

**Bridging the divide – matters to be taken into account
regarding the integration of the functions of national
equality bodies and national human rights institutions
Case study: Denmark**

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I. BACKGROUND TO THE PRESENT SITUATION - HISTORICAL DEVELOPMENT

The Danish Centre for Human Rights under threat

The Danish Centre for Human Rights was established in 1987. In the early years it was primarily a human rights research institution but it soon developed into an institution also focussing on documentation, information, general advice and consultancy on human rights issues.

In 1999, the UN approved the Danish Centre for Human Rights as an independent and autonomous National Human Rights Institution (NHRI) established in accordance with the UN Paris Principles for National Human Rights Institutions.

A Board for Ethnic Equality also existed in Denmark. It was established in 1993 to promote ethnic equality in Denmark. The Board for Ethnic Equality did not deal with individual complaints of discrimination.

A minority coalition government between the Liberal Party and the Conservative People's Party came into power in November 2001 after 8 years of Social Democratic government. One of the reasons for the change of government was that immigration issues had been given great weight in the election campaign in the autumn of 2001.¹

In his first New Year speech as prime minister, Anders Fogh Rasmussen from the Liberal Party expressed the following on January 1st 2002:

"We will put people before the system. The individual person must have greater freedom to shape his or her own life. We will do away with rigid systems, disempowerment and regimentation.

We believe that people themselves are the best to make choices. We do not need experts and arbiters of taste to decide on our behalf.

In recent years a true wilderness of public councils and institutions has been burgeoning. Many of them have developed into state-authorized arbiters of taste - determining what is good and what is right in a number of areas.

There is a tendency for expert tyranny, which is threatening to suppress the free public debate. People should not put up with admonishments from so-called experts who think they know best. Experts may be good enough for the conveying of factual knowledge. But when it comes to personal choice, we are all experts.

The government will eliminate unnecessary councils and institutions. It will be a very comprehensive reorganization. We will clean up this intermediate layer as it tabs resources and attention away from the essential" (translation by the author).²

¹ Jørgen Goul Andersen, *Valgkampen 2001: Vælgernes politiske dagsorden*, March 2002. See: http://www.epa.aau.dk/fileadmin/user_upload/ime/Election/arbejdsrapporter/valgarbapirnr12.pdf

² See: http://www.stm.dk/p_7354.html

"Vi vil sætte mennesket før systemet. Den enkelte skal have større frihed til at forme sit liv. Vi vil gøre

On January 11th 2002 a preliminary so-called “death list” was published by the government.³ The list had around 150 councils and institutions that according to the government should be shut down. The list indicated that parts of the tasks of the Danish Centre for Human Rights should be merged with other centres on foreign affairs and development studies. It was proposed that subsidies for a number of NGOs including an NGO entitled the Documentation and Advisory Centre on Racial Discrimination should be discontinued. The Documentation and Advisory Centre on Racial Discrimination worked (and still works) for the promotion of equal treatment regardless of race or ethnic origin and among other things provides assistance to individual victims of discrimination.

On the same day, Per Stig Moeller, the Minister of Foreign Affairs proposed that parts of the tasks of the Danish Centre for Human Rights should be merged with 4 other centres to establish a combined research centre on international relations. The remaining tasks of the Danish Centre for Human Rights should be transferred to a newly established department on human rights within the Ministry of Foreign Affairs.⁴

The proposal caused uproar - nationally as well as internationally. Criticism was raised by the opposition parties as well as internally within the government.⁵ The UN Human Rights Commissioner, Mary Robinson, heavily criticized the Danish government for shutting down the Danish Centre for Human Rights.⁶ The Swedish Minister for Development Aid and Integration, Jan O. Karlsson, suggested that the Danish Centre for Human Rights should move to Lund in Sweden, if the Danish government maintained the shutting down of the Centre.⁷

On February 27th 2002 the Danish government gave in to the criticism and declared that the Danish Centre for Human Rights would be kept intact with the same statutes and the same governing bodies. It was still to be merged with 4 other research centres

op med stive systemer, umyndiggørelse og ensretning.

Vi tror på, at mennesker er bedst til selv at vælge. Vi behøver ikke eksperter og smagsdommere til at bestemme på vore vegne.

I de senere år er der ved knopskydning skudt et sandt vildnis af statslige råd og nævn og institutioner op over alt. Mange af dem har udviklet sig til statsautoriserede smagsdommere, som fastslår, hvad der er godt og rigtigt på forskellige områder.

Der er tendenser til et eksperttyranni, som risikerer at undertrykke den frie folkelige debat. Befolkningen skal ikke finde sig i løftede pegefingre fra såkaldte eksperter, der mener at vide bedst. Eksperter kan være gode nok til at formidle faktisk viden. Men når vi skal træffe personlige valg, er vi alle eksperter.

Regeringen vil fjerne overflødige råd og nævn og institutioner. Det bliver en meget omfattende sanering. Vi vil rydde op i dette mellemlag, som tapper ressourcer og fjerner opmærksomhed fra det væsentlige.”

³ Ritzau, 11.01.2002.

⁴ Politiken newspaper, 12.01.2002.

⁵ Politiken newspaper, 19.01.2002. Jyllands-Posten newspaper, 20.01.2002.

⁶ Ritzau, Politiken and Jyllands-Posten newspapers, 17.01.2012.

⁷ Politiken newspaper, 26.02.2002.

but in such a way that each centre would keep its autonomy, save the establishment of a common administration overseeing all of the centres. According to the government, the Danish Centre for Human Rights would thereby keep its independence and autonomy. This new institution was named the Danish Centre for International Studies and Human Rights. It consisted of two institutes: one on international studies and one on human rights as well as a common crosscutting administrative and financial body. All three bodies had their own director and board of directors. As part of this transition, the Danish Centre for Human Rights changed its name to the Danish Institute for Human Rights. However, it was more or less the same institution as before. The other half, the Institute on International Studies, was a merger of 4 different research and policy bodies.

As a result of the decision of the Danish government to maintain in existence the Danish Centre for Human Rights, the Danish Peoples Party, being the supporting party of the minority government, threatened the government to denounce the agreement they had entered into regarding the national budget.⁸ The Danish Peoples Party wanted the closing down of the Danish Centre for Human Rights, which it had stated explicitly for several months. The party was furious that the government had given in to the strong criticism from home and abroad and that the government had decided to save the Centre without negotiating this decision with the Danish Peoples Party - the coalition partner of the government.⁹

On March 5th 2002 the government and the Danish Peoples Party entered into a new agreement that saved the national budget. To satisfy the requirements of the Danish Peoples Party, it was decided to shut down the Board for Ethnic Equality instead of the Danish Centre for Human Rights.¹⁰ Furthermore it was decided that the director of the former Danish Centre for Human Rights, Morten Kjærum, was to be fired.¹¹

The agreement on the national budget between the government and the Danish Peoples Party contained the following wording:¹²

- The government puts forward a bill on the establishment of the Danish Centre for International Studies and Human Rights.
- The Board for Ethnic Equality will be shut down on December 31st 2002.
- The positions as Directors of the new Centre will be appointed following public announcement. The boards in question will have the power to appoint their own director.
- The new Institute for Human Rights must fulfil the obligations of article 13 of Directive 2000/43 on equal treatment between persons irrespective of race or ethnic origin.
- The agreement about the national budget remains valid.

In the media the agreement between the government and the Danish Peoples Party was described as horse-trading: “Danish Peoples Party puts pressure on the government to shut down the Board for Ethnic Equality as a result of the Minister for

⁸ Berlingske Tidende newspaper, 28.02.2002.

⁹ B.T. newspaper, 28.02.2002.

¹⁰ Ritzau, 05.03.2002.

¹¹ B.T. newspaper, 05.03.2002 and Berlingske Tidende newspaper, 06.03.2002.

¹² National Budget Agreement between the government and Danish Peoples Party about the proposal to establish the Danish Centre for International Studies and Human Rights, March 5, 2002.

Foreign Affairs wanting to keep the Danish Centre for Human Rights.”¹³ “It cost the head of a Bishop for the government to be able to celebrate its first 100 days in government. Yesterday, the Bishop from Aarhus, Kjeld Holm, lost his presidency of the Board for Ethnic Equality as the Board was shut down.”¹⁴

In June 2002 Morten Kjærum, the former director of the Danish Centre for Human Rights, applied for the position as director of the Danish Institute for Human Rights - his own former position - and was appointed director in September 2002. The Danish Peoples Party highly criticized this appointment of the “arbiter of taste above all arbiters of taste” as they described Morten Kjærum.¹⁵ However, the government refused to intervene in the decision of the Board.¹⁶ After the appointment, Morten Kjærum promised that the Institute would focus even more than previously on the domestic human rights situation.¹⁷

At the same time the annual public subsidy from the national budget for the Documentation and Advisory Centre on Racial Discrimination of DKK 1.8 million was drastically reduced. In 2003 the Documentation and Advisory Centre on Racial Discrimination was denied further funding. One of the reasons was that the Institute for Human Rights was to be the provider of assistance to victims of discrimination as required under EU law.¹⁸

A number of other ethnic minority-NGO’s like ELO, IndSAM and POEM had to shut down due to the fact that they also lost their public funding.

