Bridging the Divide – Matters to be taken into account regarding the integration of the functions of national equality bodies and national human rights institutions

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Country Report:
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0. Executive Summary

This Report describes the process of integration of the Dutch Equal Treatment Commission (Commissie Gelijk Behandeling) (ETC) into the newly established Netherlands Institute for Human Rights (College voor de Rechten van de Mens), from here on: NIHR. This Institute formally came into being on 1 October 2012.

The goal of this study was to identify the most significant learning points relating to the integration of the functions of equality and human rights bodies into one singular institute. The findings presented in this Report are based on an examination of official papers, reports and academic literature and on pre-structured and standardised interviews with 16 key actors in the process of establishing the new NIHR.

The NIHR was formally established at the same moment as this research project started (October 2012). This means that at the time of writing of this Report nothing much could yet be said / observed about the effects in practice of the construction that was chosen (transformation or integration of the ETC into the NIHR). For this reason, the main focus of this Report lies on the process that has led to this decision and the possible implications thereof for the future functioning of the Institute.

Observations about the decision making process

From the perspective of other EU countries that consider to follow a similar path or strategy, the way in which the decision to integrate the ETC into the NIHR was taken is particularly interesting. It appeared that after many years of careful deliberations and extensive studies into the necessity and desirability of a national human rights institute, the decision to found such an institute by means of integrating the ETC into a (new) NIHR, was taken quite suddenly (in 2009). The factors / motivations leading to this decision were not transparent for outsiders to this process and also quite obscure to some insiders (participants in a coalition of human rights organisations and in an official steering group of stakeholders and civil servants). Persons who were ‘insiders’ in this process all had their own perspective on what exactly had led to this decision. However, each of the interviewees mentioned different factors as being decisive in the end. Probably it was exactly this coming together of various interests / perspectives that caused that all persons and organisations suddenly could come to an agreement about the one ‘solution’ that seemed to serve all of them. Also, the fact that the language in which this decision was phrased was rather vague facilitated this process. Several expressions were used to describe the situation-to-be. This may have eased stakeholders into accepting the decision and being able to defend it in their own circles / organisation. Even after the adoption of the NIHR Act and the coming into being of the NIHR, the interviewees described the (new) situation differently.

Another striking outcome of the research is that the process was mostly put in motion by non-(party) political actors. Members of Parliament hardly participated in the debate about how exactly the NIHR should be structured. Although some Motions were adopted in the previous
years, it was only after the Government had come with a particular (different) solution that there was strong political interference, which ended in the choice to integrate the ETC into the NIHR. This interference was motivated quite negatively: politicians expressed the wish not to have such an institute at all (extreme right wing) or to let the tasks of the human rights institute be placed at / carried out by one or more of the existing human rights institutions (Christian democrats and Liberals). A further important aspect of the decision making process was the economical / financial ‘momentum’. When in the end the idea had fully ripened that The Netherlands might indeed need a human rights institute, the Government had to struggle with serious budget deficits. As a consequence of that, the establishment of a completely new Institute became out of the question. In fact, the worsening economic and financial situation may have advanced the process, because suddenly the option to integrate the NIHR with an already existing organisation (or to refurbish an existing organisation into a NIHR) became acceptable for stakeholders who until then had not really considered that as a feasible option. In addition to these financial reasons, there were administrative and organisational factors why a completely new independent institute had become an unrealistic option: on the whole, a majority in Parliament and the Government wanted to have less instead of more advisory organisations or bodies.

A final reason why this decision was taken quite suddenly and without much further discussion among stakeholders and politicians was that there was a pressing need ‘to grasp the political momentum’. While finally there was a commitment from the side of the (at that time Christian Democrat, Christian Union and Labour Party) Government, there was also a lot of criticism from populist right wing parties on the ETC. At the same time there was a lot of pressure from NGOs and national human rights organisations to finally establish a NIHR. Finally, the pledge of the Minister of Foreign Affairs that the Netherlands would start with the process of establishing a NIHR made a difference.

**Insights to be gained from this decision making process**

A first insight to be gained from this history is that a process that because of conflicting interests is very slowly going on for many years can suddenly go very fast when a solution is proposed that can solve many stakeholders’ problems and / or can serve different stakeholders’ crucial interests at the same time. The process of establishing a NIHR in The Netherlands has many features of a so-called ‘coordinative discourse coalition’ in which various stakeholders from different backgrounds participate in constructing a policy change / new institution. Such a discourse coalition (as opposed to a more politically oriented ‘communicative discourse coalition’) is mostly inward looking and seeking internal consensus, instead of aiming at informing and convincing the general public. Persons who were not present in these discussions were asked how they had experienced this period. NGOs representatives and other ‘outsiders’ all called this process non-transparent. This may explain why outsiders, especially from the side of human rights NGOs, were more critical and sceptical about the ‘solution’ that was chosen. Outsiders saw the decision to integrate the ETC into the NIHR mainly as a negative choice: it was a matter of other options not being possible (e.g. because of political or financial reasons) or not being feasible / desirable.
because of raising too much (political) resistance. For the future acceptance and authority of the new Institute this may be a hindrance.

A second important insight concerns the level of integration of the two ‘worlds’ concerned. All interviewed persons agreed that in The Netherlands there are two rather separated ‘communities’ of expertise / interests / lobbies: that of the equal treatment or anti-discrimination circles and that of circles involved with human rights protection and promotion. Few legal experts have involvement with both areas of law. Equal treatment legislation has more and more become an area for legal specialists who are more oriented to and connected with European Union Law than to / with the ECHR or UN Treaties in the area of non-discrimination and human rights protection in general. Equal treatment law also has become rather technical and formalistic and sometimes leads to legal controversies / case law that generate doubts about the seriousness of the issue. Although not formally excluded from any public consultation on the plans to vest a NIHR / on the draft bill for the NIHR Act, it can be observed that the equal treatment world was far less involved with the whole process of establishing the NIHR (in which the ETC was to be incorporated). This may affect the effectiveness of the NIHR in terms of the equal treatment organisations / experts being able to / being willing to associate themselves enough with this new Institute and the work it performs in the area of non-discrimination issues.

Possible consequences of the integration from the equality perspective

The Report analyses the (theoretically) possible positive and negative consequences of the integration of the ETC into the NIHR for the protection against unequal treatment and discrimination. Aspects that could be (or become) problematic that came out of the study are the NIHR’s name (as not reflecting the equal treatment element of its tasks and being too formalistic), the Institutes visibility and low threshold function for victims of discrimination (endangered by the transformation into the wider human rights institute) and the undermining of the functioning of the tribunal type of Equality Body that the ETC fulfilled in the past. This could happen when expertise in the area of equal treatment law would suffer or diminish as a consequence of giving (more) attention to building up human rights expertise within the Institute. However, the NIHR still does have the task of dealing with complaints about discrimination under the existing equal treatment legislation. This task (which requires a strictly neutral, pseudo juridical attitude of the Institute) could conflict with the task to take a clear (and critical) stance in all issues of possible human rights violations in the country and to give advice to the Government in that regard. A possible positive consequence of the integration could be that in the future issues of equal treatment and non-discrimination will be dealt with in the wider or more holistic perspective of human rights in general. This could mean that the equal treatment division or section of the NIHR will start to include more (human rights) interest than solely the interest of (formal) equal treatment.

Possible consequences of the integration from the human rights perspective

From the perspective of the tasks of human rights protection and promotion of the NIHR it may be problematic that (by way of inheritance of the former ETC) the Institute has a commission structure. The ‘commission model’ of the ETC followed logically from its main
task: to hear and decide about individual complaints about discrimination, i.e. from being a tribunal type of Equality Body. Such a model is not indicated per se for the good functioning of a NIHR. In fact it may be a hindrance to develop into a well functioning human rights institute. On the contrary, the wider tasks of such an institute may fit better into a promotion type of Equality Body. It is possible that a one-headed NIHR would be able to act more efficiently and more adequately than a Commission with several Members. This disadvantage could become an advantage when the NIHR is organised in such a way that the 9-12 Members get assigned tasks according to their special knowledge and expertise and get the accompanying powers to execute these tasks with the help of specialised staff. A second concern about the future functioning of the NIHR is its lack of expertise in the field of human rights law and effective and efficient practices of human rights protection and promotion, as well as the lack of sufficient financial resources for the new Institute. Finally, it is a point of concern what role the NIHR could or should play in reshaping or restructuring the scattered human rights landscape in The Netherlands. On the one hand fulfilling this task could undermine its credibility and support among human rights organisations; on the other hand, it could undermine the Institute’s political credibility / political support when it does not at all contribute to these original goals of its own foundation.

Six issues that may influence the future success of the NIHR

The Report presents six issues that are important for the future success of the Institute, mentioned in the literature and by the interviewees.

In the first place, the NIHR needs to find ways to overcome the possible negative effects / obstacles that could result from the fact that it has a commission structure. Secondly, the NIHR needs to execute its tasks as regards dealing with complaints about discrimination in a more efficient way in order to have sufficient time for the task of promotion and protection of human rights in general; at the same time it needs to safeguard that expertise and knowledge about equal treatment legislation (including EU law) will be maintained on a high level. This function means that it should maintain its appearance of neutrality. Although the NIHR does not have the power to give ‘Opinions’ in (individual) complaints about human rights violations – as it does have in equal treatment cases – it does in fact have the power to clearly and loudly voice its critical opinions about human rights violations in the country. In this regard, it should keep a (difficult) balance between ‘jumping at every occasion’ to express its condemnation of particular practices and keeping too much distance from what is going on in the country. In the fourth place the NIHR needs to invest time and resources in identifying good practices from long-term established NIHRs in other countries and to develop methodologies that may enhance its effectiveness. In the fifth place, the NIHR needs to establish and consolidate its role in the establishment of ‘a fundamental rights culture’ by strengthening its relationships with all stakeholders in the field of promotion and protection of human rights, among others by conducting regular open and transparent consultations on its strategic choices for themes and topics. Finally, the NIHR needs to find a balance between clearly filling gaps in the human rights landscape and fulfilling a coordinative role on the one hand, and taking away functions and money from existing organisations on the other hand.
The key learning points that follow from this research

Finally, the Report identifies three key learning points for other countries / institutes that currently go or in the future may go through a similar transformation process.

