

Belgium

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Bridging the divide:
matters to be taken into account in relation to the integration of national equality
bodies and human rights institutions in the European Union
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Introduction

The establishment of a national human rights institution (NHRI) with A-status in Belgium has been on the agenda for about a decade. In contrast to all its neighbour States, Belgium has no such institution so far. In 2011, it decided to create an NHRI in compliance with the Paris Principles and, in 2012, a governmental working group was established for the purpose. It has to accomplish its task by 30 June 2013. The federal government and the regional governments agreed that the NHRI will be an arc-institution including the Centre for Equal Opportunities and Opposition to Racism and the Institute for Equality of Women and Men. There will thus be an integration of the functions of equality body and NHRI. The extension to which this integration will take place, however, is undetermined.

It should be noticed that Belgium has already several bodies that have some of the functions of an NHRI. Since Belgium is considering to create an NHRI in compliance with the Paris Principles late in comparison with other European States, it is not working in a vacuum but in a context in which other bodies are operating. The Centre for Equal Opportunities and Opposition to Racism, the Institute for Equality of Women and Men, the National Commission on the Rights of the Child, the Commission for the Protection of Privacy, the Standing Police Monitoring Committee and the Federal Ombudsman are amongst them. One of the most essential aspects of the establishment of an NHRI with A-Status is therefore to take existing bodies into account and to create institutional linkages with them.¹ This was done when deciding to create an NHRI in compliance with the Paris Principles in Belgium. The Centre for Equal Opportunities and Opposition to Racism and the Institute for Equality of Women and Men will fall under one roof, while the other bodies will closely cooperate with the NHRI.

The creation of an NHRI in Belgium with A-Status also requires particular attention to the constitutional structure of the Belgian State. Belgium is a federal State consisting of three Regions which overlap geographically with three Communities. The three Regions are the Flemish Region, the Walloon Region and the Brussels-Capital Region and the three Communities the Dutch-speaking Community, the French-speaking Community and the German-speaking Community. In practice, besides the federal entity, there are seven

¹ See G. de Beco, 'National Human Rights Institutions in Europe', (2007) 7 (2) *Human Rights Law Review* 331, 340-341.

independent entities: Flanders (which are a merge between the Flemish Region, the Dutch-speaking Community and the Flemish Community Commission (carrying out Dutch-speaking Community responsibilities in Brussels)), the Walloon Region, the French-speaking Community, the Brussels-Capital Region, the German-speaking Community, the French Community Commission (carrying out French Community responsibilities in Brussels) and the Common Community Commission (carrying out common Flemish and French Community responsibilities in Brussels). The seven independent entities have their own executive and legislative bodies.²

The competences are divided between the federal identity, on the one hand, and the Regions and the Communities, on the other hand, as follows: the Regions are responsible for matters related to territory, housing, employment and energy, which are the so-called ‘socio-economic’ matters, and the Communities for matters related to language, culture and education, which are the so-called ‘customisable’ matters, while the federal identity retains competence over matters related to national defence, justice, finance, social security as well as a significant portion of public health and home affairs. It should be noted that considerable competence transfers are on their way to take place as a result of the latest constitutional reform. Depending on their possible merge, as is the case with Region and Community responsibilities in Flanders, or split, as is the case with Community responsibilities in Brussels, the seven independent entities are competent for the ‘customisable’ and ‘socio-economic’ matters. Considering the importance of these matters and the future transfer of further competences, it is unthinkable to establish an NHRI with A-status without the agreement of the regional governments. In order to allow this institution to act in relation to matters falling under their responsibility, a so-called ‘cooperation agreement’ has to be concluded between the federal government and the regional governments. Another option is also to have separate NHRIs in the Regions and Communities in order to ensure that matters falling under the responsibility of the regional governments are covered. Since the regional governments recently agreed with the federal government to establish an NHRI with A-status, this option is however currently not being examined.

As far as the applicable international human rights law is concerned, Belgium ratified the European Convention on Human Rights and its Optional Protocols (except Protocols Nos 7

² For the convenience of the reader, the terms ‘regional governments’ and ‘regional parliaments’ will be used in this report to designate all the governments and parliaments of the Regions and Communities.

and 12), the European Social Charter and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It also ratified the following international human rights treaties: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) and its two first Optional Protocols, the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance (CED). It did not ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT).

This report examines the integration of the functions of equality body and NHRI in Belgium. It consists of three parts. Part I outlines the mandate and composition of existing bodies that already carry out partially the function of NHRI as well as the role of independent mechanism to promote, protect and monitor the implementation of the CRPD that was given to the Centre for Equal Opportunities and Opposition to Racism. Part II discusses the background of the current situation and examines its history and the current project. Part III examines the advantages and disadvantages of integrating the functions of equality body and NHRI as well as key factors affecting the integration and support to the project. Given the fact that discussions on the composition, functions and powers of the NHRI have not started yet, this is only hypothetical. The major part of the report deals therefore with the working of existing bodies and the background of the current situation. The conclusion provides the five most significant points emerging from this research.

The report not only sketches the current situation regarding the creation of an NHRI with A-status in Belgium but also reflects the views of the key opinion formers.³ In order to achieve this, interviews were done with leading figures who are working for the ministers competent, the existing bodies involved, the NGOs concerned and parliament. The interviewees were asked to answer a series of questions on the integration of the functions of equality body and

³ The list of interviewees is provided at the end of the report.

NHRI which were sent to them in advance of the interview. This served mainly to draft the third part but also helped to a certain extent to draft the second part of the report. While this report aims at reproducing in the fairest way the different views of the key opinion formers, its content cannot be attributed to them – neither individually nor collectively – and potential errors remain my sole responsibility, especially since very different answers were given to the questions. It should also be noted that indeterminacy made it particularly difficult for the interviewees to share their thoughts regarding the current project. It goes without saying that I thank them very much for their time and willingness to answer my questions.