The Danish Institute for Human Rights

On March 21st 2002, the government put forward a bill on the establishment of the Danish Centre for International Studies and Human Rights.¹⁹ As described above, two separate institutes were to make up the Centre: the Institute for International Studies and the Institute for Human Rights. The bill stipulated the shutting down of the Danish Board for Ethnic Equality. Finally the bill stipulated that the Danish Institute for Human Right was to constitute the National Equality Body as required under article 13 of the Race Directive (Directive 2000/43). As such, the new Danish Institute for Human Rights could be said to constitute a merger of the former Board for Ethnic Equality and the former Danish Centre for Human Rights plus an obligation to provide assistance to individual victims of racial discrimination as stated by the Race Directive.

According to the explanatory notes to the bill, the aim of the new overall Danish Centre for International Studies and Human Rights was to establish the framework for a more coherent and concentrated foreign political research environment as well as to

¹³ Berlingske Tidende newspaper, 06.03.2002.

¹⁴ Politiken newspaper, 06.03.2002.

¹⁵ Vejle Amts Folkeblad newspaper, 10.09.2002.

¹⁶ Information newspaper, 10.09.2002.

¹⁷ Information newspaper, 10.09.2002.

¹⁸ Bjørn Dilou Jacobsen, Assistance to victims of Discrimination by Equality Bodies of the EU Member States – a Scandinavian Perspective, DJØF Publishing Copenhagen, 2010, page 96.

¹⁹ L 183: Forslag til lov om etablering af Dansk Center for Internationale Studier og Menneskerettigheder, 21.03.2002.

save money through the merge of the various administrations.²⁰ Furthermore, the new centre was a way to “follow up on the decision by the government regarding the reorganization of councils, boards, committees and centres.”²¹ Moreover, according to the explanatory notes to the bill, the shutting down of the Board for Ethnic Equality “should be seen in the light of the Race Directive.”²² As expressed in the explanatory notes, the bill only implemented article 13 of the Race Directive on the setting up of the Danish Institute for Human Rights as the National Equality Body whereas the rest of the Directive would be implemented in the coming parliamentary session.

The bill stated in section 2, paragraph 2 (4) that as a National Equality Body, the Danish Institute should:

- Promote equal treatment of all persons without discrimination on grounds of racial or ethnic origin, including by assisting victims of discrimination in pursuing their complaints about discrimination
- Conduct independent surveys concerning discrimination
- Publish reports and make recommendations on discrimination issues

Except for the above wording in section 2 implementing the obligation of article 13 of the Race Directive, the preparatory works to the bill did not express anti-discrimination and ethnic equality as an aim of the establishment of the new Danish Institute for Human Rights. The primary rationale behind the “merger” of the Danish Centre for Human Rights and the Board for Ethnic Equality was financial and political. As expressed by the Prime Minister during the Parliamentary debate, the aim of the general restructuring of a number of councils and institutions was to get rid of unnecessary institutions and to free up resources for increased welfare.²³ It was also stressed that the new structure of the Danish Centre for International Studies and Human Rights with its Institute for Human Rights would strengthen the previous work on human rights protection.

During the parliamentary discussions of the bill, the Minister of Foreign Affairs was posed some questions dealing with the closing down of the Board for Ethnic Equality. In one question, the minister was asked to assess what competencies would be lost by the closing down of the Board and the establishment of the new Centre for International Studies and Human Rights.²⁴ The minister of Foreign Affairs answered that the Board did not have the power to deal with individual complaints of racial discrimination and since the new Institute for Human Rights would be given that power, it would not be a question of loss of competencies but rather an extension of competencies. According to the minister, the new Institute for Human Rights would be able to do exactly the same as the Board and even more so because of its power to provide assistance to individual victims of discrimination.²⁵ In his answer, the minister did not comment on the loss of experiences and knowledge that would result from the shutting down of the Board and the dismissal of the employees of the Board.

²⁰ Explanatory notes to L 183.

²¹ Explanatory notes to L 183.

²² Explanatory notes to L 183.

²³ Forespørgsel nr. F 15 (Udenrigsudvalget, L 183 - bilag).

²⁴ Spørgsmål 6 (Udenrigsudvalget, L 183 - bilag 13 – 17. April 2002).

²⁵ Svar på Spørgsmål 6 (Udenrigsudvalget, L 183 - bilag 13 – 17. April 2002).

In May 2002, the bill was adopted and it was decided to establish the Danish Centre for International Studies and Human Rights with its two independent institutes under the Ministry of Foreign Affairs.²⁶ By law, the Minister of Foreign Affairs was to appoint the president of the common Board of the Centre which was to oversee the two institutes. The Centre was to report to the Minister with respect to its budget and financial reporting. At the same time it was decided that the Board for Ethnic Equality was to be shut down by the end of 2002.

During debate regarding the bill on the establishment of the Danish Centre for International Studies and Human Rights, the Board for Ethnic Equality in its hearing statement expressed concern about the fact that the work for the promotion of anti-discrimination and ethnic equality in Denmark was to be put under the field of responsibility of the Minister of Foreign Affairs.²⁷ The same concern was raised during the Parliamentary debate where it was stated that the work that the Board for Ethnic Equality was responsible for simply did not belong in a foreign policy research centre: “It is about the safeguard of ethnic minorities in a national context, which is not logical to place in a foreign policy centre.”²⁸

In January 2003 the Board for Ethnic Equality was closed and the new Danish Institute for Human Rights - as part of the Centre for International Studies and Human Rights - was established. By keeping the existing structure of the Danish Centre for Human Rights in the new Centre, the new Institute for Human Rights was considered to keep its status as a national human rights institute (NHRI) in line with the UN Paris Principles.²⁹

Furthermore, the Danish Institute for Human Rights was given responsibility for the tasks of the National Equality Body under article 13 of the Race Directive. Thus the Danish Institute for Human Rights was appointed as the specialised equality body with the functions of promoting equal treatment, assisting victims of discrimination, conducting surveys concerning discrimination and the publishing of reports and recommendations on discrimination.

Conclusion on merger

In 2003 the Danish Institute for Human Rights was established as a National Equality Body and a National Human Rights Institution. While this marked a departure from previous arrangements whereby a separate specialised body existed in relation to race equality, it is important to underline that the closed Board for Ethnic Equality did not have the mandate to assist victims of discrimination and as such it did not fully constitute a National Equality Body according to the Race Directive.

²⁶ Act no. 411 of 6. June 2002 on the establishment of the Danish Center for International Studies and Human Rights.

²⁷ L 183 Bilag 1, page 59: Consultation response from the Board for Ethnic Equality. See: http://webarkiv.ft.dk/img20012/udvtilag/lib2/20012_8662.pdf

²⁸ Statement by Jeppe Kofod from the Social Democrats during the first debate of bill L 183. Meeting no. 50 on 5. April 2002.

²⁹ Explanatory notes to L 183, section 7.

This development was primarily motivated by domestic political factors, a hostile political environment against ethnic minorities and the reduction of costs that was thought to be possible to accrue from reassigning these roles and responsibilities.

The effectiveness argument that an integration of the two bodies could enhance the impact of the body on the promotion of human rights and equality was not heard in the debate.

The Danish Institute for Human Rights – development from 2003 to 2012

Timeline with structural highlights in the area of discrimination:

2003

In addition to a mandate to assist victims of discrimination, the Danish Institute for Human Rights (in the following called DIHR) was given the mandate to review individual complaints of discrimination on account of race and ethnic origin outside the labour market.³⁰ On this basis, DIHR established the Complaints Committee on Ethnic Equal Treatment (Klagekomiteen for Etnisk Ligebehandling) in July 2003 with mandate to decide on individual complaints of discrimination.³¹ The Complaints Committee could issue decisions on whether discrimination in individual cases had taken place. However, the Committee did not have the power to decide that an individual victim of discrimination was entitled to compensation.

2004

In April 2004, DIHR – in relation to its Complaints Committee on Ethnic Equal Treatment - was also given the power to handle individual complaints of discrimination on account of race and ethnic origin within the labour market.³²

2009

In January 2009, the Board of Equal Treatment was established as an administrative, independent and autonomous quasi-judicial body.³³ The sole purpose of the Board was and still is to issue decision in cases of individual complaints of discrimination.³⁴ The decisions made by the Board are final and binding for both parties. The Board may decide that a victim of discrimination is entitled to compensation. The Board can also set aside a dismissal unless it is considered unreasonable to claim the employment relationship maintained or restored.

