reorganise and strengthening its National Institution. If the proposals set out in the report are followed, an A-status accreditation will be secured.

The proposed human rights commission will convincingly comply with key ICC Sub-Committee on Accreditation General Observations, such as *inter alia*:¹⁵⁹

- The Commission will be established in a constitutional or legal text (1.1);
- It will be mandated to both *protect* and *promote* human rights (1.2);
- It will have the capacity to interact with the international human rights system (1.4);
- It will cooperate and coordinate with other human rights institutions (1.5);
- The organisational set-up will guarantee independence and pluralism (2.1 and 2.2);
- There will be adequate funding for the institution (2.6);
- The institution will be allowed to appoint its own staff (2.7);
- The institution will have full-time members (2.8);
- It will be a public body, subject to accountability, funding, and reporting arrangements, but without any risk that these regulations could compromise the National Institution’s ability to perform its role independently and effectively (2.10).

¹⁵⁹ The Guidelines are available at:
<http://www.nhri.net/2009/Guidelines%20for%20accreditation%20application%20June%202009%20ENGLISH%20.pdf>

7. KEY ELEMENTS OF A LAW ON A NORWEGIAN HUMAN RIGHTS COMMISSION

Based on the organisational model described in Chapter 6, the Review Team has drafted key elements to be included in a law on establishing a commission as the Norwegian National Human Rights Institution. There are other questions that need to be considered as well, inter alia questions concerning the Commission's access to information from administrative authorities and private enterprises receiving public funding, its access to their premises and exceptions hereto, the public's access to Commission documents, the Commission's pledge of secrecy and the role of the Auditor General in relation to the Commission.

Key elements drafted by the review team are:

§1 A Commission appointed by the Storting with the purpose of promoting and protecting human rights in Norway is to be established as the Norwegian national human rights institution.

§2 In accordance with its purpose and on the basis of internationally recognized human rights, particularly the United Nations and Council of Europe conventions and other human rights instruments, the Commission shall, inter alia:

- Monitor and map the human rights situation in Norway through its own investigations and by cooperating with, coordination of and support to human rights activities of non-governmental organisations, public Ombud and other institutions, with particular focus on the rights of the Sami people and other national minorities;
- Participate in, support, and promote international human rights cooperation and follow up on international human rights institutions' criticism of or recommendations to Norway;
- Submit proposals of any kind regarding human rights to Norwegian authorities, exercise an advisory function to the authorities on human rights issues and engage them in dialogue or public exchange on these issues;
- Actively participate in public debates on questions regarding human rights;
- Promote increased awareness of human rights in all parts of society through information and contributions to education, research and other competence-enhancing endeavours;
- Work to ensure that vulnerable groups are not lacking access to necessary and effective protection.

The Commission does not hear individual complaints, but shall register such inquiries and give advice as to follow up handling and initiating of administrative or judicial proceedings. The commission may intervene in emblematic cases. The Commission may assume national monitoring tasks under international conventions.

§ 3 Composition of the Commission and Appointment of Members

The Commission is composed of three Commissioners with 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.

The Commissioners are appointed by the Storting for a period of four years. They may be reappointed once for another four years. One of the Commissioners, whose role is to be responsible for Sami and national minorities' rights, shall be appointed through a proposal by the Sameting. One of the Commissioners shall be appointed Chief Commissioner and vested with the administrative responsibility of the Commission.

§ 4 Independence

With exceptions stated in § 2, the Commission decides jointly on strategies, planning and organisation of tasks and establishing a secretariat.

The Commission is under no instruction from Parliament, Government or any other administrative or judiciary body.

The Commissioners cannot be removed from office by the Storting during the period of time for which they have been appointed.

§5 The Council

The Commission appoints members of a Council in order to be assisted by broad expertise in the execution of the Commission's tasks. The members should represent sectors of society engaged in the field of human rights – non-governmental organisations, trade unions and professional organisations, academia and other centres of competence, public Ombud and other public institutions.

§6 Annual report, annual accounts and audits

The Commission shall submit annual reports to the Storting, provides annual accounts and intern auditing and works out an auditing plan in cooperation with the Auditor General.

