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Equality and Human Rights Institutions

1 Introduction

This paper has been prepared in the context of the on-going reviews of arms-length bodies internally in the Office of the First Minister and Deputy First Minister and at the cross-departmental level by the Budget Review Group¹. The Committee for the Office of the First Minister and Deputy First Minister has expressed interest in the depth and detail of a review of equality and human rights bodies in Northern Ireland².

The paper takes a brief look at equality and human rights institutions in Northern Ireland, broadly reviews developments elsewhere in the UK and in the Republic of Ireland and summarises some of the models in use in other European countries and elsewhere.

¹ Letter from the First Minister and deputy First Minister 15 June 2011 (Ref: COR/1127/11).

² Meetings of the Committee Office of the First Minister and Deputy First Minister 1 June 2011 and 15 June 2011.

2 Equality and Human Rights Bodies in Northern Ireland

Background

Equality bodies were first established in Northern Ireland in the 1970s. The Fair Employment Act in 1976 was a major development in anti-discrimination legislation and aimed to end direct discrimination in employment on the grounds of religious or political identity or belief. It also established the Fair Employment Agency in 1977 to enforce the new legislation. The legislation was eventually strengthened after it was found that the Act had little effect on employers' practices. A Fair Employment Commission (FEC) replaced the FEA in 1989 and was given a much wider role. Included within its remit were provisions for compulsory monitoring of the religious composition of workforces and the outlawing of indirect discrimination. Guidelines were also provided for employers on the introduction of affirmative action policies aimed at lessening imbalances within their workforce.

Equality in employment was a dominant issue in Northern Ireland from the 1970s onwards, not just in relation to religion and political opinion but also increasingly in relation to other areas such as gender, race and disability. There was a sharpening focus on women's rights in Northern Ireland in the 1970s and the NI Women's Rights Movement formed in 1975 called for the introduction of sex discrimination legislation for Northern Ireland. As the equality agenda broadened more equality bodies were set up, for example the NI Equal Opportunities Commission (EOC) was established in 1976 and Northern Ireland's Commission for Racial Equality (CRE) in 1997. Whilst varying in internal organisation and size these enforcement and promotion bodies had many features in common. New legislation in respect to age and sexual orientation was added to the growing body of equality law in Northern Ireland in 2006 and 2007.

The EOC, CRE, FEC and the NI Disability Council³ were merged to become a unified single Equality Commission in 1999. At that time the EOC had approximately 30 staff and a budget of around £1.5 million. The CRC employed approximately 7 staff and had a budget of £0.5 million. The FEC had around 80 staff and a budget of £3.5million. The government's proposals over the merger had generated considerable debate. Fears were expressed that it would be a step backwards - that it would dilute levels of expertise and create a hierarchy of grounds and serve as an excuse for watered down services. In contrast, others believed that a unified commission would be capable of developing a cross-strand approach and delivering strand specific needs whilst avoiding the establishment of a hierarchy of interests. It is likely however that the Section 75 duty was the primary motivation for the establishment of a single commission, as it was clear to many that effective enforcement of the cross-strand duty would require a single body of some sort.

³ Some of the functions of the Disability council were absorbed into the ECNI. The Disability Council was set up by the DDA 1995. Its purpose was to advise the government on disability issues.

The Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland was established by Section 73 of the Northern Ireland Act 1998. The Commission can advise individuals if they believe they have suffered unlawful discrimination on the grounds of age, disability, gender, race, religion or belief, or sexual orientation. Northern Ireland's body of equality law provides protection from discrimination at work on all of the above grounds. In addition, it covers acts of discrimination in accessing services, or buying goods, or renting, buying or accessing premises on all grounds except age. The Equality Commission also has responsibility for overseeing the implementation of Section 75 of the NI Act 1998 which is a requirement on all public authorities in NI to 'mainstream' equality in every aspect of their work. The Belfast Agreement – leading to the 1998 Act - has been acknowledged and commended as a major milestone in the extension of equality law in Northern Ireland for taking it beyond the labour market and into public policy via the statutory equality duties and through the establishment of the Equality Commission.⁴

In 2009/10 the ECNI had 149 staff and an annual budget of £7.3m. It was set up with a functional structure to deliver a joined-up approach. The Commission consists of a Chief Commissioner, Deputy Chief Commissioner and between 14 and 20 non-specialist Commissioners appointed by the Secretary of State. The Equality Commission is a NDPB and its sponsoring department is the OFMDFM. The Commission was reviewed in 2005⁵ and this found that a that merger with other Commissions⁶ was considered inappropriate at that time but should be kept under review and reconsidered in five years or sooner, if considered appropriate.⁷ The Commission's Annual Report for 2009/10 states that an Organisational Review was initiated over the period to look at the Commission's existing structure and whether any changes would equip it to better deliver its statutory remit and business objectives, particularly in the context of the forecast financial climate.