The Board of Equal Treatment was a merger of the Complaints Committee on Ethnic Equal Treatment and the Board on Gender Equality plus others. As previously described, the Complaints Committee on Ethnic Equal Treatment was established as a separate section of the Danish Institute for Human Rights and was empowered to hear

³⁰ Section 10 of Act. No. 374 of 28. May 2003 on ethnic equality.

³¹ See: <http://www.klagekomite.dk/?AFD=1>

³² Act No. 253 of 7. April 2004 amending the Act on Prohibition of differential treatment on the labour market etc.

³³ Act No. 387 of 27. May 2008 on the Board on Equal Treatment.

³⁴ See: <http://www.ligebehandlingsnaevnet.dk/artikler/default.aspx?page=1138>

complaints of discrimination based on race and ethnicity. The Board of Gender Equality was established in 2000 to deal with individual complaints of gender discrimination. The functions and powers of the Board of Gender Equality were quite similar to the current Board of Equal Treatment. In contrast with the Complaints Committee, the Board of Gender Equality could issue decisions that victims of gender discrimination were entitled to compensation.

By the end of 2008 the Complaints Committee and the Board on Gender Equality were both closed down and all pending cases were referred to the Board of Equal Treatment.

From the outset the Board of Equal Treatment took and still takes both a 'horizontal' and 'integrated' approach to anti-discrimination. Besides dealing with complaints of discrimination on account of gender, race and ethnic origin like the previous boards, it also has the power to deal with complaints of discrimination on account of religion and belief, political opinion, sexual orientation, disability and national, social or ethnic origin. In contrast with the former separated equality bodies, the Board of Equal Treatment is an integrated board of equality. Thus, the current Board of Equal Treatment has more powers than the two previous boards on gender and race/ethnicity and a far wider remit than that which resulted from merging the duties and powers of the Complaints Committee on Ethnic Equal Treatment and the Board on Gender Equality

There is no connection between the administrative Board of Equal Treatment and DIHR. Since January 2009 DIHR has not issued decisions in cases of individual complaints of discrimination.

The Board of Equal Treatment has no power to generally promote equal treatment and officially it has not been designated the role of a National Equality Body. After the closing down of the Complaints Committee for Ethnic Equal Treatment, DIHR retained its status of specialised body according to Article 13 of the Race Directive. DIHR continues to possess a mandate to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination.

2011

DIHR was given the task to promote, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities in Denmark in accordance with Article 33.2 of the Convention.³⁵ The role came into force in January 2011.

DIHR was appointed as the National Equality Body on gender issues according to the EU directives on gender discrimination. DIHR is to promote, assess, monitor and support non-differential treatment of women and men regardless of gender.³⁶ The role came into force on March 15, 2011.

³⁵ B 15 Forslag til folketingsbeslutning om fremme, beskyttelse og overvågning af gennemførelsen af FN's konvention om rettigheder for personer med handicap – 17. December 2010.

³⁶ Act no. 182 of 8. March 2011. See: <https://www.retsinformation.dk/forms/R0710.aspx?id=136126>

Conclusion

The Danish Board of Equal Treatment does not have the official status of a National Equality Body.³⁷ On the website of the Board, the Board does consider itself a National Equality Body and the Board is also a member of Equinet – the European network of equality bodies. From a legal and official perspective the Board is a tribunal type equality body and works solely on the handling of individual complaints.

The Danish Institute for Human Rights constitutes an integrated body of a National Equality Body and a National Human Rights Institution with a very broad mandate. It is a promotional type of equality body.

This paper will primarily deal with the Danish Institute for Human Rights, which is also officially considered to combine the functions of a National Equality Body and a National Human Rights Institution.

³⁷ Bjørn Dilou Jacobsen, side 46 og 50.

II. THE CURRENT INSTITUTIONAL FRAMEWORK OF THE INSTITUTE FOR HUMAN RIGHTS

Purpose of the Institute for Human Rights

In May 2012 it was decided to split up the Danish Centre for International Studies and Human Rights that had existed since January 2003, as the synergies in the common centre had never been fully realised. This decision was influenced by the change of government in October 2011 and the return to power of the Social Democrats in coalition with the Social-Liberal Party and the Socialist People's Party. In the Government Platform from October 2011, it was directly stated: "The Institute for Human Rights must be made into a separate institution to strengthen and clarify the position of the institution as a National Human Rights Institute (NHRI)."³⁸

The Danish Institute for Human Rights was to be re-established as a separate and independent institution. The aim was to strengthen and clarify the position of the Institute as a National Human Rights Institute (NHRI) in accordance with the UN Paris Principles. The Act on "The Institute for Human Rights – The National Human Rights Institute of Denmark" was adopted on May 29, 2012 and entered into force on January 1, 2013.³⁹ The Institute has been accredited as an A-status NHRI since 2001.

In the current Act it is clarified that "The Institute for Human Rights – The National Human Rights Institute of Denmark" (in the following called DIHR) is not primarily a research institution but a national human rights institution with research as one of its functions.

Duties and powers of the Institute for Human Rights – The National Human Rights Institute of Denmark

The duties and powers of DIHR are clarified in the Act (translation by the author):

"Section 2. The Institute for Human Rights – The National Human Rights Institution of Denmark must promote and protect human rights in peacetime and during armed conflict, in particular by

- 1) Monitoring and reporting on the human rights situation in Denmark,
- 2) Conducting analysis and research on human rights,
- 3) Advising the parliament, the government, other public authorities and private actors on human rights
- 4) Promoting coordination of and assistance to civil society organizations working on human rights,
- 5) Implementing and promoting human rights education,
- 6) Managing information on human rights,
- 7) Providing library facilities on human rights and
- 8) Contributing to the implementation of human rights at home and abroad.

³⁸ [Government Platform 2011](#), page 39.

³⁹ Act No. 553 of 18. June 2012.

Subsection 2. The Institute for Human Rights – The National Human Rights Institution of Denmark must promote equal treatment of all persons without discrimination on grounds of sex, race or ethnic origin, including by

- 1) Assisting victims of discrimination in pursuing their complaints about discrimination in the light of the rights of victims, associations, organizations and other legal entities,
- 2) Conducting independent surveys concerning discrimination and
- 3) Publishing reports and making recommendations on discrimination issues.

Subsection 3. The Institute for Human Rights - The National Human Rights Institution of Denmark must submit an annual report to the parliament about the activities of the institution and about the development of the human rights situation in Denmark. The report must be published by the institute.”

It is specifically mentioned in the act that DIHR, in general, must monitor and report on the human rights situation in Denmark. Furthermore every year DIHR must report to the Parliament about the work of the Institute as well as on the human rights situation in Denmark.⁴⁰ DIHR’s functions as national equality body in accordance with the Race Directive and the Gender Directives continue after January 1st 2013 with no changes in the implementation of the mandate. Thus the mandate as specialised body for the promotion of equal treatment irrespective of gender, racial or ethnic origin is laid down in the founding law of the Institute by replicating the EU-law requirement to establish equality bodies. How the Institute is to provide assistance to victims of discrimination is not further regulated by law or the like. As a public body, the Institute must comply with general Danish administrative law when carrying out its work.⁴¹

It follows from the explanatory notes to the bill that by giving DIHR the mandate to function as the national equality body, compliance with the UN Paris Principles is also ensured within the equal treatment area.⁴²

The discrimination grounds of age, disability and religion or belief are not mentioned in the act. The act describes the tasks of the institute in the area of human rights as well as the task of the institute of a national equality body according to the EU directives only covering the discrimination grounds of gender, race and ethnicity. Work on equality with regard to age, disability and religion or belief will be covered by the national human rights work of the institute. The special task of the institute to promote, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities followed a separate decision by the Parliament.⁴³

⁴⁰ Act No. 553 of 18. June 2012, section 2, subsection 3.

⁴¹ Bjørn Dilou Jacobsen, side 48.

⁴² Bill no. L 154, explanatory notes to section 2 (2).

⁴³ B 15 Forslag til folketingsbeslutning om fremme, beskyttelse og overvågning af gennemførelsen af FN's konvention om rettigheder for personer med handicap – 17. December 2010.

Independence of the Danish Institute for Human Rights

Governance

DIHR is led by an Institute Board of Directors, which is responsible for all matters relating to substance, finance and management.⁴⁴ The Board consists of 13 members, serving in their personal capacity and all acting as independent experts. Six members are appointed by the Council for Human Rights, one member is appointed by the Rector of the University of Copenhagen, one member is appointed by the Rector of the University of Aarhus, one member is appointed by the Rector of the University of Southern Denmark, one member is appointed by the Rector of the University of Aalborg, two members are appointed by the Danish Rectors' Conference and one member is selected by the staff of DIHR.

Among the six members that are appointed by the Council for Human Rights at least one member must be associated with an organisation working on ethnic minority issues, at least one member must be associated with an organisation working on equal treatment of men and women and at least one member must be appointed on the recommendation of Disabled Peoples Organisations Denmark.