A first important outcome of this study relates to the choice to integrate the ETC into the NIHR and thereby in fact abolishing the ETC. Although backward looking (or with hindsight) this choice may seem logical and well founded, it appears that during the decision making process there was a serious lack of clarity and transparency about what was going to happen and why. The study reveals that the process, at some point, got so much ‘political momentum’ and speeded up so fast that especially for outsiders it was not at all clear what was going on. But also some insiders appear to have experienced the process as lacking clarity and openness. What can be learnt from this in-depth investigation of this process is that it is very important for any stakeholder in such a merger process not to be side tracked or to lose touch with what’s going on.

As a consequence of the speedy process, some choices relating to the organisational structure and the place / function of the NIHR in the ‘scattered human rights landscape’ were not really well thought through. Especially the fact that the commission structure of the previous ETC and its task of dealing with complaints about unequal treatment were not seriously reconsidered and were transplanted unmodified into the new NIHR, may turn out to be a ‘missed opportunity’ for a serious reform of the system of protection against discrimination. Another consequence of the speediness and the non-transparency of the process is that the part of the human rights landscape that is most closely involved with the implementation of the equal treatment norm (i.e. the equality expert institutes and the local organisations that support victims of discrimination) were mostly left out of the process and/or lost touch with what was going on. This may have consequences for the level in which these organisations can identify with the NIHR as an organisation that is also have the same objective (making the country free from discrimination) and can establish a fruitful co-operation with the NIHR.

A third finding of this study relates to the substantive dimension of the process of integrating the ETC and the NIHR. Compared to the more technical, procedural or organisational aspects of the process, this part was (and still is) very underdeveloped. It was acknowledged by most interviewees that ‘of course’ non-discrimination is part of the human rights normative framework, but there was hardly any elaboration of what this might mean for the practice of the NIHR’s work. An explicit legal basis for a more holistic and/or more human rights oriented evaluation of equal treatment cases is still lacking in the GETA and other equal treatment law, as well as in the NIHR Act. Much more work / thinking and theorising about equality, non-discrimination and human rights protection in general appears to be necessary. But perhaps the integration of the ETC into the NIHR will offer new opportunities for this re-thinking of equality and human rights.

A final remark is about the (recommended) methodology for this study. It appeared to be very useful and productive to complete an initial analysis of the official (Governmental and Parliamentary) papers and the academic literature with in-depth and pre-structured interviews with 16 of the most closely involved stakeholders and other participants in the process of
establishing the NIHR. The interviewees offered many observations and insights that could not be derived from written sources. This study would not have delivered so many new insights without the time and effort that was spent on this project by the interviewees. I therefore conclude by expressing my deepest gratitude to all of them.
1. The Current Institutional Framework

1.1. Introduction

On 2 October 2012 the Netherlands Institute for Human Rights (College voor de Rechten van de Mens), from here on: NIHR, was officially opened in a festive public ceremony to which her Majesty the Queen and several members of the Cabinet attended.\(^1\) This Institute is an integrated body: the old (since 1994) Equal Treatment Commission (from here on: ETC) has been transformed into a newly established NIHR and does no longer exist as such. The provisions of the General Equal Treatment Act (GETA)\(^2\) in which the ETC was regulated were repealed by the NIHR Act.\(^3\) Instead, the same tasks and powers are now regulated in Chapter 2 of the NIHR Act, titled: ‘Investigations and findings relating to equal treatment’. A section of the Institute will be charged with dealing with complaints about unequal treatment – as regulated in the equal treatment laws. The NIHR Act provides that all the Commissioners and staff members of the ETC are now employed by the NIHR. The NIHR Act is applicable in The Netherlands and in the territories of the public bodies Bonaire, Saint Eustatius and Saba; in the latter case, with the exception of Chapter 2 of the Act.

Below (in Chapter 2), the reasons given for the establishment of the NIHR / the integration of the tasks of the former ETC into this new institute are described. Chapter 3 contains an analysis of the factors that could make this integration into a success or a failure. Chapter 4 concludes with an overview of the main findings from the research. The remainder of this first Chapter contains a brief overview of the main features of the NIHR

The findings presented in this Report are based on an examination of official papers, reports and academic literature and on pre-structured and standardised interviews with 16 key actors in the process of establishing the new NIHR.\(^4\)

1.2. The main features of the NIHR: Name, Status, Object and Mandate, Legal basis and Internal Structure

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\(^1\) The NIHR came into existence legally on 1 October 2012.

\(^2\) NB: The official name of this Act is: Algemene Wet Gelijke Behandeling, which translates as General Equal Treatment Act (GETA). For reasons not known to the present author, the word ‘general’ is not included in the translations of the names of the relevant Acts in the documents concerning the NIHR (see below). The GETA should be distinguished from the Equal Treatment Men and Women (in Employment) Act, usually called ‘the Equal Treatment Act’ (ETA). In this report, I use the names GETA and ETA.

\(^3\) Act of 24 November 2011 containing the establishment of the Netherlands Institute for Human Rights. (Wet van 24 november 2011, houdende de oprichting van het College voor de rechten van de mens (Wet College voor de rechten van de mens)); Staatsblad 2011, 573.

\(^4\) See the bibliography, the list of interviewees and the summary of the questionnaire that was designed for the interviews in the Annexes to this Report. The research was done between 1 October and 15 December 2012; the text of this Report was finalised on 31 January 2013.
In the Dutch language, the name of the Institute is “College voor de Rechten van de Mens”, which may be translated as “Board for Human Rights”, or as “Authority for Human Rights”. Originally, the proposed name was “Authority for Human Rights and Equal Treatment.” (College voor de Rechten van de Mens en Gelijke Behandeling.) Reference to equal treatment was dropped in the final bill. The designated name in English is ‘Netherlands Institute for Human Rights’.  

The NIHR is meant to be the national human rights institute as referred to in the 1993 Resolution A/RES/48/134 of the General Assembly of the United Nations and in the 1997 Recommendation R (97) 14 of the Committee of Ministers of the Council of Europe. In addition to this, the Preamble mentions relevant EU Directives as a consideration to enact this Law, as well as Article 79 of the Dutch Constitution, stating that official Advisory Commissions or Boards of the Government must be established by law.

The object of the NIHR is to protect human rights, including the right to equal treatment, in the Netherlands, to increase awareness of these rights and to promote their observance. Its mandate includes all human rights that are part of the Dutch legal order. This includes fundamental rights that are incorporated in the Constitution of the Kingdom of The Netherlands, in international and regional human rights treaties and in European Union law, as well as soft law like rules, recommendations, directives and guidelines of various international organisations. The mandate of the former ETC only stretched to the existing national equal treatment legislation.

The NIHR has a legal basis in the Act of 24 November 2011 on the establishment of the National Human Rights Institute (from hereon: NIHR ACT). Since then, (Royal) Decrees have been adopted in order to bring this Act into force on 1 October 2012, to regulate the legal status of Members of the Institute and its staff and the internal procedures of the (integrated) former ETC – now a section of the NIHR.

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5 This name may lead to confusion since there already exists an institute with the same name: SIM- the Netherlands Institute for Human Rights, which is a research institute at the University of Utrecht. (Interview with Jenny Goldschmidt 16 November 2012.)

6 Directives 2000/43/EEC, 2004/113/EEC and 2006/54/EEC. These Directives all require the establishment of a so-called Equality Body.

7 See footnote 3.

8 Besluit van 6 september 2012, houdende vaststelling van de datum van inwerkingtreding van de Wet College voor de rechten van de mens, Staatsblad 2012, 414.

9 Besluit van 28 augustus 2012, houdende regels over de rechtspositie van de leden van het College voor de rechten van de mens en de tot het bureau behorende ambtenaren (Besluit rechtspositie College voor de rechten van de mens), Staatsblad 2012, 389.

10 Besluit van 31 augustus 2012, houdende nadere regels over de werkwijze van de afdeling, bedoeld in hoofdstuk 2 van de Wet College voor de rechten van de mens (Besluit werkwijze onderzoek gelijke behandeling), Staatsblad 2012, 394.
Three groups of persons are directly involved with the work of the Institute: (1) the 9 to 12 Members (and an unspecified number of alternate Members) of the Institute (Collegeladen and plaatsvervangende Collegeleden); (2) the 7-11 Members of the Advisory Council (Leden van de Adviesraad); and (3) the Staff (medewerkers). The position of all three groups is regulated in the NIHR Act. The Chair represents the Institute in all external affairs. Members and alternate Members are appointed by Royal Decree, on the recommendation of the Minister of Security and Justice (S&J). The Advisory Council advises the Minister in this respect. The Council has a task to ensure expertise and diversity of the Members of the Institute. Any vacancy must be made public by the Institute. Staff members are appointed by the Chair of the Institute. As compared to the ETC, the appointment of the Members and the Staff of the NIHR has become more independent from the government / Minister of Justice.