The Northern Ireland Human Rights Commission

The Northern Ireland Human Rights Commission was established in 1999 by Section 68 of the Northern Ireland Act 1998 in compliance with a commitment made by the UK government in the Belfast Agreement of 10 April 1998. The equality and human rights provisions in the Agreement are seen as a key element of the transition from conflict in Northern Ireland. Strand One of the Belfast Agreement includes specific safeguards, including a Human Rights Commission and an Equality Commission⁸:

⁴ *Mainstreaming equality: The Statutory duties in Northern Ireland*. Eithne McLaughlin

⁵ The Alexander Report of 2002 led to the phasing out of quinquennial reviews, being replaced by 'landscape reviews': See House of Commons Public Administration Select Committee, *Smaller Government: Shrinking the Quango State* (2011), Volume 1, p.21: <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpublicadm/537/537.pdf>.

⁶ Presumably with bodies such as the Northern Ireland Commissioner for Children and Young People (NICCY).

⁷ <http://www.ofmdfmi.gov.uk/equality-commission-report.pdf>.

⁸ Belfast Agreement (1998), Strand One, Democratic Institutions in Northern Ireland, Safeguards, Paragraph 5: <http://www.nio.gov.uk/agreement.pdf>.

5. *There will be safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected, including:*

(b) the European Convention on Human Rights (ECHR) and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission;

(e) an Equality Commission to monitor a statutory obligation to promote equality of opportunity in specified areas and parity of esteem between the two main communities, and to investigate individual complaints against public bodies.

The Commission is a NDPB funded through the NIO. It consists of a full-time Chief Commissioner and a variable number of part-time Commissioners (currently nine) appointed by the Secretary of State. The role of the Commission is to promote awareness of the importance of human rights in Northern Ireland. In addition, it is tasked with reviewing law and practice and to advise the Secretary of State and the NI Executive on what legislative or other measures should be taken to protect human rights in Northern Ireland.

Under the 1998 Act, the Commission was required to make recommendations regarding its effectiveness to the Secretary of State within the first two years of its existence. The Commission submitted its recommendations in 2001 and government consultation in 2002, 2005 and 2006 aimed to provide further clarification of the Commission's powers⁹.

In 2002-03 the House of Lords, House of Commons Joint Committee on Human Rights carried out an inquiry into the work of the Commission.¹⁰ Its report considered the first three years of the Commission's operation and took account of the Review of the Commission's powers. The Joint Committee made recommendations in relation to a number of matters such as the Commission's co-ordination with government, independence and impartiality, resources, strategic priorities, powers and a Bill of Rights.

Following the Comprehensive Spending Review in 2010 the government announced a cut of £300,000 to the Commission's £1.7m budget.

Other key oversight and regulatory bodies in NI

The Office of the Northern Ireland Ombudsman includes two offices: the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. The Ombudsman is appointed under section 36(1) of the Northern Ireland Constitution Act 1973, which states he is appointed by the Queen. The Ombudsman is not term-limited but must leave the office by the age of 65. The Ombudsman's office is

⁹ http://www.nio.gov.uk/response_to_the_consultation_on_the_powers_of_the_northern_ireland_human_rights_commission.pdf
http://www.nio.gov.uk/the_powers_of_the_northern_ireland_human_rights_commission.pdf.

¹⁰ <http://www.publications.parliament.uk/pa/it200203/itselect/jtrights/132/132.pdf>.

funded by 'vote' through the NI Assembly. The Ombudsman's role is to investigate complaints of alleged maladministration by Government Department in Northern Ireland, their agencies and cross-border bodies set up under the Belfast (Good Friday) Agreement. Complaints to the Assembly Ombudsman can only be made through an MLA. There is no requirement in the legislation for periodic review of the Office, however in 2004 OFMDFM commissioned Deloitte to carry out a review¹¹.

The Northern Ireland Commissioner for Children and Young People (NICCY) was established in 2003. The main aim of the Commissioner is to safeguard and promote the rights and best interests of children and young people. The Office is headed by a single Commissioner appointed by the First Minister and deputy First Minister and may serve for a period of four years, renewable once. OFMDFM is required under Treasury Guidance to carry out a review of the Commissioner every three years to determine the efficiency and effectiveness of the operation of the Office. OFMDFM commissioned Deloitte to carry out a review in 2007¹² and PwC in 2010¹³. The 2010 review considered the current model of the Office and made recommendations in relation to a number of key themes, for example, delivery of objectives, relationships, past performance, responsiveness, good practice and delivery mechanisms. In relation to the delivery model the report recommended that the role of the Commissioner *...at this time is best achieved through a separate independent arms length body...* However the report recommended some reshaping and reprioritising of activities to be undertaken at the present time. The report also stated that the sharing and collaborative outsourcing of common back office functions with other statutory rights bodies is an option for reducing operating costs.

Northern Ireland's first Commissioner for Older People is to be appointed shortly following the introduction of the Commissioner for Older People Act in 2010. The main aim of the Commissioner will be to safeguard and promote the interests of older people. The legislation specifies that every three years the Commissioner must review the operation of the Act in a report to the First Minister and deputy First Minister which must then be laid before the Assembly. The Commissioner will serve a four year period of office, renewable once.