This method of appointment is quite similar to the way the Institute Boards of Directors were appointed prior to 2013. However, before January 1st 2013, at least two members had to be associated with an organisation working on ethnic minority issues, which is not the case anymore. Also, prior to 2013 there were no requirements that members had to be associated with organisations working on gender issues and disability issues. This change is a consequence of the institute assuming the roles of special equality body on gender and the mandate to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities.⁴⁵

The Council for Human Rights discusses general guidelines for the operation of the Institute and follows the activities of the Institute to promote the purposes of the Act on The Institute for Human Rights (section 5 (2)). The Board of Directors nominates the Council for Human Rights after a public hearing. The Council for Human Rights must be composed to reflect the view prevalent in civil society organisations working on human rights (section 5 (1)).

Legal structure

The new Act constitutes DIHR as an independent institution having a legal personality separate from the parent Ministry of Foreign Affairs. The legal personality of DIHR is vested in civil law.⁴⁶

In the 2012 bill it was proposed that a representative from the Ministry of Foreign Affairs should participate as an observer with no voting rights in the Board of Directors. The aim was to secure the transparency and openness of DIHR's work as

⁴⁴ Act No. 553 of 18. June 2012 on The Institute for Human Rights – The National Human Rights Institute of Denmark, section 3.

⁴⁵ Explanatory notes to Bill no. L 154, section 3.3.

⁴⁶ Act No. 553 of 18. June 2012 on The Institute for Human Rights – The National Human Rights Institute of Denmark.

well as to assist the focus of the Board of Directors on good administration of government subsidies.⁴⁷ The proposal was heavily criticized during the consultation process of the bill. It was claimed that the arrangement would violate section B 2 of the Paris Principles stating that the Institute must be independent of the government and not be subject to financial control. It was claimed that the arrangement would threaten the independence of DIHR.⁴⁸ In the final act, the proposal was removed.

The Board of Directors prepares statutes for the Institute for Human Rights that must be approved by the Minister of Foreign Affairs (section 4(2)). This was also criticized during the consultation procedures of the bill as a violation the UN Paris Principles. However, the provision of approval by the Minister of Foreign Affairs was kept in the final act.

Resources

DIHR independently manages its core administrative budget without conditions set by the ministry. Also in the provision of independent assistance to victims of discrimination, DIHR makes the decisions itself with no set restrictions from the ministry. With regard to the issuing of surveys, reports and recommendations with the purpose of giving advice to the government, DIHR also takes autonomous decisions.⁴⁹

In 2011 DIHR had an overall budget on DKK 119.709.000 (euro 16.049.149). The budget for equal treatment irrespective of ethnicity (national equality body on ethnicity and race) was DKK 6.000.000 (euro 804.408) amounting to 5 % of the total budget. The Danish government has allocated DKK 6.000.000 for ethnic equality to DIHR every year since 2003. The total expenditure in 2011 on equal treatment irrespective of ethnicity was DKK 4.034.864 (euro 540.946).⁵⁰

In 2009, DIHR had 104 staff members with 12 staff members substantially working on issues of equal treatment in general (6 full time staff members).⁵¹ In 2012 DIHR had 16 staff members working on equal treatment (12 full time staff members). The 2012 numbers include staff members working on gender and disability equality.⁵²

In January 2009, as a result of the establishment of the Board of Equal Treatment, the mandate of DIHR was changed and its individual complaints mechanism, the Complaints Committee on Ethnic Equal Treatment, was shut down. The closing down of the complaints mechanism did not influence the yearly allocation of DKK 6.000.000 to DIHR as the specialised equality body of Denmark.

⁴⁷ Bill no. L 154, section 3(7).

⁴⁸ L 154 Bilag 1, 10 April 2012.

⁴⁹ Pia Justesen, Equality Bodies Country Fiche – Denmark, November 2010. Human european consultancy, Study on Equality Bodies set up under Directives 200/43 and 2004/113.

⁵⁰ The Danish Institute for Human Rights, Facts 2011 – Organisation, financial statements, activities, legislative basis. See:

http://memeskeret.dk/files/pdf/Publikationer/Annual_reports/dk/Aarsberetning_2012_indstik.pdf

⁵¹ Pia Justesen, Equality Bodies Country Fiche – Denmark, November 2010. Human european consultancy, Study on Equality Bodies set up under Directives 200/43 and 2004/113, page 3.

⁵² E-mail from Mandana Zarrehparvar from DIHR of 5 February 2013.

DIHR can receive funding from foundations and is also allowed to do commercial consultancy and to provide advisory services (section 8).

Appointments

The Institute Board of Directors appoints the executive director of DIHR following a public call. The executive director is responsible for the day-to-day professional management of the Institute.

Staff members are appointed by the management and by the executive director. They are appointed according to private law and in accordance with collective agreements governing the public sector. Without interference from the ministry (but in respect of various collective agreements), DIHR can make decisions concerning the level of salaries, concerning conditions of promotions and ways of evaluating personnel, concerning the way of appointing personnel as well as on downsizing in the organisation.⁵³ The employees of DIHR possess a variety of educational backgrounds (i.e. technical training, law, psychology, political science, social science, history, language, religion and administrative/financial training). In 2011, 60 staff members were women and 30 staff members were men.⁵⁴

⁵³ Pia Justesen, Equality Bodies Country Fiche – Denmark, November 2010. Human european consultancy, Study on Equality Bodies set up under Directives 200/43 and 2004/113.

⁵⁴ The Danish Institute for Human Rights, Facts 2011 – Organisation, financial statements, activities, legislative basis. See:
http://menneskeret.dk/files/pdf/Publikationer/Annual_reports/dk/Aarsberetning_2012_indstik.pdf

III. ANALYSIS OF KEY FACTORS FACILITATING OR INHIBITING THE EFFECTIVE INTEGRATION OF EQUALITY AND HUMAN RIGHTS FUNCTIONS - FOCUS ON THE DANISH SOCIETY

This analysis begins with the assumption that effective integration of equality and human rights functions in integrated bodies should result in enhanced protection and promotion of equality and human rights.

Various conditions appear to influence the ability of integrated bodies to realise their potential. The following external indicators have been identified in a Danish context.

Lack of integration of equality and human rights in Danish law

Equality and non-discrimination are fundamental principles in human rights and, in effect, make all human rights universal.⁵⁵ In general, international regulations on human rights from the UN and the Council of Europe are based on the prohibition of discrimination, as formulated in Article 2 of the Universal Declaration of Human Rights from 1948:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The Universal Declaration of Human Rights also establishes a fundamental principle of equality expressed in Article 1 of the Declaration:

“All human beings are born free and equal in dignity and rights.”

The principles of non-discrimination and equal treatment are considered to be cornerstones of human rights and of central importance for the understanding of the human rights protection of citizens. It is in particular the prohibition of discrimination that promotes and provides equality for citizens. Equality and non-discrimination underpin the enjoyment of human rights. The prohibition of discrimination has been used as an active principle in the implementation of human rights. It has been used by international monitoring bodies in individual cases of complaints and in general in examinations of the Member States looking into whether their protection of citizens takes place in a way that provide citizens equality.⁵⁶

At the level of international law, in theory, it should be clear that there are no tensions between promoting human rights and promoting non-discrimination/equal treatment. Non-discrimination and equal treatment does not only constitute a separate part or a distinct element of international human rights. Non-discrimination and equal treatment is crosscutting and in a broad sense supports all international human rights – civil and political as well as economic, social and cultural rights. Non-discrimination ensures that human rights are enjoyed by all no matter what societal groups they form

⁵⁵ Equinet, Equality Bodies and National Human Rights Institutions – Making the Link to Maximise Impact, 2011, page 6.

⁵⁶ Institut for Menneskerettigheder, Effektiv beskyttelse mod diskrimination – om retlige og faktiske tiltag, Udredning nr. 5, 2007, side 47.

part of.⁵⁷ In reality, non-discrimination and equal treatment carry the protection of international human rights.

At the level of national law in Denmark, the picture is different. In Denmark human rights and non-discrimination are considered as two different although parallel systems.

There is a long tradition of working on and considering human rights issues in Denmark. There is a genuine understanding of the purpose and meaning of human rights although there is no general human rights law. Danish law is not based on a foundation of human rights. Generally, human rights are mostly thought to be relevant in other countries and in foreign affairs. “Human rights are easy to care for because they deal with situations in other states.”⁵⁸

In contrary to human rights, the area of anti-discrimination is regulated to a large extent in Danish law. “The right to non-discrimination is more visible. In general, it is perceived as a more substantial right over human rights based on international conventions. As such non-discrimination is experienced as part of binding rights given in national law.”⁵⁹

However, anti-discrimination and equal treatment law is often considered as something that has been forced into the Danish context by the European Union since the late 1970’s. “Non-discrimination and equal treatment entered the side door into Denmark through the European Union. It has not been assigned great seriousness. It’s just something we have to accept as part of our EU membership.”⁶⁰ There is not a long tradition for anti-discrimination legislation in Denmark.