I. Institutional framework

Belgium has several bodies that partially carry out the functions of NHRI. These include 1) the Centre for Equal Opportunities and Opposition to Racism; 2) the Institute for Equality of Women and Men; 3) the National Commission on the Rights of the Child; 4) the Commission for the Protection of Privacy; 5) the Standing Police Monitoring Committee and; 6) the Federal Ombudsman. It is therefore essential to know their origin and evolution as well their composition and mandate.

In addition, the Centre for Equal Opportunities and Opposition to Racism was given the role of independent mechanism to promote, protect and monitor the implementation of the CRPD.

A. Existing Bodies

1. The Centre for Equal Opportunities and Opposition to Racism⁴

The Centre for Equal Opportunities and Opposition to Racism was created by Law of 19 November 1993. The mandate of the Centre was initially restricted to combating racism. It was later extended by Law of 7 May 2007 to promote equality and combat discrimination based on race, skin colour, descent, national or ethnic origin, sexual orientation, marital status, birth, wealth, age, religion or ideology, present or future state of health, disability, political conviction, physical or genetic characteristics, or social origin. It is also mandated to ensure respect for the basic rights of foreigners, inform public authorities about the nature and scale

⁴ See www.diversite.be.

of migration and promote the struggle against human trafficking and smuggling. It was recently given the role of independent mechanism to promote, protect and monitor the implementation of the CRPD.⁵

The Centre for Equal Opportunities and Opposition to Racism is an NHRI with B-Status accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Its last re-accreditation dates from 2010.

According to Law of 7 May 2007, the tasks of the Centre for Equal Opportunities and Opposition to Racism are:

- to handle complaints on alleged discrimination or situations where the basic rights of foreigners in the territory are being infringed;
- to provide information or referral to other authorities or organisations;
- to intervene and provide practical support to the victims;
- to facilitate dialogue, negotiation, reconciliation and even mediation;
- to organise studies, seminars and programs for the exchange of information and practical experience relating to the phenomena of migration, discrimination and disregard for basic rights;
- to collaborate with associations in the field, universities and institutions;
- to give information and raise awareness about migration, diversity and multiculturalism;
- to train judges, police, private or governmental ombudsmen, businesses, schools and associations;
- to formulate recommendations to all levels of government on improving the legislation and developing action plans or seeking a better understanding by political leaders of specific new phenomena;
- to provide analysis and advice in matters within their competence to public authorities;
- to develop partnerships with representative associations of various communities and professions, associations for the integration of migrants, associations for the protection of the rights of people with disabilities, associations which represent homosexuals and so on.

⁵ See Part I.B. Independent Mechanism (Article 33 (2) CRPD).

The Centre for Equal Opportunities and Opposition to Racism is a public body which is not under the authority of the government. The members of the management board, including its President and Vice-President, however, are appointed by the federal government and the regional governments. The Director and Vice-Director, who together with the four coordinators are likewise appointed by the federal government, are responsible for the daily management. While the Centre for Equal Opportunities and Opposition to Racism is only competent for matters falling under the responsibility of the federal government, it acts to a certain extent in relation to matters falling under that of regional governments, following the conclusion of individual cooperation agreements with some of the Regions and Communities. Its competence in this regard, however, is not symmetrical. While the Centre has a broad mandate including complaints handling in the Walloon Region and the French-speaking Community and collaborates in the field of employment with the Brussels-Capital Region on the basis of such agreements, Flanders established its own local contact points (*meldpunten*) which receive support from the Centre.

2. Institute for the Equality of Women and Men⁶

The Institute for Equality of Women and Men was created by Law of 16 December 2002. The mandate of the Institute is to ensure respect for equality of women and men.

According to Law of 16 December 2002, the tasks of the Institute for Equality of Women and Men are:

- to undertake, develop, support and co-ordinate studies and research in the field of gender and equality of women and men as well as to assess the impact in terms of gender, of policies, programmes and measures;
- to address recommendations to the public authorities with a view to improving the relevant laws and regulations;
- to organise the support offered to associations working in the field of equality between women and men, or projects aiming at achieving equality between women and men;
- to help, within the limits of its goal, any person requesting advice on the scope of his/her rights and obligations and enable him or her to obtain information and advice on the possible ways to have his/her rights enforced;

⁶ See igvm-iefh.belgium.be.

- to take legal action in the case of disputes resulting from the application of criminal and other laws, specifically aimed at guaranteeing the equality of women and men;
- to provide statistics and jurisdictional decisions that might be useful to assess the laws and regulations relating to gender equality gather and issue;
- to ask the competent authorities, when the Institute identifies facts that give reason to presume the existence of discriminatory treatment as provided by the laws and regulations relating to the equality of women and men, to gather information and to inform the latter of the result of the analysis of the facts in question;
- to set up a network with the various key players in the field of gender equality;
- to prepare and execute governmental decisions and to follow up European and international policy making in the field of gender equality.

The Institute for Equality of Women and Men is a public body which is not under the authority of the government except for its function of providing support to policy making. The members of the management board, who are appointed by the federal government, determine the overall strategy of the Institute. The director, who is likewise appointed by the federal government, is responsible for the daily management. While the Institute for Equality of Women and Men is only competent for matters falling under the responsibility of the federal government, it acts to a certain extent in relation to matters falling under that of regional governments, following the conclusion of individual cooperation agreements with some of the Regions and Communities. This is the case with the Walloon Region and the French-speaking Community, where it has a broad mandate including complaints handling on the basis of such agreements.

3. National Commission on the Rights of the Child⁷

The National Commission on the Rights of the Child was created by Law of 1 May 2006 which endorsed a cooperation agreement between the federal government and the regional governments. The mandate of the Commission is to promote children's rights.

According to Law of 1 May 2006, the tasks of the National Commission on the Rights of the Child are:

⁷ See www.ncrk.be.