OFMDFM has recently informed the Committee for OFMDFM of the work of its Shared Services Project¹⁴. This project has been examining the potential for reducing administration costs and providing a more effective service by sharing expertise and resources between Arms Length Bodies funded by OFMDFM. In practice this has meant the recent move of the Older People's Advocate to the Headquarters of the Equality Commission – Equality House. It is intended that the offices of the Commissioner for Children and Young People (NICCY) and the Commission for

¹¹ <http://www.ofmdfmi.gov.uk/review-assembly-ombudsman-part1.pdf>

<http://www.ofmdfmi.gov.uk/review-assembly-ombudsman-part2.pdf>.

¹² http://www.ofmdfmi.gov.uk/ofmdfm_-_niccy_master_final_version.pdf.

¹³ <http://www.ofmdfmi.gov.uk/niccy-review-2010.pdf>.

¹⁴ Letter to COFMDFM from the First Minister and Deputy First Minister 21 June 2011.

Victims and Survivors will also move to Equality House in autumn 2011. In addition, it is anticipated that the Older People's Commissioner will also be located in Equality House¹⁵.

¹⁵ OFMDFM News Release 23 June 2011: <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-ofmdfm/news-ofmdfm-230611-junior-ministers-announce.htm>.

3 Equality and Human Rights Bodies in Great Britain

Background

The establishment of equality bodies in Great Britain (GB) can be traced back to the 1960s and 70s and a new focus at home and internationally on social justice issues such as gender and racial equality. Some commentators consider the model for these bodies to be the US Equal Employment Opportunity Commission (EEOC) which had been established in 1964 by the US Civil Rights Act, to promote race and gender equality and to process complaints of discrimination in employment.¹⁶ It is viewed as...*the 'original' equality commission, ... inspiring the establishment of many of the other commissions ... throughout the 1970s.*

New equal pay, sex discrimination, disability and racial equality legislation led to the setting up in GB of the Equal Opportunities Commission (1976), Commission for Racial Equality (1976) and the Disability Rights Commission (1999). The establishment of these equality bodies was also linked to requirements to comply with EU law. For example, ratification of certain UN Treaties and EU Directives on race and gender obliged GB to comply with particular requirements for the institutional arrangements of its equality bodies¹⁷.

Whilst the size and structures of the original GB equality bodies varied they followed a similar model and shared a number of attributes, for example, all were single strand organisations typically headed by a number of full-time and/or part-time members who were decision makers and a core function was to receive individual complaints. Over time the equality legislation in GB was expanded and strengthened and the role of the equality bodies became about more than the removal of discrimination and about addressing the *root causes* of discrimination and the *promotion* of equality. By 2007 the government in Great Britain had decided to combine all of these bodies into a unified Equality and Human Rights Commission with a new human rights mandate under a Single Equality Act.

There had been much debate over the government's proposal to create a single body but this was brought to a head by the EC Employment Directive (2000/78/EC) which required Member States to implement legislation banning discrimination in employment on grounds of religion or belief and sexual orientation by December 2003 and on grounds of disability and age by December 2005. As a result, three new "strands" were introduced into Britain's anti-discrimination legislation: religion or belief, sexual orientation and age. There was little support for setting up three more commissions to deal with these strands, but as in Northern Ireland's case there was concern that the specific problems facing the particular groups might be lost in a single body.

¹⁶ *A Single Equality Body: Lessons from Abroad* Colm O'Cinneide 2002.

¹⁷ See Section 5 of this paper (p.14).

The Equality and Human Rights Commission (EHRC)

The EHRC covers England, Scotland¹⁸ and Wales. Its funding is provided by the Government Equalities Office (GEO) on behalf of the government and the EHRC is responsible to the government through its sponsor department the GEO. The commission has a Chief and Deputy Chief Commissioner and 11 further Commissioners, appointed by the Secretary of State. They are supported by statutory committees for Scotland, Wales and disability.

The EHRC employs 417 staff and has a budget of £53m. The GEO has recently consulted on proposals for reform of the EHRC¹⁹. The government remains of the view that there is a clear legal need for an independent equality regulator and National Human Rights Institution, however, it is also of the view that since its establishment in 2007 the Commission has struggled to deliver against its remit and provide value for money. As a result, the government is proposing to retain the Commission but substantially reform it to focus on the areas where only it can add value, to increase its accountability to government, Parliament and the public and to improve its effectiveness and value for money.