1.3. Tasks and powers of the NHRI

The NIHR Act lists the following tasks:

(a) to conduct investigations into the protection of human rights, including investigating whether discrimination has taken or is taking place and to publish its findings;

(b) to report on and make recommendations about the protection of human rights;

(c) to provide advice on Acts, bills, (draft) orders in council and ministerial order that are related to human rights issues;

(d) to provide information and to encourage and coordinate education about human rights;

(e) to encourage research into the protection of human rights;

(f) to co-operate on a systematic basis with civil society organisations and with national, European and other international institutions engaged in the protection of one or more human rights, for example by organising activities in partnership with civil society organisations;

(g) to press for the ratification, implementation and observance of human rights treaties and for the withdrawal of reservations to such treaties;

(h) to press for the implementation and observance of binding resolutions of international organisations on human rights;

(i) to press for observance of European or international recommendations on human rights.

The NIHR has particular powers to investigate the general state of implementation of human rights / human rights violations. There is a public duty to collaborate when the Institute

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11 Although it does not have the power to give ‘opinions’ in (individual) complaints about human rights violations – like it has in equal treatment cases, it has the power to voice its opinions in this regard. Ferhout
demands information and documents, with the exceptions of self-incrimination and public security. Failure to comply is a criminal offence. The Institute has the power to do on-site investigation, having the right to get access to any building or site, safe exemptions mentioned in the State Secrets Act, the General Act on Entry into Dwellings and Constitutional provisions concerning the right to privacy. Any advice, recommendations, investigations and reports of the NIHR must be made public and the Minister concerned must give the Institute the opportunity to discuss with him the investigations, reports, recommendations and advice.

In addition to this, the NIHR has the power to investigate complaints about unequal treatment. (Chapter 2: ‘Investigations and findings relating to equal treatment’.) These powers are similar to those of the former ETC. The ETC also had the power to bring a case to court. This power is also transferred to the NIHR, but again this is limited to equal treatment cases.

1.4. Independence and accountability

Article 4 of the NIHR Act explicitly stipulates that “[T]he institute is independent in the performance of its duties.” Independence is further guaranteed in several other provisions in the NIHR Act. In a number of them, reference is made to other exiting laws in which a detailed regulation is given of the status of independence, accountability, incompatibilities etcetera of persons directly or indirectly working in the judiciary, in advisory boards and as civil servants for the Government. In many respects the Members of the NIHR, the Members of the Advisory Council and its staff are brought under these laws. In some other respects, these laws are exempted precisely in order to guarantee the independence of the Institute.

The NIHR’s independence means that it is not accountable to anyone as concerns the content of its opinions / advice and its research activities. An (obligatory) overview of the amount of work performed is given by means of an annual report about the advices that it has given and any other activities. The Institute also has a duty to report every 5 years about the functioning of the NIHR Act and of the equal treatment legislation. The Minister of Interior and Kingdom Relations (I&KR) will forward the reports to both Chambers of Parliament. There is no duty to officially respond to these reports or to follow up recommendations made in them. During the Parliamentary discussions on the bill, a Motion was accepted in Parliament in which the

(interview 3 December 2003) stresses that the NIHR really should take up that task. See also Fernhout & Wever 2010, p. 344.

12 The former ETC has never used this power. See below, par. 2.2. The fact that the NIHR lacks this power as far as complaints about human rights violations are concerned, has been criticised by Goldschmidt (2012a, p. 187, 188) who argues that the Institute might use it to get a legally binding judgement in human rights issues and (in the end) a judgement of the EchrHR; see for a contrary opinion Fernhout & Wever 2011, p. 351). The main reason for the government not to include this power was that this would mean that in that way (through the back door) the NIHR might get involved with individual complaints about human rights violations. (MoE, p. 18, 19.) An Amendment to the bill was submitted in the Second Chamber to include this power, but it did not get a majority. (Tweede Kamer 2011-2012, 32 467 nr.19; rejected on 19 April 2011.)
Government was asked to give a reaction within 60 days of the publication of the annual report which can serve as a basis for a discussion between Parliament and Government.

1.5. Resources

In fact, five Ministries contribute to the NIHR’s budget (as was the case with the ETC). On top of the budget of the (former) ETC\textsuperscript{13}, an additional 600,000 Euro will be paid on a permanent basis by these Ministries. In addition, for the first three years another 300,000 euros will be made available to the NIHR, involving two more Ministries. The Minister of S&J is ultimately responsible for the budget (as was the case with the ETC).\textsuperscript{14} The NIHR annually submits a draft budget which needs to be approved by the Minister of S&J. The Minister will publish the draft budget of the NIHR together with his/her budget Bill, which will be discussed in Parliament. In the third year of the existence of the NIHR it will be evaluated whether structural budgetary adjustments are necessary.

\textsuperscript{13} The ETC’s budget for 2011 was 6,200,000 Euros. As compared to 2010 (5,610,00 Euro), the ETC had already got extra money in order to prepare the transfer to a NIHR. In 2011 there were 9 Commissioners and 58 fte staff members.

\textsuperscript{14} The costs of the Institute will appear on the annual budget of this Ministry. Other Ministries have agreed to contribute and will be invoiced for that by the Minister of S&J.
2. Background to the present situation

2.1. Introduction

This Chapter describes how the present situation came about – i.e. the key milestones along the way that have led to the newly established NIHR in which the ETC-tasks have been integrated. For that purpose, I will start (in section 2) with a brief history of the ETC, of its main features, and of political and academic discussions about its functioning. Section 3 gives an overview of history of political, legal and societal action / debate to bring into being a national human rights institute that would be in compliance with the Paris Principles and the Council of Europe’s Recommendation. Between 1999 and 2009, several ‘models’ for such an institute were investigated, discussed and proposed. In 2009, the government made a final decision not to create a completely new National Institute or National Commission on Human Rights, but to transform the existing ETC into the NIHR. Section 4 describes how this decision was motivated and defended during the period 2009-2011, in which the (draft) bill to establish the NIHR was discussed among stakeholders, in Parliament and in the (legal) literature. Ultimately this has led to the NIHR Act, as described briefly in Chapter 1 of this Report.

2.2. The ETC: history, main feature, tasks and competencies and discussions

History and main features

The ETC came into being when the GETA was adopted in 1994.\textsuperscript{15} It had several predecessors in the field of equal pay (m/f) (on the basis of the 1975 Equal Pay Act, the Civil Code and the Civil Servants Act) and in the field of equal treatment between men and women in employment (on the basis of the 1980 ETA). The ETC was designated in the GETA and in all other Equal Treatment Acts as the competent body to deal with complaints about discrimination and that had to evaluate those particular Acts on a regular basis.\textsuperscript{16} The ETC was a Commission of the Government, with 9 Commissioners (among which a Chair and 2 vice Chairs who must be lawyers) and had its own budget / staff at its disposal. It was

\textsuperscript{15} A comprehensive overview in English of the history and functioning of the ETC within the framework of the Dutch equal treatment legislation may be found in Goldschmidt 2006, Goldschmidt 2009 and Howard 2012.

\textsuperscript{16} The ETC was regulated / installed by the GETA, in which its tasks, powers and obligations were described (see in particular Chapter 2 and Art. 33 of the GETA). In several other equal treatment laws reference to these Articles in the GETA was made. Besides the GETA, the ETC also had a mandate with respect to the implementation of the ETA, Article 7:646 of the Civil Code, Article 125g and 125 h of the Central and Local Government Personnel Act, the Act on Equal Treatment on the Ground of Disability or Chronic Illness, the Act on Equal Treatment on the Ground of Age in Employment, the Working Time Equal Treatment Act and the Act Equal Treatment Permanent and Fixed Time Employment Contracts. Chapter 5 (on Amendments of Other Acts) of the NIHR Act provides that all references to the GETA in all these Acts are replaced by references to the similar provisions in the NIHR Act.
independent from the Government and obtained a B-status as a National Human Rights Institute from the ICC for the first time in 1999.

Main tasks and competencies

The ETC can be characterised as a pseudo juridical Equality Body, or as a predominantly tribunal type of Equality Body.\(^{17}\) Its main task is to hear individual complaints about unequal treatment and evaluate whether this complaint is (un)justified on the basis of the existing national unequal treatment legislation.\(^{18}\) Its decisions (called Opinions) are not binding and have the force of an expert opinion in disputes that ultimately have to be settled by the courts.\(^{19}\) Besides complaints from individual victims, the ETC can hear complaints of NGOs or other public or private organisations by way of a collective action (when representing a group of individualised victims) or as a general interest action (when representing the general interest of society that there is no discrimination). The ETC sometimes refers complainants and defendants to mediation although this task / function that is not mentioned in the GETA.\(^{20}\)

The ETC may also advise organisations (including governmental organisations) who want to know whether their practices or policies are in accordance with equal treatment norms. Besides this, the ETC may investigate structural instances of discrimination on its own accord. It has used this competency inter alia to investigate structural discrimination in the area of unequal pay and in the area of practices of banks when giving loans.

The ETC’s powers to investigate alleged discrimination (and require information or to visit premises) are in line with its role to investigate complaints of discrimination and structural discrimination.\(^{21}\)

Although not mentioned in the GETA, in practice the ETC also gives advice to the government in equal treatment issues, including advice on legislative issues. The ETC sometimes does research (or assigns experts to do this on its behalf) into specific issues, like e.g. victimisation, pregnancy discrimination or discrimination against homosexuals in the workplace. The ETC has the power to bring a case of discrimination to the attention of a court (i.e. to instigate legal proceedings), but it has never used this power in the 18 years of its existence. The main reason for this is that this competence conflicts with its role to

\(^{17}\) Ammer et al., (2010), p. 8. As a consequence of this, the majority of the Members and staff have a legal background, a fact that has been criticized as too one-sided and lacking a multi-disciplinary perspective on discrimination issues. See Idem, p. 344. See also Howard 2012, p. 65.