APPENDIX: TERMS OF REFERENCE FOR THE REVIEW OF THE NORWEGIAN CENTRE FOR HUMAN RIGHTS IN ITS CAPACITY AS NORWAY'S NATIONAL HUMAN RIGHTS INSTITUTION

1 INTRODUCTION

The Norwegian Centre for Human Rights (NCHR), a multi-disciplinary research centre at the University of Oslo, Faculty of Law, is Norway's National Human Rights Institution (NHRI) by a Royal Decree in 2001. The Centre was granted A-status in 2006 by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The ICC has an established practice of periodically reassessing the standing of all NHRIs in terms of compliance with the founding principles of National Human Rights Institutions, the Paris Principles. The NCHR will be reassessed in 2011.

In light of the forthcoming assessment by the ICC, the NCHR requested that the Norwegian Government review the work, organisational structure and resource base of NCHR as Norway's NHRI. The Norwegian Ministry of Foreign Affairs (MFA) responded positively and will undertake the requested review in 2010. The review is undertaken in collaboration with the NCHR (thus the term 'review' rather than 'evaluation'). The NCHR has provided input to the Terms of Reference (ToR), will take part in the review as participating observer as far as feasible, and will support the review team throughout the review process as necessary.

The ToR has been developed by the MFA in collaboration with NCHR. Input on the ToR has been received from various stakeholders including the OHCHR, the ICC Sub-Committee on Accreditation, the NHRI Advisory Board (composed of various civil society actors and ombud institutions) and the NCHR's Board.

2 BACKGROUND

The review shall on an objective basis take stock of what the NCHR as NHRI has done, identify results achieved as well as potential shortcomings, examine the Centre's role in the context of the Norwegian human rights architecture and analyse how to improve this work in order to ensure implementation of human rights in Norway. At the same time, the review should provide inputs and suggestions for possible improvements in the organisational set-up of NHRI in Norway.

NCHR is one of several actors within the human rights field in Norway, which includes civil society organisations, ombud institutions, concerned citizens, professionals etc. These stakeholders' reasonable understanding of the NCHR mandate and their reflections on the ways in which the mandate could be most useful for the promotion of human rights in Norway is a crucial aspect to take into account.

Five aspects are crucial to understanding the aim and purpose of the present review: the background for establishing NCHR as Norway's NHRI; the NCHR's interpretation of its NHRI mandate and reasonable expectations from stakeholders; the multi-phaseted challenge of a university institution having the role of NHRI; the NCHR's observations on performance to date; and the more rigorous international accreditation process of NHRIs by the ICC Sub-Committee on Accreditation. These are outlined below.

The establishment of NCHR as Norway's NHRI

The Norwegian Centre for Human Rights was established in 1987 (until 2003 under the name 'The Norwegian Institute of Human Rights') and has since 1995 been part of the University of Oslo. It is presently a multi-disciplinary research centre under the Faculty of Law.

One of the recommendations in the Norwegian government's National Plan of Action for Human Rights for the five-year period 1999-2004 (St.meld.no 21 (1999-2000), p.38-40) was to designate NCHR as Norway's NHRI. The mandate of NCHR as a national institution was formulated in the Royal Decree of 21 September 2001 whereby the NCHR should "contribute to increased awareness and improved realisation of human rights in Norway".¹⁶⁰ The subsequently amended mandate of the NCHR (approved by the Faculty of Law and University of Oslo Senate in 2005) added that the NCHR as a National Institution "... shall monitor the human rights situation in Norway and on an independent basis cooperate with similar research institutions, with non-governmental organisations and with international and national entities working with human rights questions."

NCHR's interpretation of its NHRI mandate

The mandate was formally not difficult to reconcile with the established statutes of NCHR which was (and still is) "... to promote the practice of internationally adopted human rights by means of scientific research and assessment, training, counselling/guidance, information and documentation." It was also explicitly stated that "(t)he foundation for this activity is the existing international system of norms and institutions for the protection of human rights." This stated purpose – and the active role of NCHR founders and staff in international human rights bodies and as advisers to Norwegian authorities – explains why it appeared as a natural choice for the Norwegian government at the time to propose that NCHR should be given the status as NHRI. Significantly, it was decided that the mandate of the new NHRI should *not* include an individual complaints procedure, with reference to the already well established ombud institutions. Consequently, becoming Norway's NHRI basically meant a *continuation* of established purposes and practices of NCHR. The new status was reflected in the setting up of an NHRI unit within the Centre and a new master plan was introduced for the strengthening of its capacity and competence in research, education and dissemination related to human rights in Norway. The new activities were made possible by an addition of NOK 5 million to the core funding of the University budget approved by the Parliament.