The review of the EHRC is linked to the new coalition government's commitment in its programme for government to reduce the number and cost of quangos and the launch last year of a major review of public bodies, the aim of which is to:

...increase accountability for actions carried out on behalf of the state, to cut out duplication of activity, and to discontinue activities which are no longer necessary²⁰

The Commission's statutory framework is the Equality Act 2006 and the reforms will involve both legislative and non-legislative changes. The main proposals for reform are:

- To focus the Commission on its core functions to increase the Commission's accountability for its performance and to help it fulfill its human rights remit²¹.
- This will involve the **removal** of some non-core activities, for example:
 - The Commission's telephone advice service. The review found this was expensive to run, not widely used, and could be provided more cost-effectively by others. Government proposes to commission a new equivalent service from the private sector or civil society.
 - The Commission's airline complaints handling service (for disabled airline travellers). This telephone advice service is to be assigned to

¹⁸ Scotland has its own Human Rights Commission

¹⁹ *Building a Fairer Britain: Reform of the Equality and Human Rights Commission*. HM Government March 2011. http://www.equalities.gov.uk/what_we_do/ehrc_reform.aspx.

²⁰ http://www.parliament.uk/documents/joint-committees/human-rights/Letter_from_Theresa_May_on_Future_shape_of_EHRC.pdf.

²¹ The EHRC was criticised by the Joint Committee on Human Rights for failing to integrate human rights into its work.

the Air Transport Users Council (AUC), the consumer body and complaints handler for other aviation consumer matters.

- The Commission's conciliation service (for non-employment cases). Government does not see this function as fitting well with the Commission's strategic regulatory role and also sees there is a risk of duplication given the range of mediation services available to the public. The review decided the conciliation service was expensive to run, not widely used and could be provided more cost-effectively by others in the future.
- The Commission's grants programmes from March 2012. The Commission provides legal and strategic grants programmes to voluntary organisations. The government proposes to establish an alternative funding stream which will better support the voluntary and community sector.
- Introduction of new reporting requirements for the Commission. Some legislative and non-legislative measures are proposed:
 - A requirement to report to Parliament every 5 rather than 3 years, to tie into the Parliamentary cycle and enable reports to capture meaningful change over time.
 - Greater specification of the aims and outcomes which EHRC is required to monitor progress against. The review decided that the Commission had not been able to demonstrate that it was delivering value for taxpayers' money, resulting in the qualification of its first two sets of accounts. Consequently, the government proposes that there will be a new statutory requirement to ensure the Commission's annual business plan provides sufficient detail as to how it intends to spend its budget. In addition, there will be a statutory requirement for the EHRC's Chair and CEO to have regard to using public money efficiently and effectively. The legislation will also make explicit that the Secretary of State may impose a financial sanction where EHRC can be shown to have miss-spent taxpayers' money. It will also make clear that as a publicly funded body EHRC is subject to Government public expenditure restrictions.
- Changes to the operational management of the EHRC, a substantial reduction in staffing, changes to EHRCs ways of working, and rationalizing of its accommodation to release further savings.

A *Guardian* article (21 March 2011) following the launch of the consultation by government reported that the Commission's 630-strong staff has already been cut to 417 and is likely to be cut to between 200 and 250 over the next 18 months. The

Commission's budget will be cut from its current £53m to £45m for 2011/12, and further cuts will be imposed by 2015.²²

²² <http://www.guardian.co.uk/society/2011/mar/21/equality-commission-faces-major-surgery>.

4 Equality and Human Rights Bodies in the Republic of Ireland

As with Great Britain and Northern Ireland, the equality and human rights infrastructure in Ireland emerged from different routes and historical circumstances, some from domestic requirements and European obligations and in the case of the Irish Human Rights Commission, from the Good Friday Agreement. Some of the main equality and human rights bodies in the Republic are:

The Equality Authority

The Equality Authority is an independent body established in October 1999 by the Employment Equality Act 1998. It replaced the Employment Equality Agency²³ and was given a wider role and remit. The Board consists of a Chair and Vice Chair and 12 further members, (which must be split equally by gender). The Authority is made up of four functional units and budget allocation is along functional lines.

Under the frame work of equality legislation in the Republic, equality is defined under nine grounds of discrimination: gender, marital status, family status, age, race, religion, disability, sexual orientation and membership of the Traveller Community.

The Equality Tribunal

Established under the 1998 Employment Equality Act, the Equality Tribunal's role is to mediate and/or investigate claims of discrimination. It is an independent, statutory body under the aegis of the Department of Justice, Equality and Law Reform. The Tribunal was relocated to Portlington, 44 miles from Dublin under the government decentralisation programme.

The National Disability Authority (NDA)

The NDA is an independent statutory agency established under the aegis of the Department of Justice, Equality and Law Reform by the National Disability Authority Act, 1999. This body advises the Minister on policy and practice issues in relation to disability. It had a 2 per cent cut in the 2009 budget.

The Irish Human Rights Commission

The Irish Equality and Human Rights Commission was established in 1999 and became fully operational in 2003. Its creation has been attributed to the Good Friday/Belfast Agreement of 1998 when, as part of the Agreement, the government of the Republic committed itself to:

²³ The Employment Equality Agency was established in 1977 to oversee the operation of the Anti-discrimination (Pay) Act 1974 and the Employment Equality Act 1977. Another part of its role was to work towards the elimination of gender based discrimination in the workplace. The Agency was led by a Chair and Chief Executive and a Board of 9 additional members. The Agency was based in the Department of Labour and staffed by civil servants.