\(^{18}\) This section is written in the present sense because the section of the NIHR which is mentioned in Article 9 NIHR Act has the same features, tasks and competencies. See also Chapter 1 of this Report.

\(^{19}\) Goldschmidt 2006, p. 256.


\(^{21}\) These powers are similar to the ones now bestowed on the NIHR.
investigate complaints about unequal treatment in an independent and objective manner.\textsuperscript{22} In addition to the tasks mentioned above, the ETC spends part of its time, energy and resources on providing information about equal treatment legislation, both to individuals who phone or e-mail the Commission with concrete questions and on a more structural level to the general public (e.g. through media campaigns and producing leaflets and by means of setting up and maintaining a web site on the internet). According to Goldschmidt\textsuperscript{23}, the ETC had a lot of contacts with the field of anti-discrimination organizations in order to exchange information and to provide the necessary basic knowledge about equal treatment law to the staff and members of such organizations.\textsuperscript{24}

\textit{The ETC as the designated Equality Body in terms of EU Law}

According to the Dutch Government, the ETC is the designated Equality Body as required by EU Directives.\textsuperscript{25} Measured against these Directives, the ETC fulfills the general requirement of being an independent body. In terms of the tasks mentioned in the Directives, the ETC falls short because it does not provide independent assistance to victims of discrimination. This task, like instigating court proceedings, is seen as contradictory to its main function (dealing with complaints and giving Opinions).\textsuperscript{26} In The Netherlands every Local Council has a statutory obligation to have a so-called Local Anti-Discrimination Bureau\textsuperscript{27} (Anti-

\textsuperscript{22} Three other reasons, mentioned by Goldschmidt (2012, p. 188), for the ETC never to have used this power are that: (1) this would be a time and resources consuming task; (2) there are already enough possibilities for victims to seek redress in court themselves; and (3) only when there is a very good reason for doing so the ETC should go to court in their place. Or, as she phrased this in 2009: “The Commission has given priority to active monitoring policies and other informal methods. This can also be justified because victim`s organisations and other NGOs may also bring a case to court: if neither the victim nor any of these organisations takes further legal action, the added interest of the Commission itself is restricted.” (Goldschmidt 2009, p. 257.)


\textsuperscript{24} Laurien Koster, interview 3 December 2012, stated that this roleof the ETC will be continued by the NIHR.

\textsuperscript{25} See footnote 6 for these Directives. This designation is not laid down in the law, but follows from statements from the Government in various Parliamentary Papers. See e.g Explanatory Memorandum to the bill that has led to the EG-Implementatiewet Awgb (EC-Implementation law Equal Treatment Law) Tweede Kamer 2002-2003, 28 770, nrs. 1-3 at page 20, where it is mentioned in the Appendix, at page 20, that the implementation of Article 13 of the Race Directive is already completed because in the Netherlands we have the ETC. (EG Implementatiewet Awgb: Law of 21 Februari 2004, Staatsblad 2004, 119.)

\textsuperscript{26} This task is also not given to the NIHR, neither in the Chapter (2) on the Equal Treatment Section nor in the general provisions of the NIHR Act.

\textsuperscript{27} Staatsblad 2009, 313. On the basis of this law, there is a Decree in which a more detailed regulation of the local ADV’s is laid down. It contains provisions concerning the independence, the competency and the procedures that need to be followed when the offices provide information and assist victims of discrimination. See Staatsblad 2009, 373, Besluit gemeentelijke antidiscriminatievoorzieningen.
Discriminatie Voorziening, ADV); their main task is to provide assistance to victims of discrimination. There exist around 400 of such ADV’s in the country.\textsuperscript{28}

The complaints procedures- task of the ETC

In practice, giving Opinions in complaints and advisory procedures has taken up the major part of the ETC’s time and resources during the whole period of its existence. Apart from thereby offering ‘low threshold access to justice’ this is defended by Goldschmidt with the argument that the investigation of complaints about discrimination and the subsequent Opinions “enable the Commission to develop a (complex) understanding of how discrimination works in practice. This insight gives the Commission a solid basis for the broader tasks it is charged with, that of monitoring compliance with the equality laws.”\textsuperscript{29} To this she adds: “Most of the cases brought to the Commission would never have become public without the accessible procedure that the Commission offers. Thus the added value of each individual complaint, often representing many similar cases, is that it unearths the enduring existence and specific character of discrimination and its different manifestations.”\textsuperscript{30} In order to make these procedures more effective, the ETC has developed an active follow-up policy.\textsuperscript{31} The ETC is aware that an effective implementation of this function depends on individuals who bring cases of discrimination to its attention. Therefore, the ETC has also invested resources in awareness raising, education and training and communication strategies, in order to battle the under-reporting of cases of discrimination.\textsuperscript{32} An evaluation of the effectiveness of the complaint-mechanism is given by Erica Howard who extensively discusses the pro’s and cons of assigning such a pseudo juridical task to an Equality Body. She comes to the conclusion that the Dutch ETC, through fulfilling this task, can count as a good practice for Equality Bodies in other EU countries “as it provides victims of discrimination with an easier, less stressful, less expensive and quicker way to get a finding of discrimination than taking a case to court.”\textsuperscript{33}

Other commentators / researchers are more doubtful or even negative about the fact that the ETC mainly functions as a quasi juridical body. The following points have been mentioned

\textsuperscript{28} The ADV’s were designated as equality bodies in the Explanatory Memorandum to the Act on Local Anti-discrimination Bureaus; Tweede Kamer 2007-2008, 31 439, nr. 3, p. 7. For an overview of the numbers of complaints about discrimination that these ADV’s had received in 2010, see Tweede Kamer, 2010-2011, 31 439 nr. 19 (+ annex: report by M. Coenders, University of Utrecht): There is not yet an independent / academic evaluation of the functioning of these bodies available. There are signals that not all of them function really independently from the local government.

\textsuperscript{29} Goldschmidt 2006, p. 327.

\textsuperscript{30} Goldschmidt 2009, p. 257.

\textsuperscript{31} Also described by Howard 2012.

\textsuperscript{32} Goldschmidt 2006, p. 326.

\textsuperscript{33} Howard 2012, p. 67.
several times in the literature in favor of reconsidering the pseudo tribunal role of the ETC.\footnote{Several of the following points are also discussed by Erica Howard 2012; Howard comes to the conclusion that nevertheless the ETC fulfils the expectations set by the legislator. References to this critical literature can be found in Howard’s paper. The author of the present Report is among these critical commentators. See e.g. Holtmaat 2000 and Holtmaat 2003.}

In the first place, the criticism concerns the fact that this task consumes the greatest part of the ETC’s time and resources, to the detriment of other tasks like giving advice, information campaigns for the general public, doing research into structural discrimination, advocacy work, and publishing reports. Also, the ETC thereby focuses on solving the problems of individuals who are (alleged) victims of discrimination and in that way does not contribute (enough) to combating discrimination on a (more) structural level. A second point of criticism is that as a consequence of the fact that the ETC is the designated body to investigate complaints about discrimination, very few of such cases ever reach the regular courts. This means that the ‘ordinary’ judiciary hardly becomes familiar with equal treatment cases and the applicable national and international legal norms. It leads to an ‘island position’ of this area of law. Opinions of the ETC are not binding; therefore, victims who want to have a real solution (like financial compensation or re-installment in their job) still have to go to court after the ETC has given an Opinion (unless the defendant voluntarily changes its practices or policies). Therefore, it remains to be seen whether the complaints procedure at the ETC is indeed a cheap, easy accessible and quick way of getting a solution when one is discriminated against.\footnote{Marcel Zwamborn, in a comment on a draft of this Report, pointed out that this function can also be fulfilled in other ways, as was demonstrated in the recently published Report by FRA (2012). In a comparative study on 8 different countries, the researchers found that there are various ways to guarantee low threshold access to justice in discrimination cases and make sure that the ‘ordinary’ courts also deal with them in an effective way. See p. 35 of this FRA report.}

**Political and academic criticisms on the functioning of the ETC**

The existence and functioning of the ETC was not undisputed, especially not since the beginning of the new millennium. This was partly due to the political climate in The Netherlands, where since 2002 populist parties have taken part in the Cabinet (2002-2003), have conducted fierce opposition to various non-populist coalition Governments (2003-2010), or have sustained a minority coalition Government (2010-2012). These parties (most notably the “Lijst Pim Fortuyn” (LPF), Ms Verdonk’s “Proud of The Netherlands” (TON) and Mr Wilders’ Freedom Party (PVV)) were not at all in favour of enhancing equal treatment law or implementing such norms, even to the point of proposing to abolish Article 1 of the Constitution (the constitutional principle of equal treatment, on which the GETA and all other equal treatment legislation is based).\footnote{Fernhout and Wever (2011, p. 335, footnote 3 and 4) mention various articles in newspapers and journals in which the ETC is heavily criticized. Headlines run like “ETC is a leftish bastion” (Elsevier 2006); “VVD and PVV: Abolish ETC!” (Elsevier 2007); and “ETC criticised because of (case of) the marriage register who refuses to marry homosexuals” (Reformatorisch Dagblad, 2009).}
In this period several of the ETC’s Opinions – most notably in the area of religious discrimination – have met with very critical remarks by the leaders of these parties. In any case where the ETC, on the basis of the GETA, protected the rights of religious minorities, e.g. to wear a headscarf or to refuse to shake hands with women, these Opinions were fiercely rejected by extreme right wing populist political leaders. On the other hand, also liberals and liberal democrats sometimes were not happy with the ETC’s Opinions; for example where the ETC (on the basis of exceptions or justification clauses in EU Directives and in the GETA) ruled that schools with a religious denomination have greater liberty than other schools to impose dress codes (including dress codes that prohibit the Islamic veil) or to refuse pupils from a certain religious background. Also, some ETC’s Opinions about cases concerning civil servants who refuse to marry same sex couples, were rejected by (more) liberal and social democrat politicians, who voiced concerns about the ETC’s leniency towards religious fundamentalism at the detriment of the rights of e.g. same sex couples.37