- to promote the systematic exchange of information relating to children's rights between the federal government and the Communities;
- to facilitate dialogue between State actors and civil society organisations working in the field;
- to coordinate the elaboration of State reports on the implementation of the Convention on the Rights of the Child as well as its two first Optional Protocols (Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography) for the attention of the Committee on the Rights of the Child;
- to contribute to the preparation of other documents concerning children's rights;
- to coordinate the collection and analysis of minimal data for the Committee on the Rights of the Child;
- to develop indicators on children's rights not only for improving the State report but also for collecting additional data;
- to stimulate cooperation and permanent information exchange between different public authorities responsible for children's rights with a view to maximalising synergy in policy making;
- to communicate information on the promotion and protection of children's rights as well policies concerning children;
- to provide advice on draft international conventions and protocols relating to children's rights;
- to monitor follow-up to the recommendations of the Committee on the Rights of the Child en advice the concerned public authorities;
- to involve children in a structured and adapted manner in the works of the Commission.

The Commission on the Rights of the Child is characterised by a wide representation of all levels of power as well as civil society. It is composed of members with voting rights, who are appointed by the federal government and the regional governments, as well as members with observer status, who are appointed by civil society organisations working in the field of children's rights. The President and the Vice-Presidents of the Commission are appointed by the federal government and the regional governments. The Bureau, which is composed of the

President, Vice-Presidents and the members with voting rights, is responsible for the daily management.

In addition to the Commission on the Rights of the Child, the Communities have created their own Ombudsmen for children's rights: the Commissioner for Children's Rights of Flanders and the General-Delegate to Children's Rights of the French-speaking Community. They make recommendations to their respective public authorities and handle cases on the alleged violations of children's rights. Both Ombudsmen are member of the Commission on the Rights of the Child with observer status.

4. Commission for the Protection of Privacy⁸

The Commission for the Protection of Privacy, also called the Privacy Commission, was created by Law of 8 December 1992. The mandate of the Commission is to ensure respect for the protection of privacy in relation to the processing of personal data.

According to Law of 8 December 1992, the tasks of the Commission for the Protection of Privacy are:

- to provide assistance to both public bodies and controllers by complying with requests for preliminary informal consultation;
- to assist data subjects when exercising their rights by providing information about these rights and the procedure they need to follow;
- to authorise any organisations from a specific sector to process and communicate personal data;
- to provide advice on the protection of privacy in relation to the processing of personal data;
- to report to parliament annually and elaborating a management plan, drafting internal rules of procedure, keeping the public register and informing the public;
- to handle complaints and offering mediations in cases of alleged violations of the right to privacy at the data subject's request using all available means (notification to the Public Prosecutor, submitting a civil litigation to court etc);
- to ensure representation in national and international working groups;

⁸ See www.privacycommission.be.

- to cooperate in investigations at international level requiring the commitment of all competent data protection authorities in order to come to practicable solutions.

The Commission on the Protection of Privacy is a public body which is not under the authority of the government. All its members, including its President and Vice-President, are appointed by the (federal) House of Representatives. The President is responsible for the daily management. The Commission on the Protection of Privacy has Sector Committees dealing with specific themes in the field of the protection of privacy in relation to the processing of personal data. While the Commission is only competent for matters falling under the responsibility of the federal government, the Flemish Supervisory Commission for Electronic Administrative Data was created with a similar mandate in Flanders.

5. Standing Police Monitoring Committee⁹

The Standing Police Monitoring Committee, also called the Committee P, was created by Law of 19 July 1991. The mandate of the Committee is to monitor the working of the police.

According to Law of 19 July 1991, the tasks of the Standing Police Monitoring Committee are:

- to make proposals and issue advice to the relevant (police) authorities;
- to examine complaints and reports of police misconduct lodged by members of the public;
- to conduct judicial inquiries on behalf of the judicial authorities;
- to sending reports on its inspection inquiries to the (federal) House of Representatives, as well as its annual activity report, which contains general conclusions and recommendations.

The Standing Police Monitoring Committee is a public body which is under the authority of neither the government nor the police. Its members, including its President and Vice-President, are appointed by the (federal) House of Representatives. Decisions are taken collegially by all the member of the Standing Police Monitoring Committee.

⁹ See www.comitep.be.

6. Federal Ombudsman¹⁰

The Federal Ombudsman was created by Law of 22 March 1995. The mandate of the Federal Ombudsman is to protect citizens against maladministration.

According to Law of 22 March 1995, the tasks of the Federal Ombudsman are:

- to examine complaints from citizens about how the federal administrative authorities act and function;
- to investigate, at the request of the (federal) House of Representatives, how the federal administrative services function;
- to make recommendations to federal public authorities and to parliament based on observations made during these two missions;
- to report to parliament.

The Federal Ombudsman is a public body which is not under the authority of the government. It is composed of two Ombudspersons, one Flemish- and one French-speaking, who are appointed by the (federal) House of Representatives. Decisions are taken collegially by the two Ombudspersons.

B. Independent Mechanism (Article 33 (2) CRPD)

Following the ratification of the CRPD by Belgium, the Centre for Equal Opportunities and Opposition to Racism was given the role of independent mechanism to promote, protect and monitor the implementation of the Convention, as provided for by Article 33 (2) CRPD. This was agreed by the federal government and the regional governments on 11 July 2011. The working of the independent mechanism was subsequently determined through individual cooperation agreements between the Centre and the federal government, on the one hand, and the regional governments, on the other hand.¹¹ The Centre for Equal Opportunities and Opposition to Racism received thus the functions of promoting, protecting and monitoring the

¹⁰ See www.federalombudsman.be.

¹¹ G. de Beco, *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe*, Study commissioned by the Office of the UN High Commissioner for Human Rights (OHCHR) Regional Office for Europe, July 2011, 19; available at: http://europe.ohchr.org/Documents/Publications/Art_33_CRPD_study.pdf.

implementation of the CRPD for matters falling under the responsibility of both the federal government and regional governments.