...take steps to further strengthen the protection of human rights in its jurisdiction and...bring forward measures to further strengthen and underpin the constitutional protection of human rights

The Commission has 14 members and a full-time paid President, all are appointed by government for a period of five years. There is also a full time CEO. The Commission reports to the Department of Justice, Equality and Law Reform.

The National Employment Rights Authority (NERA)

NERA was established in 2007 to secure compliance with employment rights legislation and to foster a culture of compliance through information, inspection, enforcement, prosecution and the protection of young persons.

The Office of the Ombudsman

The Ombudsman examines complaints relating to equality and human rights – specifically complaints about the administrative actions of Government departments, the Health service Executive, local authorities and An Post.

The Ombudsman for Children’s Office

The Ombudsman for Children’s Office was established by the Ombudsman for Children Act 2002. The Ombudsman seeks to ensure that government and others who make decisions about young people, operate appropriately and effectively.

Recent developments

In August 2008 there was a proposal from the Minister for Justice, Equality and Law Reform that the Equality Authority be merged with the Equality Tribunal, the National Disability Authority, the Irish Human Rights Commission and the Data Protection Commissioner. In total these bodies accounted for €18m of funding and employed 170 staff. Strong protests to the merger came from the bodies concerned plus the Equality and Rights Alliance²⁴, elected representatives and academics. It was claimed that the government was attempting to dilute its commitment to human rights. The merger did not go ahead but severe cuts were made to the Equality Authority and the Human Rights Commission in the government’s October 2008 Budget. The Equality Authority’s 2008 funding was reduced from €5,897,000 to €3,333,000 in 2009 – a cut of 43% and in addition, part of the Authority was decentralised to Co Tipperary. Staffing levels reduced from 58 in 2008 to 37 in 2009. The Authority attempted to re-negotiate the cuts with the Department. This was unsuccessful and the Chief Executive and six board members resigned.

The Irish Human Rights Commission’s funding was cut by 24% in the October 2008 Budget. The number of full time staff fell from 17 in 2008 to 13 in 2009. The President of

²⁴ A coalition of 140+ civil society groups and individuals. Its remit is to defend and strengthen the Irish equality and human rights infrastructure.

the Commission stated at the launch of the Commission's Annual report in 2009 that the cuts had "*seriously hampered*" the Commission "*in performing its statutory functions*".

5 Equality and Human Rights Institutions in Europe

National human rights institutions have been established across the world to oversee the implementation of human rights standards and provide information about human rights to embed rights cultures in national governments and in the general population. The international body for human rights is the Office of the High Commissioner for Human Rights at the United Nations²⁵.

The National Human Rights Institutions Forum²⁶ acts as a network for human rights bodies and the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights²⁷ reviews the accreditation of national institutions in view of compliance with a set of guidelines known as the Paris Principles²⁸, adopted by the UN General Assembly in 1993. These Principles are to ensure the independence, competence and financial capacity to fulfil the requirements of monitoring compliance with international human rights standards, raising awareness of human rights and investigating violations of human rights.

Equality institutions oversee compliance with anti-discrimination legislation and provide information, advice and support in the pursuit of equality. There is a European network, Equinet²⁹, which comprises the national bodies of most European states. EU Member States are required to designate equality institutions under certain Directives, such as the Race Directive (2000/43/EC³⁰) and the Gender and Equal Treatment Directives (2002/73/EC³¹ and 2004/113/EC³²) and the Recast Directive (2006/54/EC³³) to provide independent support to people who experience discrimination, monitor the implementation of equality obligations and to gather independent information on discrimination issues.

States have implemented these requirements differently. A summary of models in use in Europe are set out in the following sections.

Ombudsman

The most basic institutional structure is an ombudsman that has been designated as the national human rights body, with no corresponding independent equality institution. With the exception of Poland³⁴, none of these states are EU members, so are not subject to Directives requiring an equality body. The ombudsman offices vary in size,

²⁵ OHCHR website: <http://www2.ohchr.org/english/>.

²⁶ National Human Rights Institutions Forum website: <http://www.nhri.net/>.

²⁷ ICC web pages: <http://www.nhri.net/default.asp?PID=85&DID=0>.

²⁸ Principles relating to the Status of National Institutions (The Paris Principles): <http://www2.ohchr.org/english/law/parisprinciples.htm>.

²⁹ Equinet website: <http://www.equineteurope.org/6.html>.

³⁰ Race Directive, Article 13: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>.

³¹ Gender Directive, Article 8: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:269:0015:0020:EN:PDF>.

³² Equal Treatment Directive, Article 12: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:EN:PDF>.

³³ Recast Directive, Article 20: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:en:PDF>.

³⁴ Poland has variously designated government departments and the Commissioner for Human Rights Protection, but these have been insufficient to fulfill EU requirements. See Margit Ammer et al, *Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (2010), p.121.

function and powers, for example, that of Macedonia³⁵ has 67 staff, but the Croatian³⁶ body has 32. In the case of Moldova³⁷, there are also three regional offices in addition to the central ombudsman office.