From the side of the academic world there was also quite a lot of criticism of the ETC’s functioning. Partly this has been discussed in the previous section (on the pseudo tribunal role of the ETC). Other points that were discussed in the literature are mainly related to the fact that the ETC is bound to give its Opinions in individual cases and advice on request solely on the basis of the non-discrimination norms in the equal treatment legislation.38 As far as direct discrimination is concerned, this legislation has a closed system of justifications. This leaves no room to take other interests and values into account. In applying these norms, the ETC sometimes seems to be even stricter than the CJ EU, most notably with respect to the possibility to accept justifications for discrimination and the possibility to implement positive action schemes. This leads to a one sided and unconvincing weighing of the issues at stake.39

On that ground, the ETC is sometimes seen as a ‘one issue’ organization and on that account is lacking authority, especially among jurists and academic lawyers who are not specialized in the field of (EU) equal treatment law. Because the equal treatment legislation quite neutrally talks about ‘making a distinction’ on a number of grounds, any distinction becomes suspect; i.e the relative weight of such distinction (as compared to other interests involved) is not taken into consideration. This means that the ETC gives a lot of Opinions about what many people consider being trivial issues (like e.g. whether women like men must be obliged to put their bicycles on the highest shelves in a train station bicycle storage).40

37 It is therefore remarkable that Howard (following De Witte 2011, p. 171) concludes that it the ‘amalgamation’ of the two institutes was not inspired by dissatisfaction with the ETC. This may not have been openly the reason to make this choice (see also par. 3.2 of this Report), but it certainly has played a role.

38 The GETA and other equal treatment laws only give the power to the ETC to evaluate cases in the light of these laws. This is the reason why the Commission until recently was very reluctant to broaden its scope of review to other legal norms, including other human rights norms.

39 In 2011, for the first time, the ETC openly took the freedom of expression as guaranteed under the ECHR into account. This so-called Elsevier case, Opinion 2011-69, was very much debated among the equality law specialists. See inter alia Terlouw 2011 and Noorlander 2012, at p. 173.

40 See e.g. De Wolff 2004 and Holtmaat 2003.
2.3. The desire / necessity to establish a NIHR – 1999-2009

Counted from the moment of adoption of the *Paris Principles*, it has taken the Dutch Government almost 20 years to bring the NIHR into being. Public debate about this issue started in 1999 when the Dutch Section of the International Committee of Jurists (NJCM; a major human rights NGO) dedicated a symposium to the question whether The Netherlands needed a human rights institute, as recommended by the 1993 United Nations Resolution, and in the 1997 Council of Europe Recommendation. The participants concluded that the establishment of such an institute would indeed fill important gaps in the scattered pattern of existing official, semi-official (subsidised) and non-governmental institutions in the area of human rights promotion and protection. Between 1999 and 2008 there were several initiatives, sometimes supported by Motions in Parliament, from the side of NGOs and a Consortium of four important Institutes that were operating in the area of human rights. Several proposals were made, based on in-depth surveys of the situation. In the same period, the Government applied for membership of The Netherlands of the UN Human Rights Council and at that occasion promised several times that it would install a national human rights institute. In addition, there was a Recommendation (nr 30) of the Human Rights Council in the 2008 UPR Report on The Netherlands to establish such an Institute. As Fernhout put it: “(…) it attracts attention that the Netherlands is one of the countries where a National Institute for Human Rights is lacking. This is considered more and more (…) as a deficiency. It undermines the authority and credibility of the Netherlands as a champion of human rights.” From the perspective of human rights organisations, the lack of such an institute was an obstacle to be represented and heard in the relevant international organisations.

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41 See for a more elaborate description of this period Goldschmidt 2012a.
44 The most important ones are Tweede Kamer 2000-2001, 27400 VI, nr 28. (Motion Halsema.) and Tweede Kamer 2006-2007, 30 800 V, nr 29 (Motion Karimi, Koenders, Köser Kaya).
45 These were the National Ombudsman (NO), the ETC, the Data Protection Agency (DPA) and the Netherlands Institute for Human Rights (SIM; a research institute at the University of Utrecht).
47 A/HRC/8/31, 13 May 2008. See also Concluding Observations of the ECOSOC Committee, 19 November 2010, footnote 108
49 Fernhout 2007, p. 166.
In 2007, the Consortium recommended to establish an independent Institute in such a way that the desired A-status of the ICC could be attained. The form of the proposed National Human Rights Institute would have to be a foundation under civil law, to be supported financially by the Government. Later that year, the Consortium proposed that this Institute could be housed at the National Ombudsman’s (NO’s) offices on a basis of a model of ‘twinning of shared services’.\(^{50}\) It was estimated that the establishment of such a NIHR would cost 1.15 million Euro annually. Finally, things were set in motion. According to Goldschmidt “(…) the international action of the Dutch Foreign Office, the international pressure imposed by the EU Parliament and the UN Human Rights Council, and the initiative of the Consortium, mutually reinforced each other. The establishment of a national institution meeting the requirements to obtain the A-status at international level had become a common goal.”\(^{51}\)

In July 2008, the Cabinet submitted a *Position Paper* (Kabinetsstandpunt) to Parliament.\(^{52}\) In it, the Government for the first time fully committed itself to establish a NIHR. It gave several arguments for doing so. Most attention was given to the desirability to have an Institute that would be able to obtain the A-status from the ICC. The Government also acknowledged that there were indeed gaps in the protection of human rights in The Netherlands and that there was a need to co-ordinate actions and programs, especially in the context of international relations. However, the establishment of a completely new (free standing) Institute was not deemed desirable and feasible. In the *Position Paper*, it was argued that the Bureau of the NO would be the most suitable location for the new NIHR to be housed. It was explicitly stated that this option would not mean an extension of the powers and functions of the NO.\(^{53}\) An interdepartmental ‘Steering Group’ was formed, which was assigned to elaborate this option together with the Consortium partners. It was mentioned that this option was in line with a general trend in Europe to reform the National Ombudsman’s Institute into a Human Rights Institution. The new NIHR (under the NO’s roof) would have a board in which there needed to be a close co-operation of the Consortium partners and other relevant stakeholders.

The Cabinet’s *Position Paper* was discussed in a Commission of Parliament in December 2008.\(^{54}\) At that occasion, several MP’s made clear to the Government that there would not be

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\(^{50}\) Sharing the same building, the front office and the function to inform the general public about their rights. Letter of the Consortium partners dd 1 November 2007, appendix to 2007-2008, 31 200 VII, nr. 75.

\(^{51}\) Goldschmidt 2012b, p. 37.


\(^{53}\) Advantages of this option, mentioned by the Government, would be that (inter alia) the NO already has a legal basis and is independent from the Government and funded by Parliament; the NO has a lot of experience with and facilities for information campaigns for the general public; and the NO has a front office where persons with questions can be given adequate information. Idem, p. 7.

a majority in Parliament for the option of housing the new NIHR at the premises of the NO. Several political parties expressed the wish not to establish a new institute.\textsuperscript{55} In the discussions it became clear that the Minister of Interior & Kingdom Relations (I&KR)\textsuperscript{56} also did not really want a completely new institute, even when housed at the premises of the NO. A Motion was adopted in which the Government was asked to further investigate whether the tasks of a national human rights institute could be assigned to one or more of the existing institutions or organisations in the field of human rights protection and promotion.\textsuperscript{57} After some further investigations, the Steering Group came to the conclusion that two models were possible: (1) a model of “twinning of shared services” of the new Institute with the NO’s office or with the ETC (i.e. sharing the same building and achieving some efficiency goals, also called the “hosting” model); or (2) a model of integration of the NIHR with the NO or with the ETC.

2.4. The establishment of the NIHR, integrating / absorbing the ETC – 2009-2011

The Cabinet’s Advanced Position Paper of 2009

In 2009, in an Advanced Position Paper (Nader Kabinetsstandpunt), the Government declared that it favoured the option of “placing the NIHR at the ETC”; or, as it was also phrased in that Paper “to integrate the NIHR with the ETC”, whereby one new organisation would be established.\textsuperscript{58} The National Ombudsman (NO) wrote to the Minister of I&KR, expressing the willingness to integrate the NIHR into his own organisation.\textsuperscript{59} The Government rejected that option with the argument that in the Position Paper of 2008 it had already taken the stance that it was not an option to extend the tasks and powers of the NO.\textsuperscript{60} The following reasons for the decision to establish a new Institute, in which the tasks of the ETC were merged, were given:

\begin{itemize}
  \item The Liberals (VVD), the Labour Party (PvdA), the Socialists (SP) and mr Wilder’s Freedom Party (PVV).
  \item This Minister / Ministry is responsible for Constitutional Affairs. In that capacity I&KR has the task to deal with human rights issues; the Minister of Security & Justice is involved with the NIHR because this Ministry deals with the organisation / administration and budgets of the official advisory boards of the Government.
  \item Motion Schinkelshoek (MP for the Christian Democrats); Tweede Kamer 2008-2009, 31 700 VII, nr 52. The Government reacted by stating that it strives after getting the A-status of the ICC. Tweede Kamer 2008-2009, 31 700 VII, nr. 60.
  \item Nader Kabinetsstandpunt Nationaal Instituut voor de Rechten van de Mens 10 juli 2009, Tweede Kamer 2008-2009, 31 700, VII nr 75. (Advanced Position Paper.) In a footnote (nr 6) to this Position Paper it is explained that integration here is synonym with ‘going together’ (‘samengaan’ i.e. a merger), meaning that one new institute was to be formed.
  \item Advanced Position Paper, p. 2.
  \item Advanced Position Paper, p. 2. The political sensitivities behind this standpoint are discussed below in par. 3.3. of this Report.
\end{itemize}
In the first place the wish not to increase the number of official Advisory Boards or Institutes. Secondly, the fact that the Office of the High Commissioner of Human Rights (OHCHR) had recommended to integrate the NIHR with the ETC. Because there already existed an organisation (the ETC) that already had a B-status with Members (since 19919, staff and an office that could be transformed into a human rights institute, it would be possible in a relatively short time to establish a NIHR that would be in accordance with the \textit{Paris Principles} requirements. As far as these requirements are concerned, the Government took a minimalist stance: “For the tasks of the NIHR the enumeration of the minimal list of tasks in the \textit{Paris Principles} is leading, because these are the measure sticks for obtaining the A-status in the UN context.” There is no discussion in the \textit{Advanced Position Paper} on the level of substance, i.e. about the similarities and differences between the fields of equal treatment and human rights protection.