The principles of equality and objectivity in Danish administrative law are general principles prohibiting unfair treatment within the public sector. These administrative law principles obligate public bodies to protect equality and human rights when they exercise their functions. The administrative law principles are general principles and for individual citizens they are often experienced as weak and unclear principles. An introduction in Danish law of a robust obligation for all public bodies to have due regard to both human rights and equality in their work would clear the state of the law in this area. For example, at the time of writing Ireland is proposing to introduce the following into law:

*“A public body shall in the exercise of its functions have due regard to the need to eliminate prohibited discrimination, promote equality of opportunity and treatment and protect the human rights of its staff and the persons to whom it provides services....”*⁶¹

⁵⁷ Equinet, Equality Bodies and National Human Rights Institutions – Making the Link to Maximise Impact, 2011, page 7.

⁵⁸ Employee of Documentation and Advisory Centre on Racial Discrimination (DACoRd).

⁵⁹ Former employee I of DIHR.

⁶⁰ Employee I of DIHR.

⁶¹ Michael Farrell, ECRI Member, Seminar with national Specialised Bodies to combat racism and racial discrimination, The Irish Example, 29th May 2012, page 7.

Generally human rights and non-discrimination are seen as two separate systems that have not been integrated in Danish law and practice. Politicians, authorities, NGO's and academia do not seem to have an integrated approach to human rights and non-discrimination. "When we talk about equality, no politician can find a way to say that it's about all of us. That it is not just about ethnic minorities."⁶²

The lack of integration of human rights and non-discrimination in Danish law and practice may have influenced the work of the integrated DIHR. "The high status of human rights could've spilled over to non-discrimination and equal treatment after the merger of the institutions in 2003. However, it was not a priority at that time. It should have been articulated internally and externally at that time that the Institute was both a National Human Rights Institute and a National Equality Body."⁶³

Public opinion on the protection against discrimination and human rights violations

The effectiveness of the work on equality requires an external environment that is supportive and enabling.⁶⁴ In general in Denmark, there is a poor recognition of the fact that discrimination constitutes an issue. "The basic social normativity in Denmark is that there is a great reluctance to accept structural discrimination in relation to ethnicity."⁶⁵

Public opinion does not seem to accept that there is any deficiency in Denmark's performance of obligations relating to equality and non-discrimination. "Talking about discrimination will be categorized as political correctness. Talking about human rights will be considered positive and constructive."⁶⁶

In general, the area of non-discrimination and equality is low status in comparison with human rights protection. At the law schools as well as at DIHR, much more research is done within the area of human rights than within the area of non-discrimination. Also, there are a number of different law school courses on human rights and most of them are oversubscribed. In contrary to that, law school courses specifically dealing with anti-discrimination and ethnic equal treatment are not on the schedule on a regular basis.

As an employee at DIHR explains: "After we received the special gender and disability mandates, it has been even clearer to us that ethnic equality is low status area. Disability is relatively high status area. Gender is in-between. People cannot see the problems of ethnic discrimination in the same way as when we talk about disability and gender."⁶⁷

⁶² Employee I of DIHR.

⁶³ Employee I of DIHR.

⁶⁴ Office of the UN High Commissioner for Human Rights, Economic, Social and Cultural Rights – Handbook for National Human Rights Institutions, 2005, page 40-41.

⁶⁵ Employee II of DIHR.

⁶⁶ Employee of DACoRd.

⁶⁷ Employee II of DIHR.

Fragmented anti-discrimination legislation

There is no general prohibition of discrimination in the Danish constitution or in civil law. The current legislation on discrimination is fragmented and it is difficult to get an overview of the content and scope of the right to non-discrimination.

The Danish legislation prohibiting discrimination consists of several acts offering different degrees of protection depending on the discrimination ground in question. Thus, there is a hierarchy between the different grounds of discrimination

The result is insufficient protection against discrimination targeted at certain groups, an unequal approach to combating discrimination, a complex legal basis for practitioners of law to apply and lack of predictability for ordinary citizens. For example, it is both made illegal in civil law and criminalised for restaurants to refuse admittance based on the ethnic origin of a person. However, it is not a violation of Danish law to refuse admittance because of a person's disability or age since these two discrimination grounds are not protected outside the labour market. Furthermore discrimination against homosexuals within commercial or non-profit services is criminalised and, therefore such cases may be investigated by the police, whereas homosexuals are unable to bring such a complaint to the Board of Equal Treatment under civil law with more favourable rules on the burden of proof.

A comprehensive equal treatment legislation covering all grounds of discrimination would support national structures for promoting equality.⁶⁸ In Denmark, the law does not send a clear signal that non-discrimination and equal treatment legislation is important. Companies and employers find it difficult to understand the obligations of the law and to perform in the right way. Furthermore, it can be questioned whether the law fully assist individuals to respond effectively to experiences of discrimination.

Underreporting

Underreporting of discrimination and harassment is considered to constitute a problem in Denmark.⁶⁹ Underreporting reduces the effectiveness of DIHR and the Board of Ethnic Equality in promoting equality.

Low level of awareness of national structures for promoting equality is thought to constitute one of the causes for this situation. In the national debate, concern has been expressed that public awareness of anti-discrimination legislation and redress in general is limited.⁷⁰ The Danish government is, however, of the opinion, that it cannot be concluded that people are unaware of the protection offered by Danish anti-discrimination legislation concerning race or ethnic origin from the fact that only few cases have been brought to court.⁷¹

⁶⁸ Commissioner for Human Rights, Opinion of the Commissioner for human rights on national structures for promoting equality, 21 March 2011, page 13.

⁶⁹ EU-MIDIS (2010), page 11-12.

⁷⁰ FRA (2009), par. 185.

⁷¹ FRA (2009), par. 183.

During the last couple of years, there has been a general raise in the number of discrimination cases dealt with by the Board of Equal Treatment. This increases the knowledge about anti-discrimination law in general and must be expected to influence the knowledge about the prohibition of racial and ethnic discrimination in particular.

The Board of Equal Treatment does, however, deal with relatively few cases on discrimination because of race and ethnicity in comparison with the other types of discrimination cases (gender, age, disability etc.). Of 191 decisions in 2011, 43 cases dealt with discrimination on account of race or ethnic origin. Only in 4 out of the 43 adjudicated cases on ethnic discrimination the Board concluded that discrimination had taken place.⁷²

The political will

The most important factor for a successful integration of national equality bodies and human rights institutions appears to be political will: “We are politically established institutions! If there is something the political system does not want, it is hard for us to succeed no matter how high the quality of our work is. The history of the past 10 years in Denmark illustrates this fact. In that period of time, there has been great political reluctance towards ethnic equality.”⁷³

The political and public discourse from 2002 to 2012 was very negative towards ethnic minorities. In that period, the political environment was neither favourable nor supportive to issues of non-discrimination and equality.

“If the merged institution of DIHR works, then it is in spite. The current DIHR was born in sin! It was never intended by the politicians, that the merger should strengthen human rights and equality work.”⁷⁴

⁷² Board of Equal Treatment, Annual Report 2011.
http://www.ligebehandlingsnaevnet.dk/Page_Pic/pdf/Ligebehandlingsnaevnets_Arsrapport_2011_23_08_2012_13_41.pdf

⁷³ Employee II of DIHR.

⁷⁴ Employee of DACoRd.

IV. ANALYSIS OF KEY FACTORS FACILITATING OR INHIBITING THE EFFECTIVE INTEGRATION OF EQUALITY AND HUMAN RIGHTS FUNCTIONS - FOCUS ON THE INSTITUTE FOR HUMAN RIGHTS

1. Introduction of overall gains and risks of merger experienced in Denmark

Effective integration of equality and human rights functions means that the integrated institution should be stronger than the sum of the two former and separate institutions:

“We attempt to unite the work on equality and human rights to become stronger, instead of spreading efforts and becoming weak. Human rights can be a lever for ethnic equality work.”⁷⁵

Over the years, DIHR has experienced a number of gains from the merger and from the holding of a dual mandate:

“The work on human rights becomes more concrete with the integration of the equality perspective. Using the prohibition of discrimination and the right to equality, we don’t need to explain the meaning of for example the right to education in the same way. Equality makes human rights more practical. At the same time, the work on equality becomes much easier with the integration of the human rights perspective. When you meet a public servant working on education it is obvious to ask him about his plans for educating children with ethnic minority background.”⁷⁶

The merger has also resulted in tensions and a clash of traditions and approaches that may have undermined the effectiveness of the equality work of DIHR in the first years after the merger.