According to the individual cooperation agreements, the tasks of the Centre for Equal Opportunities and Opposition to Racism relating to its role of independent mechanism to promote, protect and monitoring the implementation of the CRPD under Article 33 (2) CRPD are:

- to inform and raise awareness among persons with disabilities, the organisations and associations concerned as well as the general public about the existence of the Convention, its approach and the rights it guarantees (promotion);
- to provide, fully independently, legal advice and support to persons with disabilities who feel that their rights have been violated (protection);
- to evaluate whether the national legislation, policies and practices are in compliance with the Convention (monitoring).

In order to achieve this, the Centre for Equal Opportunities and Opposition to Racism has made up a Unit and set up a Steering Committee.¹² The Steering Committee, which guarantees the participation of civil society, is composed of representatives of organisations of persons with disabilities, universities and labour unions.

This development is remarkable for three reasons:

First, the decision to give the Centre for Equal Opportunities and Opposition to Racism the role of independent mechanism to promote, protect and monitor the implementation of the CRPD was made by agreement between the federal government and the regional governments. It can therefore play this role for matters falling under the competence of both the federal government and the regional governments, although it is an equality body only competent for matters falling under the competence of the federal government. While the operation of the independent mechanism was determined by individual cooperation agreements, because of the absence of a federal government when this mechanism was being established, this is the way in which the NHRI will have to be created taking into account the competences of the Regions and Communities.

¹² Ibid.

Secondly, the Centre not only created a Unit but was also equipped with a Steering Committee. This Steering Committee was established in order to meet the requirement of pluralism under the Paris Principles which Article 33 (2) CRPD explicitly refers to. While this only concerns the independent mechanism, this requirement will also have to be fulfilled for the future NHRI. Representatives of NGOs, universities and labour unions will likewise have to be represented in this institution.

Thirdly, the designation of the Centre for Equal Opportunities and Opposition to Racism entails a partial integration of the functions of equality body and NHRI. In addition to carrying out the tasks relating to its role of equality body for persons with disabilities, the Centre has to promote, protect and monitor the implementation of the CRPD. It was thus given a human rights mandate for one particular vulnerable category of persons. Although this is somewhat awkward for an equality body, it should be noted that it had already the mandate of ensuring respect for the basic rights of foreigners. The designation of the Centre for Equal Opportunities and Opposition to Racism can be therefore considered as a stepping stone towards the integration of the functions of equality body and NHRI.

The abovementioned reasons make that the Centre for Equal Opportunities and Opposition to Racism has become the laboratory for the creation of an NHRI in compliance with the Paris Principles in Belgium. If successful, it will show that combining promoting respect for human rights and promoting equality and combating discrimination is sustainable. There are however challenges in playing the role of independent mechanism to promote, protect and monitor the implementation of the CRPD. Because the Centre is an equality body, it has to adapt its working methods. Although it is to a certain extent already promoting, it does so solely in the non-discrimination field, while its most important function is still complaints handling. As a result, it places stronger emphasis on enforcement than promotion. In order to carry out its new human rights mandate, the Centre will have to develop new approaches, apply other methodologies and create partnerships with other actors. It will also need to acquire a sound expertise in the field of human rights.

II. Background to the Present Situation

The proposal to establish an NHRI with A-status in Belgium is already being discussed for more than a decade. While several proposals have been made in 2006, the project was reactivated only in 2011. This project is linked to endeavours to allow the Centre for Equal Opportunities and Opposition to Racism to act in relation to matters falling under the responsibility of the regional governments.

It was decided that the NHRI will be an arc-institution to be set up through a cooperation agreement by 30 June 2013. The Centre for Equal Opportunities and Opposition to Racism and the Institute for Equality of Women and Men will fall under one roof, whereas the other bodies will closely cooperate with the NHRI. How this institution will work, however, is still being discussed.

A. History

The main argument for the establishment of an NHRI in Belgium is that there is no public-funded independent institution with a general human rights mandate. While there is a vibrant civil society, there is no NHRI. Besides the absence of in-depth examination of the human rights situation, there is therefore no internal evaluation of the compliance of policies and legislation with international human rights treaties. While Belgium is a strong promoter of human rights internationally and is known for its strong protection mechanisms for the rights of linguistic minorities, it has no national body responsible for promoting and protecting human rights. In contrast, all its neighbour countries, including the UK, France, Luxembourg, Germany and, since October 2012, the Netherlands have an NHRI with A-status (or have an NHRI which is aspiring an A-status as is the case with the Netherlands).¹³ This has considerably increased the pressure to establish such an institution in recent years.

As indicated in the previous section, Belgium has nonetheless several bodies that carry out some of the functions of NHRI. These include the Centre for Equal Opportunities and Opposition to Racism, the Institute for Equality of Women and Men, the National

¹³ EU Fundamental Rights Agency, *National Human Rights Institutions in the EU Member States. Strengthening the fundamental rights architecture in the EU I* (Vienna: EU, 2010) 12-14; available at: http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf.

Commission on the Rights of the Child, the Commission for the Protection of Privacy, the Standing Police Monitoring Committee and the Federal Ombudsman. Establishing an NHRI with A-status is therefore impossible without taking existing bodies into account and creating institutional linkages with them.¹⁴ Duplication should be avoided and cooperation between these bodies facilitated.