Although the term ‘integration’ was used throughout this \textit{Advanced Position Paper}, several other terms were also used in that regard. For example, the Paper speaks of the NIHR ‘taking over’ the tasks of the ETC and of ‘transferring the tasks of the ETC to the new Institute’. This is an indication that in the beginning of this process (between 2009-2010; i.e. until the NIHR bill was submitted to Parliament) it was rather vague what exactly was about to happen. Did it mean that the ETC would cease to exist, or would it still be there but housed under the roof of the new NIHR? Or would it be the other way around: the NIHR being housed at the ETC? Only when the bill was published, it became clear that the former ETC was to become a ‘section’ of the NIHR that would deal with individual complaints about discrimination under the existing equal treatment legislation. The ETC as such, including its well known name, would indeed cease to exist. Appointed ETC-Commissioners and the ETC Staff would automatically become Members and Staff of the NIHR and would get a much wider package of tasks, including dealing with all human rights issues. The NIHR would be housed at the offices of the ETC in Utrecht.

An important consequence of the proposal to transform the ETC into the NIHR was that a much lower budget was deemed necessary to fulfil all the additional / new tasks of the NIHR.

\begin{itemize}
\item \textit{Advanced Position Paper}, p. 2. The advice by the NIRMS section of the OHCHR (dated 15 October 2010) is published as an Appendix to Tweede Kamer 2010-2011, 32 467, nr 6. Previously, the ETC had also asked advice and got a letter dated 28 June 2010, published as an appendix to idem.
\item The motivation that this was a quick and easy way to reach this goal was mentioned by most interviewees as an important factor in the decision making process at this stage.
\item \textit{Advanced Position Paper}, p. 3.
\item Idem.
\item The location of the NIHR was a point for debate in the Parliamentary discussions. Some stakeholders and politicians argued that the NIHR should be closer to the political scenes and Governmental offices and to international organizations that are all based in The Hague. In the interview with the Chair of the NIHR she acknowledged that The Hague certainly has advantages over Utrecht, but that for practical and financial reasons moving to The Hague was not an option. (Interview with Laurien Koster 16 November 2012.)
\end{itemize}
In fact, the proposed budget was almost cut in half (a mere 600,000 structural increase of the ETC’s budget instead of 1.15 million for a new Institute, as was estimated by the Consortium in 2007). This was an important argument in favour of this solution in times when serious budget cuts were implemented in all areas of governmental policies. According to the first Position Paper the instalment of a new NIHR should be ‘budget neutral. This goal was reached by means of asking the Ministries involved to find the necessary extra money within the limits of their existing budgets. In this way it was not very costly to get the much desired Institute with a (possible) A status. Also, the proposal fitted into the general policy of the Government (much advocated by the then Minister of I&KR) not to increase (sooner to decrease) the number of advisory organs or other semi-governmental bodies.  

It is this choice of the Government in 2009 that became the foundation on which the NIHR was built. In order to give this Institute the necessary legal basis, the (at that time intermediate) Government submitted a bill to Parliament in August 2010. After two more years of consultations with stakeholders and political discussions, this bill became the NIHR Act (as described in Chapter 1 of the current Report).

The adoption of the NIHR Act

The process of adopting the NIHR Act had three main stages: a public consultation on the basis of a draft bill, the discussions in the Second Chamber and the discussions in the First Chamber (Senate) of Parliament. During the first part of the process, the Government also got the (obligatory) official advice of the Council of State and the advice of the International Co-ordinating Committee of National Human Rights Institutions (ICC) in Geneva about the construction of the NIHR in such a way that it would be in accordance with the ICC’s requirements for getting the desired A-status.

In fact, there was no fierce opposition in Parliament or among stakeholders to the solution proposed by the Government (the transformation of the ETC into the NIHR). Issues that were raised mainly concerned the question whether the new Institute would be sufficiently independent from the Government, i.e. whether it fulfilled all the requirements to possibly get the desired A-status from the ICC, whether it should have the right to instigate court

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67 After the decision was taken, a new steering group was formed, consisting of representatives of the Ministry of I&KR and the Ministry of S&J, and the Chair of the ETC.

68 Tweede Kamer 2009-2010, 32 467, nrs 1-3.

69 This period has been described in detail by Donders & Olde Monnikhof 2012.

70 See footnote 61.

71 Mr Wilders’ PVV was dead against this Institute, no matter what form it would take. His party was the only one voting against the bill in both Chambers of Parliament.

72 Donders & Olde Monnikhof 2012 describe these discussions in detail.
proceedings about human rights issues (beyond equal treatment cases), and whether the allocated budget would be sufficient / would not be exceeded. Another issue (mainly raised outside Parliament) was whether the Commission structure that came with the old ETC was the most appropriate and desirable one for a NIHR.\(^{73}\) All this resulted in the adoption of the NIHR Act (as described in Chapter 1 of this Report).

2.5. In the meantime: the preparation of the transformation of the ETC into the NIHR

From the moment the bill for the NIHR Act was submitted to Parliament (August 2010), the ETC started to prepare its transformation into a national human rights institute.\(^{74}\) For the year 2010 it already got an additional budget of 267,000 and for the year 2011 900,000 from the Government to do this preparatory work.\(^{75}\) Part of the staff of the ETC was tasked to do this work; some additional staff with human rights expertise was hired. This (temporary) section employed a wide variety of activities, among others providing internal schooling and training for the existing staff and ETC Members about human rights law and human rights issues in The Netherlands, making an inventory of the most pressing human rights issues in the country (according to reports and NGOs assessments), visiting human rights institutes abroad to learn from their experiences, and consultations with more than 150 stakeholders in the wider society.

In 2011 the ETC opened a web site on which information about the legislative process (the bill was still under discussion in Parliament at that time) and about the practical preparations was published.\(^{76}\) During this whole period, the ETC’s management and the internal section tasked with the transformation process regularly consulted a so-called ‘sounding board group’ (\(klankbordgroep\)). This group gave advice about the steps that needed to be taken. It consisted in a number of persons from various academic and NGO-backgrounds.\(^{77}\)

\(^{73}\) The Council of State had serious concerns about this choice; see Tweede Kamer 2009-2010, 32 467 nr 4, p. 2. See also Goldschmidt 2012a.

\(^{74}\) The 2011 annual report of the ETC (also available in English) contains an extensive overview of the preparatory activities that took place in 2010-2012. See footnote 75. See also Donders & Olde Monnikhof 2012.

\(^{75}\) See ETC annual reports on 2010 and 2011, to be downloaded from http://www.mensenrechten.nl/publicaties/zoek?categori[0]=434555 (Last accessed on 29 November 2012.)

\(^{76}\) The name of the web site was: http://www.naarenmensenrechteninsituut.nl (towards a human rights institute.nl)

\(^{77}\) Remarkably, apart from a former director of SIM, no representatives from the Consortium partners were part of this group.
3. An analysis of Key Factors Facilitating or Inhibiting the Effective Integration of Equality and Human Rights Functions

3.1. Introduction

This part of the Report contains an analysis of the current situation in The Netherlands with a view to the central question of this research project, i.e.: to identify the most significant factors which should be taken into account regarding the integration of the functions of national equality bodies and national human rights institutions.

The NIHR was formally opened at the same time as this research project started (October 2012). This means that at the time of writing of this Report nothing much could yet be said / observed about the effects in practice of the construction that was chosen (transformation or integration of the ETC into the NIHR). From the perspective of other EU countries that consider to follow a similar path or strategy, the way in which this decision was taken is particularly interesting: which factors were (co)decisive to come to the conclusion that such a combined institute would be the best / most feasible option? Who were involved in the process of decision making? Who were (mostly) left out? Was the process transparent for (relative) ‘outsiders’? In the second place, the possible positive and negative consequences of the integration of the ETC into the NIHR for the protection against unequal treatment and discrimination are presented. Thirdly, the same will be done from the perspective of human rights protection and promotion. This Chapter concludes with a presentation of six most significant issues that are important for the future success of the Institute.

3.2. Issues concerning the process of decision making towards the transformation of the ETC into the NIHR

Factors leading to a decision in 2009

Par. 2.4 of this Report describes that after many years in which hardly any progress was made, in 2009 quite suddenly and quite quickly the decision was taken to transform / integrate the ETC into the (to be established) NIHR. Six aspects of the process leading to this decision deserve special attention.

In the first place, the transparency or obscurity of the actual decision making / taking is a relevant aspect of the decision making process. Purely on the basis of a reading of the formal papers it remained unclear how this decision had come about. It appeared to have dropped ‘out of the blue sky’. For that reason, participants in the decision making process were asked

78 The research was done between 1 October and 15 December 2012; the text of this Report was finalised on 31 January 2013.