A university institution as NHRI

Combining the role as both a university centre and NHRI was discussed with both the Faculty and the University leadership, but not considered as a basic hurdle for NCHR to take on its NHRI mandate. However, concerns have been raised from time to time if the principle of academic freedom can be practiced by an institution which is obliged to monitor and give institutional advice and recommendations to the authorities. Another concern is if a university institution has the necessary independence and integrity to be an effective advocate of human rights in Norwegian society. The NCHR's own position has been that the university connection has strengthened the NHRI's independence of the authorities and secured high quality in all aspects of its work as NHRI. However,

¹⁶⁰ The Royal Decree specifies that: "As a national institution for human rights, the Centre shall monitor the human rights situation in Norway and, on an independent basis, cooperate with related research centres, voluntary organisations and international and national bodies working in the field of human rights."

the university connection has been debated internally at the NCHR and recently gave rise to disagreement within the NCHR Board.

In 2006 the NCHR was found to be in compliance with the Paris Principles and was granted A-status by the ICC. This approval was granted after structural adjustments had been made in response to ICC concerns. The two adjustments were earmarking the funding of NCHR as NHRI over the national budget, separating it from the general allocation to the University, and the establishment of an NHRI Advisory Board composed of representatives from civil society and ombud institutions.

NCHR observations on its performance as NHRI

The NCHR has exercised its role as National Institution over a period of eight years (2002-2009). The current strategy for NCHR as NHRI (2008-2012) approved by the NCHR Board in December 2007, takes as its point of departure that “(1) NCHR is fulfilling the tasks pursuant to its mandate and the societal needs in Norway, albeit at a minimum level; and (2) that it is desirable to increase activities based on legitimate external expectations, developments nationally and internationally, and own desire to go deeper into questions regarding human rights in Norway.” The Board noted, in its consideration of a report from the former Acting Director of National Institution in February 2010, that “NCHR has had problems in fulfilling its mandate as NHRI within the current organisational and financial model”. The Board also requested that issues raised in the report be given due consideration in the forthcoming NHRI review.

More rigorous international accreditation process

The ICC’s Sub-Committee on Accreditation (SCA) has further developed its interpretation of the Paris Principles since Norway’s NHRI was accredited in 2006. SCA has adopted General Observations which reflect an increased emphasis on core protection issues including the relationship between NHRIs and other bodies such as ombuds-institutions and equality bodies. Both the protection as well as the promotion aspects of the NHRI mandate will be addressed in the forthcoming consideration of the NCHR’s application for reaccreditation. On a similar note, the NHRI Advisory Board has recommended that the review give emphasis to the NHRI’s advocacy (“pådriver”) role and to the division of labour between NHRI and other stake holders, in particular the ombuds institutions as well as civil society organisations.

3 REVIEW AIM, PURPOSE, CONTEXT AND INTENDED USE

The aim of the NCHR and other stakeholders is to ensure a strong, competent and well-functioning NHRI in Norway which will maintain an A-status accreditation in the international NHRI network. Towards this end the overall purpose of the review is to assess the work of NCHR as NHRI from 2002-2009 and make recommendations to strengthen Norway’s NHRI. The more specific purpose is two-fold:

To provide the necessary information basis for improving NHRI work in Norway in line with the Paris Principles and ICC’s Guidelines for Accreditation and Re-Accreditation ;

To explore relevant organisational adjustments and/or organisational models which would enhance the relevance and influence of NHRI in the Norwegian context.

The core concerns raised in the NCHR strategy for national institution (2008-2012) and in the report by former Acting Director of NI, in January 2010, include (1) capacity and competence to fulfil a broad mandate faced with higher national and international expectations; (2) NCHR’s organisational model and priorities in terms of thematic focus and funding ; (3) increased expectations and the possible need for additional resources in terms of capacity and funding; (4) coordination and

cooperation with other institutions monitoring human rights in Norway; and (5) the organisational linkage to a university institution.

The first three concerns should be examined in order to address the first purpose of improving NHRI work in Norway. The two last concerns should be examined to address the second purpose of strengthening relevance and influence through organisational design. In parallel with the MFA review, NCHR has initiated discussions with the Faculty of Law and the University leadership in order to examine the organisational aspect from the university point of view. These discussions will be shared with the review team.¹⁶¹

The findings and recommendations of the review will be used to improve Norway's NHRI and to determine whether these improvements will be implemented by the NCHR or within another organisational model.