Switzerland has a unique model of having a national human rights institution³⁸, but there are equality bodies at canton level³⁹.

The role of the majority of ombudsman institutions is to uphold rights within a constitution and this role is extended to being the national human rights body in terms of UN treaty obligations.

Equality Body

Estonia⁴⁰ and Malta⁴¹ do not have an independent human rights body in accordance with the Paris Principles, but they have equality bodies which have anti-discrimination functions in accordance with EU requirements. Estonia's equality body⁴² hears complaints about and advises government on issues relating to a range of equality grounds (sex, nationality, race, ethnicity, colour, religion or belief, age, disability and sexual orientation), but that of Malta⁴³ only covers gender and race, i.e. the minimum EU requirement.

Joint Equality and Human Rights Body

A small number of states have a body which serves the dual function of equality and human rights oversight, which in the case of Sweden⁴⁴ is the product of merging separate bodies into one. However, these states also have an ombudsman, or in the case of the Czech Republic⁴⁵, a human rights advisory body, which, while not fulfilling the role of a national human rights body, are nevertheless significant independent institutions for the defence of human rights. For example in the Netherlands, the

³⁵ Ombudsman of the Republic of Macedonia (Народен Правобранител or Public Attorney); website: <http://www.ombudsman.mk/>.

³⁶ People's Ombudsman of the Republic of Croatia ((Institucija Pučkog Pravobranitelja); website: <http://www.ombudsman.hr/hr.html>.

³⁷ Centre for Human Rights of Moldova; website: <http://www.ombudsman.md/md/start/>.

³⁸ The Federal Commission against Racism (Eidgenössische Kommission gegen Rassismus); website: <http://www.ekr.admin.ch/aktuell/index.html>.

³⁹ For example, that for Zürich (Ombudsmann des Kantons Zürich); website: <http://www.ombudsmann.zh.ch/ombudsmann.htm>.

⁴⁰ The Chancellor of Justice is the designated human rights body for Estonia, but this does not adhere to the Paris Principles, see Concluding Observations of the UN Human Rights Committee examination of Estonia, 4 August 2010. Website: <http://www.oiguskantsler.ee/>.

⁴¹ While the National Commission for the Promotion of Equality undertakes some reporting to UN bodies, it is not recognised as a national body adhering to the Paris Principles. Malta has an ombudsman for hearing complaints about maladministration, but this is not a designated national human rights body. Ombudsman website: <http://www.ombudsman.org.mt/index.asp>.

⁴² Gender Equality and Equal Treatment Commissioner website: <http://www.svv.ee/index.php?t=1>.

⁴³ National Commission for the Promotion of Equality website: https://secure2.gov.mt/socialpolicy/SocProt/equal_opp/equality/welcome/front_pg.aspx.

⁴⁴ Equality Ombudsman website: <http://www.do.se/>.

⁴⁵ The Public Defender Of Rights (Veřejný Ochránce Práv) – website: <http://www.ochrance.cz/> - is the national equality and human rights body, but the advisory body, the Government Council for Human Rights (Rada vlády pro lidská práva) – website: <http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rfp/rfp-uvod-17537/> - is a substantial body with 108 staff.

Equal Treatment Commission⁴⁶, with a staff of 62, has the dual role of national equality and human rights body, but the National Ombudsman⁴⁷ responsible for hearing complaints about public and government administration has a staff of 143.

Separate Equality and Human Rights Bodies

The standard model for EU states to have separate bodies designated under the EU Directives and as national human rights bodies, although the form, size and function varies greatly. Greece, for example, has an Ombudsman⁴⁸ office responsible for equality with 189 staff and a Human Rights Commission⁴⁹ as the designated national human rights body. A variation on this theme is to have the two separate institutions for human rights and equality and an additional ombudsman to hear complaints about government bodies, for example, in Luxembourg⁵⁰.

In a small number of states, there are national institutions which connect with sub-national governmental levels through regional offices. For example, France has independent national equality⁵¹ and human rights⁵² bodies and an ombudsman to conserve the rights of citizens under the constitution⁵³, but the equality body also has offices in each of the 97 Départements, totalling 80 staff at the national level and further 215 regional staff. Conversely, Romania also has national equality⁵⁴ and human rights⁵⁵ bodies, but the human rights institution has representation in regional offices.

The EU obligation for independent institutions to promote non-discrimination with regard to race and gender in some cases led to the establishment of separate bodies for those equality grounds. While these have often been merged into single equality institutions, there are still examples where these are kept separate. For example, Finland has Ombudsman institutions for gender equality (and gender minorities)⁵⁶ and minorities (with an ethnicity and race focus)⁵⁷, as well as the Parliamentary Ombudsman⁵⁸, which is the designated national human rights institution.

Devolved Regions

States have different devolved arrangements depending on their constitutional make-up. Germany, for example, as a federal republic, has national equality⁵⁹ and human

⁴⁶ Equal Treatment Commission (Commissie Gelijke Behandeling) website: <http://www.cgb.nl/home>.