79 I.e. the Government’s (two) Position Papers, Parliamentary Committee Meeting Reports and Motions, the MoE to the NIHR Act and Parliamentary Papers.
to explain what had actually happened between the first option to house the NIHR at the premises of the NO on the basis of a model of twinning of shared services, and the second and final option to transform the ETC into the NIHR or to let the ETC integrate into the NIHR. Although formally it was not the Steering Group, that was formed after the first Position Paper had been published, but the Minister / Cabinet who decided which option was chosen in the end, in fact this decision was prepared in this Steering Group. It was a closed circle of civil servants and Consortium members. According to these persons themselves it was logical that they kept their debates internal since it was a very complicated / sensitive process. As it was voiced by Laurien Koster, then Chair of the ETC, the ETC volunteered to be the organisation that could ‘house’ the new NIHR. This suggestion was done after the National Ombudsman appeared to be reluctant to house the NIHR on the basis of a model of shared services – the NO saw this as a corpus alienum in his organisation and wanted to be the actual head of the two bodies (in one building); and after the Chair of the ETC had asked the ETC Commissioners how they thought about the relationship between the two institutions. It appeared that the Commissioners saw integration as an opportunity. One of them voiced this as: “Of course equal treatment will benefit from being embedded into a wider human rights framework.” The ETC offered its co-operation, without indicating which model (shared services or complete integration) it favoured. The only precondition (also voiced in a letter to the Minister of Justice at that time) was that the merger would not lead to a diminishing of the protection against unequal treatment. At a particular moment, some actors seem to have operated (partly) outside the Steering group, preparing a decision in favour of the ETC. According to the NO he was as surprised by the Government’s final decision as was the outside world.

A second aspect is the lack of clarity about the motivation(s) to choose this particular option. Persons who were present in the Steering Group meetings mentioned a great number of reasons why the shift from NO to ETC was made. They all had their own perspectives on what exactly had led to this decision. Factors that were mentioned as contributing to the shift were budgetary reasons, substantive considerations (inter alia the connection between human rights and non-discrimination), practical / organisational considerations (most notably the

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80 I.e. in the period of the first Cabinet’s Position Paper (18 July 2008), the Motion Schinkelshoek (18 December 2008) and the Advanced Position Paper (10 July 2009).

81 Interview with civil servants 22 November 2012 and Interview with Jenny Goldschmidt 16 November 2012.

82 Interview with Laurien Koster 16 November 2012.

83 Interview with Laurien Koster 16 November 2012.

84 Interview with Laurien Koster 16 November 2012, in which she stated that she actively consulted the existing ETC Commissioners about the option to ‘house’ the NIHR at the ETC and discussed this option with the civil servants in the Steering Group. It was confirmed from that side (interview with civil servants 22 November 2012) that at some point bi-lateral talks had taken place, however the outcomes thereof had always been discussed in the Steering Group.

85 Interview with Alex Breninkmeijer 3 December 2012.
wish not to increase the number of advisory boards and the fact that the ETC already had B status since 1999), the threatened position / the lacking authority of the ETC, the position / the authority of the NO and political considerations (e.g. the fact that the Christian Democrat Minister of Foreign Affairs was very much in favour of quickly establishing such an institute because he had promised to do so in Geneva). However, each of the interviewees mentioned different factors as being decisive in the end. Probably it was exactly this coming together of various interests / perspectives that caused that all persons and organisations suddenly could come to an agreement about the one ‘solution’ that seemed to serve all of them.\textsuperscript{86} The only one loosing out was the NO who had not whole heartily welcomed the first option, but who (too late) made it clear that the NIHR could also be merged with his own institution (under his leadership). At the same time there was some political opposition to the idea of giving more tasks and powers to the NO.\textsuperscript{87} Another important factor was that the UN had (twice) advised positively about the option to the transform ETC into the NIHR. Most importantly the final solution meant that in this way it was not necessary to establish a completely new institution / advisory board.

A third (related) point that is striking and may have contributed to the speeding up of the process in 2008-2009 is the fact that the wording of the decision in the Cabinet’s \textit{Advanced Position Paper} (2009) was rather vague / opaque. Several expressions were used to describe the situation-to-be. This may have eased stakeholders into accepting the decision and being able to defend it in their own circles / organisation. Even after the adoption of the NIHR Act and the coming into being of the NIHR, the interviewees described the (new) situation differently. When asked to point out the phrase that would most adequately describe the new situation, diametrically opposed answers were given. The following descriptions were used, both in the written documentation / academic commentaries and in the answers to the questionnaire: the new NIHR was brought under the ETC; the tasks of the ETC were brought under the NIHR; the ETC has been transformed into a NIHR; the ETC was merged with the NIHR; the tasks of the ETC are integrated into the new NIHR; the ETC has been abolished; there now is a NIHR that also has a task to deal with issues in the area of equal treatment. Several interviewees agreed that in fact a shift of paradigm took place during the process: at first it was presented as that the ETC would take on board the NIHR, while in the course of time what actually happened was that the NIHR took on board the ETC.\textsuperscript{88}

\textsuperscript{86} See also the quote from Goldschmidt in par. 2.3 above.

\textsuperscript{87} This was a politically sensitive issue at the time. The NO had had some controversies with the Government and besides there were already proposals to also include the Children’s Ombudsman and the Whistle Blower Institute in the Ombudsman’s organisation. It was made clear (also in the Advanced Position Paper) that the Government did not want to further increase the NO’s tasks powers. Civil servants (interview on 28 November 2012) also mentioned the fact that the constitutional position of the NO could not easily be reconciled with the different statutory-based position of a NIHR.

\textsuperscript{88} This was expressed in this way by the civil servants; others, like Zwamborn, Brenninkmeijer and Fernhout used stronger expressions, stating that the ETC had disappeared, was abolished or was ‘swallowed up’.
A fourth remarkable aspect is that the process was mostly put in motion by non-party political actors. Members of Parliament (at least not openly) hardly participated in the debates about how exactly the NIHR should be structured. Although some Motions had been adopted in the previous years, it was only after the Government had come with a particular solution in its first Position Paper that there was strong political interference, which ended in the option to integrate the ETC into the NIHR. This interference was motivated quite negatively: politicians expressed the wish not to have an institute at all (extreme right wing) or to let the tasks of the human rights institute be placed at / carried out by one or more of the existing human rights institutions (Christian Democrats and Liberals). The subsequent Parliamentary Motion Schinkelshoek made it possible that a turn was taken from NO to ETC. The Motion did not express a preference, it only said that it should be further investigated whether the tasks of the human rights institute could be placed at / carried out by one or more of the existing institutions. The main stakeholders also refrained from openly taking a clear stance in this matter: neither the Consortium partners nor the Broad Coalition for Human Rights (section NL) (Breed Mensenrechtenoverleg Nederland) publicly indicated a preference for one of these two models or for one of the two Institutes (NO or ETC). The only one that raised a voice against this solution was the NO, who announced that he was (also) willing to take the NIHR on board. And behind the scenes, the ETC (in fact its Chair) made it clear the it was willing ‘to do the job’.

A fifth aspect of the process was the economical / financial ‘momentum’. Paradoxically, the financial and economic crisis that broke out in the second half of 2008 may have helped to speed up the process considerably. When in the end the idea had fully ripened that The Netherlands might indeed need such an institute (even if only to be able to fully participate on the international Human Rights-level), the Government had to struggle with serious budget deficits. As a consequence of that, the establishment of a completely new Institute became out of the question. In fact, the worsening economic and financial situation may have advanced the process, because suddenly the option to integrate the NIHR with an already existing organisation (or to refurbish an existing organisation into a NIHR) became acceptable for stakeholders who until than had not really considered that as a feasible option. In addition to these financial reasons, there were also administrative and organisational factors why a completely new independent institute had become an unrealistic option: on the whole, the Government wanted to have less instead of more advisory organisations or bodies.

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89 See footnote 44.

90 Motion Schinkelshoek. See footnote 57.

91 On the basis of the information by the Government in its Advanced Position Paper of 2009. See footnote 58. This was confirmed in the interviews with the civil servants and the NGO representatives on 28 November 2012

92 See paragraph 2.4.

93 Interview with Laurien Koster 16 November 2012.
A final aspect (mentioned by several interviewees) why this decision was taken quite suddenly in 2009 and without much further discussion among stakeholders and politicians, was that there was a pressing need to grasp the political ‘momentum’. While finally there was a commitment from the side of the (at that time Christian Democrat, Christian Union and Labour Party) Government, there was also a lot of criticism from populist right wing parties on the ETC. At the same time there was a lot of pressure from NGOs and national human rights organisations to finally establish a NIHR. Finally, the pledge of the Minister of Foreign Affairs, made in Geneva in order to be eligible to get a seat in the Human Rights Council, that the Netherlands would start with the process of establishing a NIHR made a difference. When the Government fell in 2010, the topic remained on the legislative agenda of the interim Government and the bill for the NIHR Act was submitted to Parliament by this interim Government.

Two problematic aspects of this decision making process

A lesson to be learned from this history is that a process that because of conflicting interests is very slowly going on for many years can suddenly go very fast when a solution is proposed that can solve many stakeholders’ problems and / or can serve different stakeholders’ crucial interests at the same time. Apart from the NO, everybody seemed to be very happy with this ‘solution’. Critical voices about this option were only heard from some ‘outsiders’, i.e. organisations and persons who had not been present at those crucial Steering Group meetings in 2008-2009. This lack of involvement of NGOs, especially from the side of the ‘equal treatment world’, and a lack of trust in this solution, especially from the ‘human rights world’, could eventually undermine the NIHR’s legitimacy and authority. Two observations are of particular importance in that regard.