The DIHR’s dual mandate should in theory provide it with the capacity to deal with complex cases involving equality issues and human rights issues as well as cases involving a conflict between rights and equality issues. The question is whether appropriate conditions are in place for the current DIHR to fully realise this potential?

By examining the development of the institutions from the former Danish Centre for Human Rights to the current Institute for Human Rights – The National Human Rights Institute of Denmark - and by interviewing a number of stakeholders with close connection to the Institute – during the merger in 2002 and now - a number of positive and negative indicators have been identified influencing the independence and effectiveness of an integrated body. The identified factors will be elaborated upon in the following.

⁷⁵ Employee II of DIHR.

⁷⁶ Employee I of DIHR.

2. Independence

a) Legal Structure

DIHR is a statutory body established by law and independent of the state. It does not form part of civil society due to its statutory basis and is also independent from civil society.⁷⁷

DIHR works within a broad mandate prescribed by law. It has been given the mandate to function as the national human rights institute of Denmark as well as the national equality body. This means that the Institute's compliance with the UN Paris Principles is ensured not only within the human rights area but also within the equal treatment area.⁷⁸ It enhances the independence of the integrated institution that it has been put under the remit of the international standards of the UN Paris Principles.

Besides the fact that the Minister of Foreign Affairs must approve the statutes for DIHR decided by the Board of Directors, the requirements for independence and pluralism in the UN Paris Principles appear to be fulfilled.

An equality body being set up to not only to provide assistance to victims of discrimination and to promote equal treatment more generally, but also to hear and investigate complaints risks being seen by respondents as biased in favour of complainants. Further, victims of discrimination may argue that a body with the task of being impartial when hearing complaints is not capable of giving effective assistance. In Denmark, this issue has been dealt with through the establishment of the Equal Treatment Board, which is an administrative, quasi-judicial body hearing and investigating complaints of discrimination.⁷⁹ This arrangement ensures that DIHR can focus on and be seen to focus on providing assistance to victims of discrimination and promoting equal treatment in general, whereas the Board of Equal Treatment can be seen as an objective body capable of hearing complaints impartially.

From a structural and *de jure* point of view, DIHR seems to be a fully independent national institution. The situation in 2002 and 2003, however, illustrates that domestic policy will always be able to threaten the independence of the Institute. In the end, if politicians agree that the Institute should be shut down, this may happen.

Also, the *de facto* independence is under pressure when the finances allocated by the government are so limited that DIHR has difficulty in fulfilling its mandate and is forced to use time and resources on fundraising. According to DIHR, the most important factor that may affect the level of independence of DIHR is finances.⁸⁰

Parameters for *de facto* independence include strong leadership, stakeholder involvement, plurality within the body's board and staff and a commitment to and

⁷⁷ Commissioner for Human Rights, Opinion of the Commissioner for human rights on national structures for promoting equality, page 7.

⁷⁸ Bill no. L 154, explanatory notes to section 2 (2).

⁷⁹ Bjørn Dilou Jacobsen, page 332.

⁸⁰ Pia Justesen, Equality Bodies Country Fiche – Denmark, November 2010. Human european consultancy, Study on Equality Bodies set up under Directives 200/43 and 2004/113, page 14.

interest in being independent.⁸¹ This is illustrated by the fact that strong support for the Danish Centre for Human Rights from a number of different stakeholders was a crucial factor in the rescue of the institution in 2002.

DIHR is under the field of responsibility of the Ministry of Foreign Affairs. This structure risks sending the signal that human rights in other countries constitute the primary concerns for DIHR, whereas domestic issues are not in focus. When the previous act was debated in 2002, it was argued that safeguarding the rights of ethnic minorities did not have anything to do with foreign policy and thus should not be placed under the field of responsibility of the Ministry of Foreign Affairs. Aligning DIHR to a different structure which better reflects DIHR's independence and autonomy working with both national and international human rights and antidiscrimination issues would be valuable, for example placing DIHR under the Prime Minister's Office or directly under the Danish Parliament.

b) Accountability and transparency

DIHR is an independent autonomous institution within the public administration. DIHR receives funding from the state through the annual budget. DIHR is able to manage its own finances through agreed to budgetary allocations without interference from government ministries. DIHR is subject to the National Audit of State Accounts (Rigsrevisionen). The primary task of Rigsrevisionen is to audit the state accounts and to examine whether state funds are administered in accordance with the decisions of the Folketing.

In addition to financial accountability DIHR aims to be accountable to those groups and individuals, whose rights DIHR is established to promote and respect. The Council for Human Rights is composed in a way to reflect the prevalent views of civil society organisations working on human rights. The new structure as of January 2013 could, however, be questioned as it is now the Board of Directors that nominates the Council for Human Rights – and the Board of Directors is partly elected from among the Council of human rights civil society organisations.

As previously described, the Board for Ethnic Equality, the former board working for the general promotion of equal treatment regardless of race or ethnic origin, was shut down in 2002 and DIHR was assigned with the task of national equality body. As of 2003, DIHR has received an annual funding of DKK 6.000.000, which is the same amount that the Board received. It has been argued that DIHR did not use the funding of DKK 6.000.000 allocated for ethnic equality work in the first couple of years after the merger.⁸²

In the period from 2003 to 2009 activities at DIHR give the impression that there was not much work on ethnic equal treatment except for the work of the Complaints Committee for Ethnic Equal Treatment. The number of publications on discrimination and equal treatment of ethnic minorities drastically declined in comparison with the number of publications that were made in previous years by the Board for Ethnic

⁸¹ Margit Ammer etc., Study on Equality Bodies set up under Directives 2043/43/EC, 2004/113/EC and 2006/54/EC, 2010, page 11.

⁸² Bjørn Dilou Jacobsen, page 96-97.

Equality. The allocated money seemed to be used for domestic human rights work not necessarily focussing on ethnic equality. As such it can be argued that promotion of ethnic equality did not seem to be given sufficient emphasis in several years after the merger.

Increased transparency with regard to budgets in the years after a merger would have made it clear whether the funding of DKK 6.000.000 for equality work was actually used for that purpose. “During the transition phase of a merger, there should be transparency in the budgets. It is important that you can see the activities that are initiated according to the EU Race Directive mandate. It is important in order to ensure that there is no decline in the work on ethnic equal treatment.”⁸³

c) Appointments

The Institute Board of Directors is elected partly from among the Council of human rights civil society organisations and partly through nomination from universities. The Board then elects its chair. The Board of Directors appoints the executive director of DIHR following a public call. Staff members are appointed by the management and by the executive director. They are appointed according to private law and in accordance with collective agreements governing the public sector.

There is no interference from the ministry of Foreign Affairs or other government institutions in the appointment processes.

The situation in Denmark in 2001 and 2002 illustrates the importance of independence with regard to appointments. At that time there was a massive and clearly expressed political wish to remove the former executive director. The Act of the Institute was amended and the executive director was forced to apply for his own position. Although the formal structures with regard to appointments of Board of Directors, executive director and staff in general are clearly securing the independence of the Institute, the Danish example illustrates that when there is a political will, the independence of a human rights or\and an equality body is always at risk.

3. Effectiveness

Effectiveness means that a merged institution can achieve an impact and realise its potential. The level of effectiveness of an integrated body depends on a number of elements, including:

a. Resources

To enable an integrated body to implement all of its functions in a strategic manner and to a scale and standard enabling to have an actual impact in practice, it must have adequate resources.⁸⁴

⁸³ Employee of DACoRd.

⁸⁴ Commissioner for Human Rights, page 10.

DIHR has identified lack of resources for equal treatment work as a problem. Independence of DIHR may be put under pressure when the finances allocated by the state are so limited that the institution has difficulty in fulfilling its mandate and is therefore forced to use time and resources on fundraising.⁸⁵

According to section 7 of the Act establishing DIHR, it is determined that the State provides an annual appropriation to DIHR.⁸⁶ The Act does not qualify that DIHR must be given sufficient resources to ensure that it can carry out each of its functions effectively as it is proposed with regard to the new Irish Human Rights Commission and the Equality Authority.⁸⁷ An obligation like the one proposed for the Irish Human Rights Commission and the Equality Authority would secure a certain minimum level of effectiveness.

The DIHR budget for 2011 for the work on equal treatment irrespective of ethnicity amounted to DKK 6.000.000. The total budget for DIHR in 2011 was DKK 119.700.000. Thus, equal treatment work on race and ethnicity amounted to 5 % of the total budget.

The imbalance between the resources used by DIHR for human rights work and resources for equal treatment work risk sending a signal that promotion of equality is not as important as human rights work. In Denmark, no separate national equality body has been appointed to keep a focus on the promotion of ethnic equal treatment. In a situation like this where one institution - DIHR – is responsible for both mandates it seems to be crucial that a basic parity of esteem exists between the work of promoting human rights and that of promoting equality. Thus, there should be a certain balance between the resources allocated for equality work and human rights work.

b. Identity

What is the identity of DIHR as an institution? To be fully integrated DIHR must see itself and be seen by others as an institution with crosscutting mandates of human rights and equality.