Another important aspect of the establishment of an NHRI with A-status in Belgium is that this NHRI must be able to act in relation to matters falling under the responsibility of the regional governments – which include territory, housing, employment and energy, as far as the Regions are concerned, and language, culture and education, as far the Communities are concerned –, failing which the NHRI will simply not be competent for these matters. So doing will allow it to address both the federal government and the regional governments and to cooperate with civil society organisations in the Regions and Communities. As already mentioned, establishing an NHRI with A-status therefore requires a cooperation agreement between the federal government and the regional governments. Such an agreement was adopted to establish the National Commission on the Rights of the Child and individual cooperation agreements – instead of a collective cooperation agreement, because at the time no federal government was created yet after the national elections of 2010 – were necessary for the operation of the independent mechanism to promote, protect and monitor the implementation of the CRPD. In this regard, discussions have been going on for about a half a decade to change the statutes of the Centre for Equal Opportunities and Opposition to Racism in order to allow it to act in relation to matters falling under the responsibility of the regional governments, a process called ‘inter-federalisation’. This was accelerated following to the European Commission’s notice of Belgium’s failure to implement Race Equality Directive at the regional level. The issue has however been considered separately from the creation of an NHRI with A-Status.

The establishment of an NHRI in compliance with the Paris Principles was for the first time provided for in the Government Agreement that was adopted following the creation of the government in 2003. Two proposals for setting up such an institution were made in 2006. First, a group of Belgian NGOs, led by Amnesty International Belgium, proposed to create a

¹⁴ de Beco, ‘National Human Rights Institutions in Europe’, *op. cit.*, 339-340.

Belgian Fundamental Rights Commission.¹⁵ The purpose was to establish a commission-type of body, like in the UK and Ireland, with broad powers run by a limited number of commissioners. The Belgian Fundamental Rights Commission would also have played the role of national preventive mechanism under OP-CAT (which Belgium has not ratified yet). Secondly, the federal government proposed to expand the mandate of the Centre for Equal Opportunities and Opposition to Racism in order to make it in compliance with the Paris Principles and thereby upgrade its B-status to A-status. A detailed review of the two options was subsequently asked to the Office of the UN High Commissioner for Human Rights (OHCHR). The OHCHR offered a concrete evaluation of these options but without advocating one or the other.

The proposal to establish an NHRI with A-status has not been included in subsequent government agreements. As a result, the federal government undertook no further action with a view to setting up such an institution for several years. There was also no follow-up to the proposal made by the group of Belgian NGOs, led by Amnesty International Belgium, to create a Belgian Fundamental Rights Commission.

The proposal to establish an NHRI with A-status, however, was reactivated in 2011. With the active participation of the Ministry of Justice and Ministry of Foreign Affairs, Belgium agreed to implement a recommendation to set up such an NHRI at the Universal Periodic Review before the Human Rights Council. This created leverage to re-open discussions on the issue. Many UN human rights treaty bodies had also urged Belgium to do so. Following the Universal Periodic Review, the current federal government committed again to create an NHRI in compliance with the Paris Principles in the Government Agreement that was adopted following its creation in 2011.¹⁶ While several national actors encouraged States to make this recommendation to Belgium, the pressure to have such an institution comes thus in essence from the international level. Combined with the endeavours to allow the Centre for Equal Opportunities and Opposition to Racism to act in relation to matters falling under the

¹⁵ See *Commission belge des droits fondamentaux: présentation et projet d'accord/De Belgische Commissie voor Grondrechten: voorstelling en voorstel van akkoord*, Memorandum prepared by Olivier De Schutter and Gauthier de Beco and signed by 14 NGOs for the attention of the Belgian Government, April 2006; available at: www.justicepaix.be/IMG/pdf/2006-CBDFondamentaux.pdf.

¹⁶ See *Accord de Gouvernement*, 1 décembre 2011, 142; available at: http://premier.fgov.be/sites/all/themes/custom/tcustom/Files/Accord_de_Gouvernement_1er_decembre_2011.pdf.

responsibility of the regional governments, the Universal Periodic Review was the main motivation behind the current project.

A last relevant aspect is the decision to give the Centre for Equal Opportunities and Opposition to Racism the role of independent mechanism to promote, protect and monitor the implementation of the CRPD. As explained earlier, through this designation, the Centre has received a human rights mandate for one particular category of vulnerable people, namely persons with disabilities. Although this was not explicitly mentioned in the decision, this could have been considered as the first step towards the transformation of the Centre into an NHRI with A-status, an option that seems to have been abandoned for the moment. The Centre for Equal Opportunities and Opposition to Racism is in this way running ahead of the integration of the functions of equality body and NHRI. The reference to the Paris Principles in Article 33 (2) CRPD also raised attention to the need to that the NHRI should be in compliance with the Paris Principles.

B. Current Project

Both the creation of an NHRI with A-status in compliance with the Paris Principles and the ‘inter-federalisation’ of the Centre for Equal Opportunities and Opposition to Racism were provided for in the Government Agreement of 2011. This was however done in two different chapters.¹⁷ Since the purpose is to incorporate the Centre into an NHRI, both issues have become interrelated, although they are still treated as specific items. The principal focus so far regarding the establishment of an NRHI with A-status is therefore on the role of the Centre and the structure of this institution.

In order to implement the Governmental Agreement of 2011, the federal government and the regional governments decided on 21 July 2012 to establish a governmental working group, under the authority of the Minister of Justice and the Minister of Equality, charged with elaborating a cooperation agreement on the creation of an NHRI in compliance with the Paris Principles by 30 June 2013.¹⁸ This was agreed in parallel to the adoption of a draft

¹⁷ Ibid., 142 and 161.

¹⁸ La Vice-Première Ministre, ministre de l’Intérieur et de l’Egalité des chances, *Communiqué de presse - Interfédéralisation du Centre pour l’égalité des chances et la lutte contre le racisme, ainsi que création du Centre fédéral pour l’analyse des flux migratoires, la protection des droits des étrangers et de lutte contre la traite des êtres humains : des nouvelles institutions pour mieux combattre les inégalités*, 20 juillet 2012;

cooperation agreement allowing the Centre for Equal Opportunities and Opposition to Racism to act in relation to matters falling under the responsibility of the regional governments.¹⁹ The deadline of 30 June 2013 was set both because Belgium will have to report on its achievements to the Human Rights Council in 2013 and because national elections will be held to have a new federal government in 2014. There is also considerable pressure to move ahead with the project given the tense political environment in which Belgium finds itself currently. In addition, it was decided that another cooperation agreement will be adopted to likewise ‘inter-federalise’ the Institute for Equality of Women and Men and that a new Federal Centre for Migration Monitoring, Protecting the Basic Rights of Foreigners and Combating Human Trafficking would be created to take over the same responsibilities from the Centre for Equal Opportunities and Opposition to Racism – without being ‘inter-federalised’ – by 30 June 2013.