⁴⁷ National Ombudsman website: <http://www.nationaleombudsman.nl/>.

⁴⁸ Greek Ombudsman website: <http://www.synigoros.gr/>.

⁴⁹ National Commission on Human Rights website: <http://www.nchr.gr/>.

⁵⁰ These institutions are the Centre pour l'Égalité de Traitement (website: <http://cet.lu/>), the Commission Consultative des Droits de l'Homme (website: <http://www.ccdh.public.lu/fr/index.html>) and the Médiateur (website: <http://www.ombudsman.lu>).

⁵¹ Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE), website: <http://www.halde.fr/>.

⁵² Commission Nationale Consultative des Droits de l'Homme, website: <http://www.cncdh.fr/>.

⁵³ Médiateur de la République website: <http://www.mediateur-republique.fr/>.

⁵⁴ National Council for Combatting Discrimination website: <http://www.cncd.org.ro/>.

⁵⁵ People's Advocate website: <http://www.avp.ro/>.

⁵⁶ Ombudsman for Equality website: <http://www.tasa-arvo.fi/fi>.

⁵⁷ Website of the Ombudsman for Minorities: <http://www.ofm.fi/intermin/vvt/home.nsf/pages/index1>.

⁵⁸ Parliamentary Ombudsman website: <http://www.oikeusasiamies.fi/Resource.phx/EOA/index.htm>.

⁵⁹ Antidiskriminierungsstelle des Bundes, website: http://www.antidiskriminierungsstelle.de/DE/Home/home_node.html.

rights⁶⁰ institutions, a federal parliamentary ombudsman⁶¹ and ombudsman offices at each of the Länder assemblies⁶². Denmark also has national equality⁶³ and human rights⁶⁴ bodies, as well as a parliamentary ombudsman⁶⁵, but the devolved regions of Greenland⁶⁶ and Faroe Islands⁶⁷ have their own ombudsman offices.

In Belgium, a considerable amount of national power is devolved to the three regional entities. At the national level, there are separate institutions for race⁶⁸ and gender⁶⁹ equality, that for race equality also being the national human rights body. In addition, there is a federal parliamentary ombudsman⁷⁰. At the regional level, a Flemish Equal Opportunities Commission has also been established⁷¹.

Conflict Areas

As in Northern Ireland, there have been areas in Europe that have experienced inter-communal conflict. In Bosnia and Herzegovina, for example, has a national human rights institution⁷² that is a merger of institutions for the Republika Srpska and Federacija Bosne i Hercegovine. In addition, there is a Gender Centre⁷³, established as part of the development of the EU acquis, with a view to potential EU accession candidacy. Kosovo has an Ombudsman office which functions as the human rights institution⁷⁴.

In Spain, there are national race equality⁷⁵ and human rights⁷⁶ institutions and each region has its own People's Defender, or Ombudsman. As well as the regional People's Defender⁷⁷, the Basque Country has established an institute for gender equality, Emakunde⁷⁸, which advises the regional government and monitors gender equality developments there.

Other conflict areas tend to have the same equality and human rights provision as the state in which they are located. For example, Corsica comes under the French

⁶⁰ Deutsches Institut für Menschenrechte, website: <http://www.institut-fuer-menschenrechte.de/>.

⁶¹ Petitionsausschuss web pages: <http://www.bundestag.de/bundestag/ausschuesse17/a02/index.jsp>.

⁶² For example, the Petitionsausschuss for Baden-Württemberg web pages: http://www.landtag-bw.de/parlament/der_landtag/ausschuesse/petitionsausschuss.asp.

⁶³ Board of Social Appeals website: <http://www.ast.dk/>.

⁶⁴ Institute for Human Rights website: <http://menneskeret.dk/>.

⁶⁵ Parliamentary Ombudsman website: <http://www.ombudsmanden.dk/>.

⁶⁶ Greenland Ombudsman website: <http://www.ombudsmand.gl/>.

⁶⁷ Faroe Islands Ombudsman website: <http://www.lum.fo/>.

⁶⁸ Centre pour l'Égalité des Chances et la Lutte Contre le Racisme, website: <http://www.diversite.be/>.

⁶⁹ L'Institut pour l'Égalité des Femmes et des Hommes website: <http://iqvm-iefh.belgium.be/fr/>.

⁷⁰ Médiateur Fédéral, website: <http://www.federalombudsman.be/>.

⁷¹ Gelijke Kansen in Vlaanderen website: <http://www.gelijkekansen.be/default.asp>.

⁷² Human Rights Ombudsman for Bosnia and Herzegovina (Institucija Ombudsmena/Ombudsmana za Ljudska Prava) website: <http://www.ombudsmen.gov.ba/IndexEn.aspx>.

⁷³ Gender Centar Bosne i Hercegovine website: http://www.fgenderc.com.ba/bh/o_gender_centru.html.

⁷⁴ Avocati i Pullit website: <http://www.ombudspersonkosovo.org/?id=1,a,54>.