“We say that we are people from a National Human Rights Institute with a compliance task. We say that we are equal treatment people with a human rights task. In the future, we need to be better at articulating the fact that we have both identities!”⁸⁸

It could be argued that equality work would get more distinct focus if a separate body for the promotion of equality existed. That may be the reason that it has been

⁸⁵ DIHR, Questionnaire 2010, question 71.

⁸⁶ Act No. 553 of 18. June 2012 on The Institute for Human Rights – The National Human Rights Institute of Denmark.

⁸⁷ Michael Farrell, ECRI, Seminar with national Specialised Bodies to combat racism and racial discrimination, 29th May 2012, page 8.

⁸⁸ Employee I of DIHR.

necessary to establish separate teams working on various issues of non-discrimination and equal treatment within the institution of DIHR.

“We have a team working with racial and ethnic discrimination. In 2011 it started to operate. Separate teams may be a precondition. We designated departments to get some focus on equal treatment.”⁸⁹

The name of the integrated body signals the identity of DIHR. The actual name of DIHR does not illustrate that the institution works with equal treatment. “The name of the institute sends an important signal that the primary issue for the institute is human rights.”⁹⁰ As such the name does not directly give the impression that DIHR is the national equality body of Denmark.

“A factor for success of linkage between equality and human rights is a coherent name for the integrated institution, for example Danish Institute for Human Rights and Equality”.⁹¹ Thus, it ought to be marked for the outer world that DIHR also is a national equality body.

c. Mandate

DIHR is a promotional type of human rights and equality body. DIHR has a broad mandate and responsibility, including being the independent mechanism for the purpose of promoting, protecting and monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities.

As the National Human Rights Institution of Denmark, the mandate of DIHR is to monitor and report on the human right situation in Denmark, to perform analyses and research within the area of human rights, to give advice on human rights, to promote the coordination of the work of NGO's on human rights, to teach and educate and inform about human rights and to contribute to the realization of human rights at home and abroad.⁹²

Furthermore, as a National Equality Body, the mandate of DIHR is to promote equality with regard to gender, race and ethnicity by way of providing assistance to victims of discrimination, making independent surveys as well as publishing reports and recommendations about equality.⁹³

Even though the dual mandate of DIHR is stated in the same section of the Act establishing DIHR, the purpose of the Institute is not really integrated as it follows from two separate subsections of the Act describing different functions for the human rights mandate in comparison with the functions for the equality mandate. Thus, the

⁸⁹ Employee I of DIHR.

⁹⁰ Former employee II of DIHR.

⁹¹ Employee I of DIHR.

⁹² Section 2, subsection 1 of Act No. 553 of 18. June 2012 on The Institute for Human Rights – The National Human Rights Institute of Denmark.

⁹³ Section 2, subsection 2 of Act No. 553 of 18. June 2012 on The Institute for Human Rights – The National Human Rights Institute of Denmark.

mandates accorded in relation to human rights and equality are not clearly integrated in the act.

Thus, a clear integration should be reflected in an integrated purpose of the establishing act. With inspiration from the Irish proposal, the following wording could be a suggestion:⁹⁴

“The purpose of DIHR is to protect and promote human rights and equality, to encourage the development of a culture of respect for human rights, equality and intercultural understanding in Denmark...”

A factor for success of linkage between equality and human rights is a coherent legal basis for the promotion of equality and the promotion of human rights.

d. Functions – Societal change: Legal development and policy-making

In legal briefs, DIHR assesses the impact of proposed legislation on various human rights. According to the new mandate as of January 1st 2013, DIHR shall annually submit a report to Parliament on the developments of the human rights situation in Denmark.⁹⁵ This obligation is new and will inevitably increase the domestic focus of DIHR, which must be expected to increase the focus on equality work as well. Based on the specialised equality body mandate, in legal briefs, DIHR does specifically include an assessment of the impact of the proposed legislation on ethnic equal treatment.⁹⁶

However, at the time of writing there were no researchers in the DIHR research department specialising in ethnic equal treatment.

The ability to participate in court proceedings is not only an important means to provide assistance to the individual victim of discrimination or human rights violation. It may also clarify legislation and establish precedents having a widespread impact and serving as a means to develop the law.⁹⁷ According to the UN Paris Principles, a national human rights institution such as DIHR should have the power to participate in individual court proceedings through for example the submission of *amicus curiae*. For example, DIHR participated in a joint action by NHRI's across the Council of Europe Region and intervened as a third party in the Gauer-case on disability and sterilisation for the European Court of Human Rights.⁹⁸ For the first time, DIHR also recently decided to assist an individual in bringing legal proceedings in a human rights case on discrimination because of citizenship.

⁹⁴ Michael Farrell, ECRI, Seminar with national Specialised Bodies to combat racism and racial discrimination, 29th May 2012, page 6.

⁹⁵ Section 2, subsection 3 of Act No. 553 of 18. June 2012 on The Institute for Human Rights – The National Human Rights Institute of Denmark.

⁹⁶ FRA (2008), par 105.

⁹⁷ Bjørn Dilou Jacobsen, page 328.

⁹⁸ FRA, Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union, 2012, page 28.

According to the equality body mandate, DIHR has a clear competence to assist victims of discrimination in various ways as elaborated in the following section.

e. Functions – Individual change: Assistance to victims of discrimination and human rights violations

Change at the level of the individual is central to the purpose of human rights and equality bodies.

Traditionally like the other Scandinavian human rights institutions, DIHR has not been very proactive in bringing individual cases or test cases of human rights violations to courts.

“DIHR does not have a profile as a complaint- and advisory body for the citizens. Consequently, complaints handling and advisory of the citizens who’ve experienced discrimination have disappeared in the lot. The public does not think of these tasks as part of the profile of DIHR.”⁹⁹

This perception as well as the lack of experience in dealing with individual complainants and individual cases has represented a challenge for DIHR when required to provide assistance to victims of racial discrimination.

Since 2009 following the closing down of the Complaints Committee of Ethnic Equal Treatment, DIHR has had the following system of assistance to victims of discrimination:

- DIHR provides information about anti-discrimination law as well as giving advice on the possibility to complain about discrimination.
- DIHR can take principle cases to court and assist victims where the Board of Equal Treatment is not able to do so.
- DIHR may intervene acting as amicus curiae in principle court cases of discrimination.

Finally, DIHR can take up cases on its own initiative about discrimination on account of race and ethnic origin.

DIHR assistance to victims primarily deals with the provision of information and with advices on possibilities to complain about discrimination (how and where).¹⁰⁰ DIHR does not file complaints to the Board of Equal Treatment on behalf of a victim, but rather provide information on how the complainant can do it on her/his own. On the website of DIHR, a telephone number and an e-mail address is listed if a person needs assistance and advice on discrimination issues and ways to complain.

“The help is that they send people on to the Board of Equal Treatment. However, many times people cannot take the case themselves to the Board. In reality, the Institute send people on to us at the Documentation and Advisory Centre on Racial Discrimination.”¹⁰¹

⁹⁹ Former employee I of DIHR.

¹⁰⁰ See <http://www.menneskeret.dk/danmark/ligebehandlings-rådgivning> (28-11-2010).

¹⁰¹ Employee of DACoRd.

DIHR can take principle cases to court and assist victims where the Board of Equal Treatment is not able to do so. This could for example be a case that has been dismissed by the Board of Equal Treatment because of lack of written documentation and the need for oral testimonies. It could also be a case where the Board of Equal Treatment has decided that discrimination did not take place. In such cases, DIHR can decide to assist the victim of discrimination with the application for free legal aid from the government or with the application for legal aid insurance from a private insurance company. DIHR has assisted victims of discrimination with the application for free legal aid from the government in two cases since 2009.

DIHR has plans to intervene in principle court cases on discrimination acting as *amicus curiae*. This has only recently happened for the first time. DIHR can also take up discrimination cases on its own initiative, which took place once in 2011 and twice in 2012. Lawyers working at DIHR are not attorneys authorized to litigate in the civil court system, which may constitute a barrier for the intervention of DIHR in individual court cases.

According to statistics from DIHR, most inquiries from individuals deal with human rights – and not with ethnic equality.¹⁰² In 2010, DIHR received 226 human rights inquiries and 20 ethnic discrimination inquiries. In 2011, DIHR received 398 human rights inquiries and 14 ethnic discrimination inquiries. In 2012 (except November and December), DIHR received 240 human rights inquiries and 22 ethnic discrimination inquiries.

For the effectiveness of DIHR in promoting protecting against discrimination on the individual level, it is crucial that DIHR can refer victims on to NGOs. There is, however, only one NGO – The Documentation and Advisory Centre on Racial Discrimination - in Denmark directly assisting victims of discrimination on grounds of racial or ethnic origin with the taking of cases to court. This NGO is not publicly funded.