The NHRI will be an arc-institution consisting of the (Inter-federal) Centre for Equal Opportunities and Opposition to Racism, the (Inter-federal) Institute for Equality of Women and Men and the new Federal Centre for Migration Monitoring, Protecting the Basic Rights of Foreigners and Combating Human Trafficking. It will thus bring together different bodies, two of which have currently the function of equality body, and provide an additional human rights mandate. The two bodies would acquire competences for matters falling under the responsibility of the regional governments, while the other one would only be able to act in relation to matters falling under the competence of the federal government. How far these bodies would integrate, however, is unclear. The role of the arc-institution itself is likewise undetermined. Nothing was furthermore provided regarding the involvement of other bodies, including the National Commission on the Rights of the Child, the Commission for the Protection of Privacy, the Standing Police Monitoring Committee, the Federal Ombudsman, and, as far as the Communities are concerned, the Commissioner for Children’s Rights of Flanders and the General Delegate to Children’s Rights of the French-speaking Community, although it was stated that their existence would be taken into account in establishing the NHRI in compliance with the Paris Principles. Whether the NHRI will play the role of national preventive mechanism under OP-CAT has also to be decided (once OP-CAT will be ratified by Belgium).

available at : <http://www.milquet.belgium.be/sites/default/files/Communique%CC%81%20de%20presse%20-%20centre%20interfe%CC%81de%CC%81ral.pdf>.

¹⁹ The draft cooperation agreement was submitted to the *Conseil d’Etat* and will subsequently have to be endorsed by the federal parliament and the regional parliaments.

The composition, functions and powers of the NHRI will be discussed in the governmental working group. Besides the structure, the aspect that has raised the main attention so far is the requirement of independence, especially since fulfilling this requirement will have an impact on determining this structure. One of the questions is whether all the bodies within the arc-institutions will have to be independent according to the Paris Principles, the answer of which is most probably positive. Incorporation into the NHRI will be more difficult for some of them than for others. This concerns in particular the Institute for Equality of Women and Men which partly falls under the authority of the government. This has led to examining and comparing independence under both the Paris Principles and EU gender equality law. The merger of the human rights and equality agenda, however, has not been examined so far. Because the focus is on structure, discussions on the issue have been left aside for the moment. The main question, which is how the arc-institution will carry out its double function, has therefore simply not been addressed. Who exactly will deal with human rights issues – supposedly either the different bodies themselves or an additional body in the arc-institution – is also undefined. The main risk in doing so is that the human rights agenda might emerge only with great difficulties.

III. Integration of the Functions of Equality Body and NHRI²⁰

Integrating the functions of equality body and NHRI has both advantages and disadvantages. As indicated by the interviewees, the integration would strengthen the promotion of equality and the combat of discrimination, whereas it would take advantage of complementarity between human rights and non-discrimination approaches. However, it would also diminish attention to particularities relating to gender in particular and give away expertise on non-discrimination issues.

In general, five factors affecting the integration of the functions of equality body and NHRI were identified by the interviewees: 1) resources; 2) guarantees; 3) organisation; 4) strategy and 5) visibility. While support to the project varies, the interviewees came up with different alternatives.

²⁰ This section is based on the interviews on the integration of the functions of equality body and NHRI in Belgium with the key opinion formers.

A. Advantages and Disadvantages of the Integration of the Functions of Equality Body and NHRI

1. Advantages

For most of the interviewees, the integration of the functions of equality body and NHRI would be beneficial. Since the purpose is to incorporate equality bodies into an NHRI, only the advantages of this integration for promoting equality and combating discrimination will be examined. Many interviewees consider that having a human rights mandate would fill in a gap in the Belgian human rights architecture. International human rights law can expand the horizon of anti-discrimination law, beyond EU law and the scope of services and employment, and complement the working methods of equality bodies, through promotion in particular. A human rights-based approach would also bring a new dimension to the non-discrimination field. A recurrent example was the screening of draft legislation in the light of international human rights treaties. Even for complaints handling, it was considered that a human rights perspective would be beneficial. It was also mentioned that non-discrimination is part, and even one of the core aspects, of international human rights law. Since human rights and non-discrimination are interrelated, one interviewee argued that it would be normal to give the functions of equality body and NHRI to a single body.

A human rights approach would not only bring a new dimension but also replace a pure technical approach in examining potential cases of discrimination and avoid categorization according to the different grounds of discrimination. One interviewee was also said that human rights could help to concentrate debates on more fundamental questions which are sometimes overshadowed by less related questions under anti-discrimination law. International human rights law also allows referring to other international legal instruments, thereby broadening the understanding of non-discrimination issues and coupling these issues to human rights issues. The integration of the functions of equality body and NHRI would thus be a concrete application of the indivisibility of human rights. In this regard, one interviewee pointed out that the Centre for Equal Opportunities and Opposition to Racism does not adopt a human rights perspective in addressing non-discrimination issues. A greater focus on human rights would therefore be an enrichment to people who are working in the non-discrimination field. It was however stressed that this does not result in anti-discrimination law losing its importance. To the contrary, anti-discrimination law can

sometimes provide clearer answers and give more leverage to obtain changes in society. It was also repeated that both human rights and non-discrimination approaches are complementary.