4 REVIEW QUESTIONS

The review shall consider standard evaluation criteria in accordance with the OECD/DAC Evaluation Quality Standards.

More specifically the review shall:

Assess compatibility of Royal Decree with Paris Principles and ICC Guidelines for Accreditation and Re-Accreditation;

Assess whether adjustments in mandate are needed;

Document NCHR activities and assess results in fulfilment of its mandate as NHRI. Key issues are visibility, accessibility and effectiveness in protecting (monitoring, referring complaints etc) and promoting human rights in Norway. Identify reasonable expectations and analyse reasons for results above/below these expectations. Comment on additional results expected given international developments in the role of NHRIs;

Document and assess the NCHR's organisation of its NHRI-work and financial priorities made within available NHRI-funding;

Document and assess the role played by the NCHR as NHRI in relation to government and other Norwegian institutions and organisations, including civil society, promoting human rights in Norway.

¹⁶¹ Note: The present review will examine the organisational aspect including the university linkage, from the perspective of the Paris Principles. As seen from the perspective of the University of Oslo, an equally relevant question is whether and how the NCHR's role as National Institution has impacted on its role as a university centre and, most importantly, its ability to function as the academic focal point for future human rights research and education at the university, particularly at the Faculty of Law. Can NCHR be the principle institutional mechanism in this regard or does its role as NHRI come in the way? The two perspectives – one as seen from the Paris Principles, the other as seen from the university – illustrate that a *comprehensive* review of Norway's NHRI in the current situation is a rather complex task since it involves concerns on two different yet interdependent institutional levels. Combining the two roles now seems more challenging than before, and the aim must be to find an organisational model that solves the challenges. In parallel with the MFA review, NCHR has already initiated discussions with the Faculty of Law and the University leadership in this regard.

Particular attention should be given to compatibility of roles and cooperation with entities with individual complaints procedures;

Document and assess the participation of NCHR as NHRI in international work to promote and protect human rights, including through the ICC, cooperation with other NHRIs and cooperation with OHCHR;

Explore alternative organisational models for NHRI in Norway which can maximize the potential for impact on human rights implementation;

Make recommendations that will increase the likelihood of renewed A-status accreditation in 2011 and a more effective NHRI in a longer term perspective

5 IMPLEMENTATION OF THE REVIEW

Review team: There should be a team of 3-4 persons to be identified for an assignment of 2-4 weeks duration to be carried out as soon as possible and no later than October-November 2010. The team will be supported by a Secretary assigned for a period of 4-8 weeks. The team must have competence on NHRI standards and practices, human rights law and implementation, organisational management and ability to read Scandinavian language since most documentation is available in Norwegian only. The team should consist of 1-2 international and 1-2 national consultants giving due consideration to gender balance and balance between legal and non-legal backgrounds. The NCHR's Acting Director of NI will be an observer, taking part in the review as feasible and supporting the review team as necessary.

Reference groups: Two reference groups will be consulted. It is suggested that the NHRI's Advisory Board serve as a national reference group for 2-3 consultation/comments to the review team. Additional actors can be included in the national reference group subject to the approval of the Advisory Board. An international reference group of 2-5 representatives will be appointed for 2-3 consultations/comments to the review team.

Methodology: Reviewing documents and conducting interviews with selected stakeholders; to explore alternative organisational models in comparable countries in a cost-efficient manner; and other information gathering means deemed appropriate and possible within available budget.

Division of responsibility between the MFA and the NCHR: The review was requested by NCHR and the MFA has complied with this request. The MFA is the owner of the present review and is responsible for developing ToR, selecting and contracting review team, ensuring the quality of the final report and securing funding of the review. The NCHR as an independent NHRI is a cooperating partner contributing to the development of the ToR, identification of potential members of the review team, support to the review team as requested and taking part in the review as a participating observer as feasible.

Timetable for preparation, field work and finalisation of report: First planning meeting June/August; data collection in Oslo in the period August-November; final report submitted no later than 1 December.

Budget: To be determined by MFA

Reporting: Report to be written in English so as to be available for all stakeholders, including the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights and its Sub-Committee on Accreditation.