⁷⁵ Race and Ethnic Minority Council, website:

http://www.igualdadynodiscriminacion.org/ss/Satellite?pagename=ConsejoNoDiscriminacion/Page/CND_home.

⁷⁶ Defensor del Pueblo website: <http://www.defensordelpueblo.es/>.

⁷⁷ Ararteko website: <http://www.ararteko.net/>.

⁷⁸ Emakunde website: <http://www.emakunde.euskadi.net/u72-home/es/>.

national human rights body and has four regional contact points for the equality institution, HALDE. The contested region of South Tyrol has a regional ombudsman in the same way as any other region of Italy⁷⁹.

Children's Commissioners

Many European states have a body or person responsible for the protection of children's rights. In most cases, this is an independent Commissioner or Ombudsman for children at the national level, for example, the Commissioner for Children's Rights in Cyprus⁸⁰, the Ombudsman for Children in Poland⁸¹ or the Danish National Council for Children⁸². In some cases, the role of protecting children's rights is a specific function of a general rights body, for example, Slovenia's Human Rights Ombudsman has a section for children's rights⁸³.

There are also regional children's rights advocates. For example, in Austria, while a federal ombudsman for children is located in a government ministry, there is an independent ombudsman at state level in Vorarlberg⁸⁴. In Belgium, while there is no equivalent office at national level, there are commissioners in both the Flemish⁸⁵ and French-speaking⁸⁶ regions. In Spain, there is both a national Children's Ombudsman, but also equivalents in some regions, for example, in Catalonia⁸⁷.

⁷⁹ Volksanwaltschaft des Landes Süd Tyrol, website: <http://www.volksanwaltschaft-bz.org/de>.

⁸⁰ Commissioner for Children's Rights website: http://www.childcom.org.cy/ccr/ccr.nsf/DMLindex_gr/DMLindex_gr?OpenDocument.

⁸¹ Ombudsman for Children website: <http://www.brpd.gov.pl/>.

⁸² National Council for Children website: <http://www.boerneraadet.dk/>.

⁸³ Children's rights web pages of the Human Rights Ombudsman: <http://www.pravice-otrok.si/>.

⁸⁴ Ombudsman for Children and Young People website: <http://www.kinderanwalt.at/>.

⁸⁵ Children's Rights Commissioner website: <http://www.kinderrechten.be/>.

⁸⁶ Délégué Général aux Droits de l'Enfant website: <http://www.dgde.cfwb.be/>.

⁸⁷ Síndic de Greuges website: <http://www.sindic.cat/ca/page.asp?id=113>.

6 International Equality and Human Rights Institutions

Equality and human rights institutions are common throughout the world, differing in status, function and scope. This section looks at the institutions of Canada, Australia and New Zealand.

Canada has a Human Rights Commission⁸⁸, which promotes human rights and non-discrimination and hears complaints about human rights and equality issues. As at national level, human rights and equality issues are conflated in provincial and territorial human rights bodies⁸⁹. The Canadian Children's Commissioner was abolished in 2002, but there are Children's Advocates in some states⁹⁰.

Similarly, Australia has a Human Rights Commission⁹¹ at the national level which deals with equality and human rights issues, providing education, hearing complaints and monitoring compliance. At state level, there are similar institutions, be they the Equal Opportunities and Human Rights Commission in Victoria⁹², the Human Rights Commission of the Australian State Territory⁹³ or the Anti-Discrimination Commission of Queensland⁹⁴, they deal with both human rights and equality issues.

Australia is currently considering having a Children's Commissioner⁹⁵. However, there are Children's Commissioners already at state level⁹⁶.

New Zealand has a Human Rights Commission⁹⁷ which, similarly to Canada and Australia, deals with both human rights and equality, but there are no equivalent sub-state institutions. There is also a Children's Commissioner for New Zealand⁹⁸.

⁸⁸ Canadian Human Rights Commission website: <http://www.chrc-ccdp.ca/default-eng.aspx>.

⁸⁹ For example, Alberta Human Rights Commission; website: <http://www.albertahumanrights.ab.ca/>.

⁹⁰ For example, the Saskatchewan Children's Advocate Office, website: <http://www.saskcao.ca/>.

⁹¹ Australian Human Rights Commission website: <http://www.hreoc.gov.au/>.

⁹² Victorian Human Rights and Equal Opportunity Commission website: <http://www.humanrightscscommission.vic.gov.au/>.

⁹³ ACT Human Rights Commission website: <http://www.hrc.act.gov.au/>.

⁹⁴ Anti-Discrimination Commission Queensland website: <http://www.adcq.qld.gov.au/>.

⁹⁵ See the Human Rights Commission discussion paper:

http://www.hreoc.gov.au/human_rights/children/2010_commissioner_children.html.

⁹⁶ For example, the Children's Commissioner for Western Australia, website: <http://www.ccp.wa.gov.au/index.aspx>.

⁹⁷ New Zealand Human Rights Commission website: <http://www.hrc.co.nz/>.

⁹⁸ New Zealand Children's Commissioner website: <http://www.occ.org.nz/>.