While one interviewee considered that there are actually no tensions and another one that there were less tensions than often advanced between human rights and non-discrimination approaches in practice, still another one thought that giving a human rights mandate to a body that is already promoting equality and combating discrimination would result in reducing such tensions because these tensions would have to be resolved internally. In other words, the more integration the less tensions.²¹

The integration of the functions of equality body and NRHI would increase the chances of complementarity between human rights and non-discrimination approaches giving its full potential. The human rights and non-discrimination communities work rather separately and do not communicate. This integration would therefore facilitate the sharing of expertise and the exchange of information between them. It would improve not only coherence but also coordination. As far as the NHRI is concerned, a greater balance between enforcement and promotion would be achieved, while the structure would ensure collaboration and mutual strengthening. In addition, it would provide one stop one shop for every citizen, which would especially be useful for those who belong to less visible categories of vulnerable people. It would also create a single contact point for other national bodies, in Belgium and abroad, as well as international organisations.

2. Disadvantages

According to most of the interviewees, the major risk of integrating the functions of equality body and NHRI is that this would weaken the mandates of existing bodies. In this context, integration was understood not only as combining both functions but also assembling different equality bodies – *in casu* the Centre for Equal Opportunities and Opposition to Racism and the Institute for Equality of Women and Men. The importance of working by categories of vulnerable people was therefore stressed. Besides the fact that working methods

²¹ Contra: S. Sottiaux and J. Vrielink, *De 'institutionalisering' van gelijkheid en mensenrechten. Gelijkheidsorganen en mensenrechteninstellingen in Vlaanderen en België* (Cambridge/Antwerpen: Intersentia, 2012) 73-75.

are different, it was argued that bodies with mandates for particular categories of people can better protect them against discrimination. It was furthermore reminded that when Belgium accepted to implement the recommendation to establish an NHRI with A-status at the Universal Periodic Review before the Human Rights Council it stressed that it would take into account particularities.

Since the Institute for Equality of Women and Men would be the sole body with a mandate for a particular group of people to be incorporated into the NHRI in the current project, the issue was especially considered in relation to gender. It was argued that gender aspects would be diluted should there no longer be a body that would address gender discrimination only. Such a body is necessary since gender stereotypes are often considered normal in society and since promoting gender equality requires examining societal relationships. In general, there is also greater consensus on the need to combat discrimination based on grounds other than gender.

Although the advantages of the integration of the functions of equality bodies and NHRIs were unanimously recognised, some interviewees deemed that this integration would also entail problems. A human rights-based approach might neglect the discriminatory aspects of human rights issues. An example is the way in which the European Court of Human Rights has been dealing with abortion. While it focusses on the right to life and the right to privacy, the gender dimension is to a certain extent absent in its jurisprudence. Another problem is that valuable expertise risks being lost with the NHRI.²² Not only would there be less people specialised in anti-discrimination law but those who are might want to leave equality bodies. In addition, the general public is more familiar with non-discrimination issues. Some interviewees considered therefore that bodies with mandates for particular categories of people were more effective to promote equality and combat discrimination. One of them referred to the examples of the UK and France in order to demonstrate that integration had usually negative effects.

It was also argued that the creation of the NHRI in compliance with the Paris Principles could affect the working of the bodies of the arc-institution. As often happens, it can take some time before new bodies effectively start to work. In addition, depending on the extent to which

²² Ibid., 73.

integration takes place, incorporating the equality bodies into an NHRI would create competition for resources, difficulties in prioritisation and conflicts of interest.

B. Key Factors Affecting the Integration of the Functions of Equality Body and NHRI

1. Resources

All interviewees agreed that resources were the major factor affecting the integration of the functions of equality body and NHRI. In this regard, no budget will be provided for the NHRI, while existing bodies will have to continue to function on their current budget. There is a however general consensus that it is impossible to give a human rights mandate to existing bodies without allocating additional resources to them. These bodies cannot be asked to do more with the same budget, unless they stop certain activities in order to undertake new ones. The arc-institution cannot address human rights issues without resources either. As a result, some interviewees feared that nobody will address human rights issues and that this institution would only serve to facilitate coordination. In other words, the human rights agenda would be non-existent in practice. A budget for promoting respect for human rights is therefore a pre-condition for the integration of the functions of equality body and NHRI.

2. Guarantees

Guarantees in the statutes of the NHRI were considered essential. One interviewee stressed the necessity to have the same degree of independence for all the bodies of the arc-institution, as provided for the Paris Principles, and to ensure that this institution transcends the different layers of power in Belgium. Another interviewee pointed out the importance of having a credible leader to run the NHRI who will have to be considered independent across the political spectrum. His or her independence should not only be guaranteed on paper but also in practice and he or she should not start to build political ties during his or her mandate. The objectives of the NHRI also should be clearly defined. The statutes should provide how human rights issues will be dealt with in particular. In this regard, some had a preference for giving a human rights mandate to the existing bodies, whereas others favoured creating a new body responsible for promoting respect for human rights within the arc-institution.

3. Organisation

Several interviewees argued that the organisation of the arc-institution will greatly affect the integration of the functions of equality body and NHRI. The way in which this institution will operate should be precisely determined. This does concern not only internal issues, like the number of staff members allocated to the various themes, but also external issues, like cooperation with external stakeholders, such as NGOs and academics. Who may take initiatives, create working groups, contact external stakeholders and so on should be clearly established. Several interviewees insisted in this regard that more attention was needed to functions and regretted that the main focus was on structures so far. One of them also emphasised the importance of working gradually and have an open-ended process allowing to re-evaluate the options chosen later on and to improve continuously the working of NHRI.

4. Strategy

Some interviewees deemed that strategy was an essential factor. Integrating the functions of equality body and human rights requires adopting a strategy that defines how action will be planned, priorities made and outcome evaluated. Depending on the structure of the NHRI, an important aspect is the way in which collaboration will take place within this institution, especially for transversal issues. One interviewee insisted on the importance to establish how the different bodies will decide whether certain issues have to be addressed from a human rights or a non-discrimination perspective or from both. Another interviewee mentioned that the NHRI would not be credible without a sound communication strategy.