It is considered that in order to be more effective on the individual level, DIHR could assist victims of discrimination in writing complaints to the Board of Equal Treatment or by taking cases to court.

f. Time

A successful merger needs a planned and systematic approach and sufficient time to find the right solutions.

As the Danish experiences from 2002-2003 illustrate, it is very difficult to merge institutions when the actual integration is done in a rush. One of the institutions quite likely risks being more or less crushed. This was the case for The Board for Ethnic Equality being the smaller and more unpopular one.

¹⁰² Statistics provided by Nanna Krusaa from DIHR, e-mail of December 4, 2012.

More time for a development from mutual exchange between the equality body and the human rights body to joint action between the bodies, going on to joint planning and eventually to the actual merger would have been beneficial.¹⁰³ However, such an ideal setting will be rare in the real world often dominated by domestic politics.

g. Training – Multidisciplinary approach

The gains of a merger must be clear for the staff to secure the thinking of equality into human rights work and to secure the thinking of human rights into equality work.

Employees working in a National Human Rights Institution often lack knowledge and understanding within the anti-discrimination and equal treatment area.

“It was obvious that the human rights people did not think about equality issues.”¹⁰⁴

Likewise, employees working in a National Equality Body lack knowledge and understanding of human rights.

“Training and awareness is crucial before integrating. The aim is to create a common language and understanding.”¹⁰⁵

It is of crucial importance to increase the level of understanding and acceptance of both human rights and equality/non-discrimination among the staff. In that way an institutional capacity to deal with the link between human rights and equality can be developed.

h. Mainstreaming

If the aim for the merged body is to have full integration, steps must be taken to avoid two separate silos of human rights and equality.

“When we speak with one of the ministries about a particular human rights issue, it's easier to also push the equality agenda because of our dual mandate. With regard to new regulations, we can for example advice on the incorporation of the Disability Convention and at the same time question whether a new regulation risk having an ethnic bias.”¹⁰⁶

In 2013 DIHR can still be characterized as having a mixed approach to the implementation of its dual mandate.¹⁰⁷ There are distinct departments within DIHR that have specific responsibilities for human rights initiatives and equality initiatives. There are other departments within the organisation that integrate a human rights

¹⁰³ Equinet, Equality Bodies and National Human Rights Institutions – Making the Link to Maximise Impact, 2011, page 8.

¹⁰⁴ Former employee II of DIHR.

¹⁰⁵ Employee I of DIHR.

¹⁰⁶ Employee II of DIHR.

¹⁰⁷ Equinet, Equality Bodies and National Human Rights Institutions – Making the Link to Maximise Impact, 2011, page 11.

focus and an equality focus within their work. These integrated departments often but not solely deal with crosscutting tasks like communication and research work.

In a fully integrated institution, equal treatment should be incorporated into all human rights projects and vice versa.

“In the ideal world it could be interesting to take down everything and build up our work around areas of society: for example the right to health and education. Human rights, non-discrimination and equality cut across all areas.”¹⁰⁸

An equality perspective should be part of all projects in an integrated body.

“There has been a growing understanding of equal treatment in DIHR over the past 10 years. It has constantly been pointed out, that international projects lack a compliance perspective. Currently a mainstreaming tool is being developed, so that equality will be thought into all projects in DIHR. All projects must be washed through with a compliance perspective.”¹⁰⁹

i. Strategic approach

For a successful integration of equality and human rights bodies, the ambition and strategy of the merger must be clear. If the objective of the merger is well defined, the subsequent integration process between the institutions and their different spheres of expertise will be less complicated. In 2002 the objective of the merger of The Board for Ethnic Equality and the Centre for Human Rights was not clear. The reasons for the merger were basically domestic policy, horse-trading and a public opinion being sceptical against ethnic minorities. On that background it is not difficult to understand, that the equality mandate of DIHR was less visible for the first 10 years after the merger.

“In the beginning within the institute, the importance of the national equality work was not taken for granted – it constantly had to be argued for.”¹¹⁰

The more planned and systematic the integrated DIHR is in exercising its functions and powers and deploying its resources, the more effective it will be in achieving its goals. Working in a political context, it is always not an easy task to stay focussed.

“The success of an institution like DIHR depends very much on the work of various political and administrative authorities. This makes it challenging for us to put words on the products we provide and to measure the results and effects of our work. If we could be even clearer on the objectives of our activities, it would also be easier to effectively integrate the equality and human rights work.”¹¹¹

¹⁰⁸ Employee II of DIHR.

¹⁰⁹ Employee I of DIHR.

¹¹⁰ Former employee II of DIHR.

¹¹¹ Employee II of DIHR.

j. Accessibility

An effective human rights and equality institution will be accessible to the individuals and groups whose rights it is established to protect and promote. Accessibility requires that people know of the institution and its role, that they are able physically to make contact with it and that they are treated appropriately when they are in contact with its staff.¹¹² Physical accessibility may require local offices or regular visits by field officers.

DIHR has a mandate to provide assistance to victims of human rights violations and to victims of discrimination. DIHR disseminates information about discrimination and equal treatment in a number of ways, such as books, brochures, compliance tools, information campaigns, the diversity award, public seminars and the websites: www.menneskeret.dk, www.humanrights.dk and www.mangfoldighed.dk.

DIHR can assist victims of discrimination where it is not possible for the Board of Equal Treatment. Furthermore, DIHR can take principle cases to court as well as intervene in principle cases. The different ways of assisting victims are described on the website of DIHR (www.menneskeret.dk). However, the website of DIHR has a far broader content than equality issues as it relates to all the various activities of DIHR. For a victim of discrimination it does not seem very accessible. Aside from the description on the website, no public information about the mandate to assist victims has been found. DIHR is located in Copenhagen and has no local branches. This may be a problem for victims in need of personal contact living outside the area of Copenhagen.

DIHR estimates that between 6 and 20 % of the population aged 16 and beyond knows the name and powers of DIHR.¹¹³

The lack of local or regional branches of DIHR or even local NGOs assisting victims of discrimination constitutes a barrier to the effective protection against discrimination and the rights to redress.

k. Civil society

Cooperation with civil society and close contact with NGO's is a fundamental requirement for DIHR to be effective in its promotion of human rights and anti-discrimination. It follows from the Paris Principles that an effective national human rights institution should not function alone but should establish and strengthen cooperative relationships with a wide range of organisations and groups. The events in 2002 illustrates that the Institute was saved from being shut down, partly by pressure from civil society.

DIHR participates in a number of network activities and cooperates with a number of NGOs and trade unions and trade associations.

¹¹² Office of the United Nations High Commissioner for Human Rights, Economic, Social and Cultural Rights – Handbook for National Human Rights Institutions, 2005, page 37.

¹¹³ DIHR Questionnaire 2010, question 67b.

DIHR started developing a national strategy to combat discrimination together with 22 NGOs represented in the DIHR Council and covering the areas of race and ethnicity, gender, disability, sexual orientation, religion and belief. Hereby a platform for NGOs working on equality issues was created. The initiative has been labelled the Equality Council under the DIHR Council (Ligebehandlingsudvalget).¹¹⁴ This platform has served and serves as a forum for sharing knowledge and experience as well as good practice. Thus, the network builds up capacity and competences and works to develop a common strategy.¹¹⁵ Also through this network DIHR created a coalition of NGOs arguing for the establishment of an integrated complaints body dealing with cases of discrimination. DIHR thus had a major impact on the establishment of the quasi-judicial Board of Equal Treatment in 2009. Currently, the coalition is calling for a general non-discrimination Act instead of the patchwork of current Danish minimum rules in the discrimination area.

According to the Paris Principles, the integrated body should see its role as empowering those at most risk of discrimination and human rights violations with the means to protect and promote their own rights. Although DIHR cooperates extensively with NGOs, some NGOs seem to be sceptical towards the work of DIHR. One of the reasons may be that DIHR does consultancy work and applies for funding from different foundations in competition with NGOs with the risk of undermining civil society. As argued by one NGO, “The problem is that DIHR is a competitor to NGOs. DIHR applies for the money that the NGOs must live by”.¹¹⁶

V. Conclusions with highlights of 5 indicators

Based on experiences in Denmark, a number of indicators for the success of integrated bodies have been identified.

In particular, the following 5 indicators should be in focus:

1. A clear ambition and strategy of the merger.
2. A name of the integrated body signalling the dual mandate of human rights and equality
3. A highly transparent budget of the integrated body after the merger
4. Multidisciplinary training of staff
5. Comprehensive equal treatment and anti-discrimination law

¹¹⁴ DIHR, Ligebehandling, status og fremtidsperspektiver, Udredning nr. 2, 2005 (Report No. 2, 2005, Equal Treatment – Status and future perspectives (English abstract)), page 14.

¹¹⁵ FRA (2009), par. 105.

¹¹⁶ Employee of DACoRd.