5. Visibility

It was agreed that visibility is an essential factor affecting the integration of the functions of equality body and NHRI. Several interviewees feared that the different categories of vulnerable people would not get in touch with the arc-institution, because they would no longer recognise the mandates of the existing bodies. Citizens should be able to see in one way or another that the NHRI is competent for persons with disabilities, women, children, foreigners and so on. One interviewee found that the equality bodies should be recognisable within the arc-institution. In addition, it was considered that the concept of human rights is less appealing to citizens than that of non-discrimination. Several interviewees proposed

therefore to keep the reference to equality in the name of the NHRI, as done in the UK, and even to highlight particular categories, although it was accepted that too long a name was not desirable either. In order to avoid difficulties in finding the right body in the arc-institution, it was proposed to have one phone number that would dispatch calls immediately to that body.

C. Support to the Project

Support to the project varies among the interviewees. While for some of them this project is a step in the right direction, others support it merely because they consider it necessary to create an NHRI in compliance with the Paris Principles and because this is the only proposal that has been made so far. Still others deem it dangerous. There is therefore no consensus on the question of whether setting up arc-institution is a good solution for the creation of an NHRI with A-Status. Several interviewees had also questions on compliance with the Paris Principle, especially regarding existing bodies within this institution. However, all interviewees agreed that it is unclear what the project will exactly produce and how the arc-institution will be. What will be the function of the arc-institution, who will carry out the human rights mandate, how will the different bodies cooperate with each other, what will be the decision making process and so on still have to be defined. In other words, the extent to which integration will take place – if there will be such integration at all, as noticed by one interviewee – is unknown. In this context, it was difficult for the interviewees to state their thoughts regarding the project.

Likewise, there is little consensus on options other than setting up an arc-institution. At least four alternative options were mentioned by the interviewees. To a certain extent, all of them could be reached through the current project and can therefore not be excluded. The first option is merging all existing bodies and adopting them in order to have one new NHRI. This concerns not only the Centre for Equal Opportunities and Opposition to Racism and the Institute for Equality of Women and Men but also the other bodies which partially carry out the functions of NHRI. The second option is keeping the existing bodies and strengthening their cooperation through common strategic planning. In this scenario, nothing would be changed except that there would be more collaboration. The third option is keeping existing bodies but adding a NHRI amongst them. This is akin to the proposal of the group of Belgian NGOs, led by Amnesty International Belgium, with the creation of the Belgian Fundamental Rights Commission. The fourth option is to transform the Centre for Equal Opportunities and

Opposition to Racism into an NHRI. What was started for persons with disabilities would be done for all categories of vulnerable people.

Conclusion

This report examined the integration of the functions of equality body and NHRI in Belgium. It presented existing bodies, sketched the current situation and exposed views on this integration.

The five most significant points emerging from this research are:

- Little attention has been paid to the integration of the functions of equality body and NHRI (something which made elaborating this report particularly difficult). Discussions on the structure tend to dominate, which is probably due to the sensitive character of the project. The consequence is that not only the added value of giving a human rights mandate to existing bodies but also the merge of the human rights and equality agenda has been unaddressed so far.
- Integration creates tension. Besides the requirement of reaching agreement between the federal government and regional governments, incorporating existing bodies into an NHRI is especially hard in a country in which several bodies already partially carry out the function of NHRI. So doing requires not only considering particularities but also adapting working methods. Changing mandates is difficult in such a context and encounters a certain degree of resistance.
- One worrying aspect is that chances are great that the human rights mandate would not be a priority. Existing bodies almost exclusively deal with non-discrimination issues. There is no reflection on the way in which the arc-institution would carry out its double function. The risk is therefore that the existing bodies will continue to focus on promoting equality and combating discrimination, especially since no additional resources would be allocated.
- It seems that the advantages of the integration of the functions of equality body and NHRI are more theoretical than practical. While a human rights mandate would enrich the equality bodies in abstract terms, there is a fear that this integration would compromise their functioning in concrete terms. There is therefore a necessity to

examine carefully how the arc-institution will carry out the human rights mandate in practice.

- It is astonishing to see how the key opinion formers' views vary. While some of them favour radical changes, others prefer to proceed to minimal adjustments. All interviewees agree that integration is beneficial but they propose different solutions in order to achieve this. This complicates discussions and makes agreement difficult. As a result, the creation of an NHRI progresses slowly, although existing bodies already examine the potential impact of the project on their mandate.

The integration of the functions of equality body and NHRI in Belgium is only at its inception. Leaving aside the necessity to make the NHRI independent according to the Paris Principles, discussions have still to start at the time of writing this report. In the meanwhile, the main attention goes to the 'inter-federalisation' of the Centre for Equal Opportunities and Opposition to Racism. It is therefore too early to examine how the arc-institution will look like. Considering the absence of consensus on the issue, it is however probable that the current project is the most common denominator amongst for the moment. The principal question is whether it will be possible to find an agreement on the creation of an NHRI with A-status while allowing existing bodies to continue to work.

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List of Interviewees

Government

Niki Dheedene, Advisor, Private Office of the Deputy Prime Minister and Minister for Internal Affairs and Equal Opportunities

Alexander Hoefmans, Advisor, Private Office of the Minister of Justice

Civil society

Eva Berghmans, Campagner, Amnesty International Belgium (Dutch-speaking section)

Montserrat Carreras, External Relations Officer, Amnesty International Belgium (French-speaking section)

Jan Pollet, Political Affairs Officer, Amnesty International Belgium (Dutch-speaking section)

Independent bodies

Jozef De Witte, Director, Centre for Equal Opportunities and Opposition to Racism

Carine Joly, Advisor, Institute for Equality of Men and Women

Danuta Kuzyn, Legal Officer, Institute for Equality of Men and Women

Michel Pasteel, Director, Institute for Equality of Men and Women

Parliament/University

Eva Brems, Member, (Federal) House of Representatives; Professor, University of Ghent