The process of establishing a NIHR in The Netherlands has many features of a so-called “coordinative discourse coalition” in which various stakeholders from different backgrounds participate in constructing a policy change / new institution. Such a discourse coalition (as opposed to a more politically oriented “communicative discourse coalition”) is mostly inward looking and seeking internal consensus, instead of aiming at informing and convincing the general public. Persons who were not present in these discussions were asked how they had experienced this period. NGOs representatives and other ‘outsiders’ all called this process non-transparent. One interviewee expressed this by saying that “[A]ll of them kept their

94 Expressed by inter alia the civil servants, Zwamborn, Goldschmidt and Olde Monnikhof.

95 The name of the (then) Minister of Justice (Hirsh Ballin, Christian Democrat) popped up several times in the interviews: it was thanks to him that the bill was presented to Parliament in a period of interim Government. This is quite remarkable, because in that situation controversial issues are almost always taken off the legislative agenda and have to await the installation of a new Government after the elections.


97 This was acknowledged by those stakeholders who had participated in the process; according to them there was no other way to come to a quick solution. E.g. interview with Laurien Koster 16 November 2012 and with Jenny Goldschmidt 16 November 2012.
cards to their chest until the final decision was made”. This may explain why outsiders, especially from the side of human rights NGOs, were more critical and sceptical about the ‘solution’ that was chosen. For the future acceptance and authority of the new Institute this may be a hindrance. Outsiders saw the decision to integrate the ETC into the NIHR mainly as a negative choice: it was a matter of other options not being possible (e.g. because of political or financial reasons) or not being feasible / desirable because of raising too much (political) resistance. Or as one of the interviewees remarked: “It was a matter of striking out all other options that were impossible or unwanted until this one was left over.”

This observation about the process being relatively closed and not-transparent for outsiders, links up with a second observation that came out of the interviews. All interviewed persons agreed that in The Netherlands there are two rather separated worlds of expertise / interests / lobbies: that of the equal treatment or anti-discrimination circles and that of circles involved with human rights protection and promotion. “They seem rather stand-alone monolithic blocks and in my perception there is not much connection between them.” Or, as one of the interviewed persons said: “At the opening ceremony of the NIHR for the very first time I saw people of these two worlds together in one room.” Apart from some NJCM-members, few legal experts have involvement with both areas of law. Equal treatment legislation has more and more become an area for legal specialists who are more oriented to and connected with European Union Law than to / with the ECHR or UN Treaties in the area of non-discrimination and human rights protection in general. Equal treatment law also has become rather technical and formalistic and sometimes leads to legal controversies / case law that generate doubts about the seriousness of the issue. Although not formally excluded

98 Interview with Marcel Zwamborn 31 October 2012.

99 Interview with Marcel Zwamborn 31 October 2012.

100 This is confirmed in the academic legal literature where the equal treatment world is sometimes seen as a closed circle of experts that have lost sight of real life. See e.g. Jaap van Slooten 2013.

101 Interview with Cyriel Triesscheijn 11 December 2012.

102 Interview with Marcel Zwamborn 31 October 2012.

103 The legal journal published by NJCM-(the NTM-NJCM-Bulletin) publishes reviews of developments in both areas of law and is one of the few Dutch legal journals that regularly publish and annotate ETC Opinions.

104 One of the reasons for this could be that a lot of attention of the Dutch human rights specialists goes to developments in the case law of the ECtHR. Since Art. 14 ECHR does not contain a free standing non-discrimination provision, this issue also got little attention from the ‘Strasbourg watchers’.

105 Some commentators (among which the author of this Report) have observed that the formal and symmetric approach to equality in the existing equal treatment legislation sometimes leads to rather trivial cases before the ETC. See Holtmaat 2003 and De Wolff 2004. The connection with ‘real’ and ‘really serious’ human rights violations is lost. This may lead human rights specialists / activists to consider equal treatment law as less important to deal with (in detail). This was confirmed in the interview with Alex Brenninkmeijer 3 December 2012.
from any public consultation on the plans to vest a NIHR / on the draft bill for the NIHR Act, it can be observed that the equal treatment world was far less involved with the whole process of establishing the NIHR (in which the ETC was to be incorporated). Apart from the ETC that participated in the Consortium, main institutions in the area of equal treatment, like the gender equality expert institute *Equality*, the *LBR* (later ‘Art.1’), the Dutch Council for the Chronically Ill and Disabled Persons (*Gehandicaptenraad*), the Expert Bureau for Age Discrimination (*Bureau Leeftijd*) and the national association of local anti-discrimination bureaux (ADVs) were not represented in the Consortium nor in the working group (‘sounding board group’) that was formed by the ETC management to ‘guide’ the process of the actual integration. This may affect the effectiveness of the NIHR in terms of the equal treatment organisations / experts being able to / being willing to associate themselves enough with this new Institute and the work it performs in the area of non-discrimination issues.

### 3.3. Issues concerning the future functioning of the NIHR from the perspective of protection against discrimination

**The Institute’s name**

The draft bill proposed the name “Authority for Human Rights and Equal Treatment”. According to in particular the NJCM-and the Council of State, this name was confusing. There were concerns that by adding ‘equal treatment’ to the name, it would appear as these were two different subjects. Also, there were concerns that the new Institute would appear to be only a small add-on to the existing ETC (a very ‘cheap’ solution, as this was called by the editors of the NJCM-NTM-Bulletin), instead of being the (one and only) National Human Rights Institute with a wide mandate, encompassing all human rights. On the other hand, dropping the equal treatment element from the name means that this aspect of the work became (more) invisible. The fact that the former ETC’s name had become well known among a substantial part of the general public, was washed away “with one strike of a pen” in the new name. Fernhout & Wever make the remark that dropping ‘equal treatment’ from the name may be seen by proponents and pioneers of the equal treatment legislation as a possible signal that equality is placed on the second plane (i.e. behind human rights). They link this observation with the critique that at that time was voiced by right wing politicians

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106 According to the Director of ‘Art.1’, an expert institute that supports local Anti-Discrimination Bureaus (ADV’s), the ETC in the period of transition to the NIHR did send around newsletters about the progress that was made and at one point organised an informative meeting with the ADV’s, but that was at a time when the transformation was a fact, i.e. after the adoption of the NIHR Act in Parliament. (Interview with Cyriel Triesscheijn 11December 2012.)

107 See the Editorial of the *NTM-NJCM-bulletin* 2010, pp 459-461. The editors also doubt whether the NIHR will be able to develop into an authoritative Institute, because it is a transformation of a one-issue institute (the ETC) and does not have much expertise in the area of ‘general’ human rights. See the Editorial of the *NTM-NJCM-bulletin* 2011, pp. 841-844.

about the functioning of the ETC as ‘too soft on immigrants and Muslims’. These authors criticise the choice of the name (College) and the designated English translation into NIHR. Why not, like the UK Human Rights Commission that also was born out of the UK Equality Bodies, “Commission for Equal Treatment and Human Rights” or “Equality and Human Rights Commission”? In that way the well known name of the ETC could have been preserved. Another objection that they voiced against the name that was chosen that this appears to about a quite formal (or formalistic) institution. “The name creates distance and gives the impression of a specialised institution that works in a rather specialised area under which for outsiders equal treatment is not automatically included.” Or, as this was expressed by a stakeholder in the anti-discrimination field: “Until now, I think the NIHR has a high ‘bobo’ level and I don’t know whether it will really appeal to the imagination of the general public. That is not an easy task, but it is the ultimate test whether it will remain an elitist Institute or also an Institute that plays a crucial role in the experience of ordinary people.”

The Institutes visibility / the low threshold function of the ETC

From the perspective of the ETC / the tasks of an Equality Body, the visibility and public awareness of the Commission’s existence and role may become blurred as a consequence of the integration or transformation of the ETC into the NIHR. According to Howard “(…) there could be a danger that, as part of the Institute, the equality work of the Commission will become less visible and, also, that victims of discrimination might get confused as to what the Institute does.” From the perspective of the NIHR (also) fulfilling the role of a tribunal type of Equality Body, low threshold access to this body is essential. As it was expressed by one of the interviewees: “A main challenge is to create ‘bearing surface’ for the new institute in the country. People need to get to know the Institute and to recognize themselves in the NIHR. It needs to be known by vulnerable groups in the country. It appears to be quite formal institute now. Low thresholds are necessary.”

The Institute’s functioning as a tribunal type Equality Body.

One of the striking things when reading the Memorandum of Explanation (MoE) and the text of the NIHR Act, is that there is hardly any recognition of the fact that the ETC (also)

109 Fernhout & Wever 2011, p. 335.
110 Fernhout & Wever 2011, p. 347.
111 Fernhout & Wever 2011, p. 351. Also Interview with Fernhout 3 December 2012.
112 Idem, translation RH.
113 Cyriel Triesscheijn interview 11 December 2012.
114 Howard 2012, p. 64.
115 Jenny Goldschmidt interview 16 November 2012. Also expressed by Roel Fernhout interview 3 December 2012.
fulfilled the function of an independent Equality Body under the relevant EU Directives. The accent lies completely on the question whether the new Institute will be in compliance with the requirements of the Paris Principles and will be constructed in such a way that it may obtain the desired A-status of the ICC. Requirements following from the EU Directives (e.g. the function of assisting victims of discrimination) are not mentioned / discussed at all. However, apart from the NO who stated that “[T]he ETC’s function of being an Equality Body has spirited away in the process”, all interviewees were of the opinion that the new Institute does still fulfil these requirements; none of them expressed any worries in that regard. Several interviewees saw the integration into the NIHR as an opportunity to overcome the sole focus on its quasi-juridical task (dealing with complaints) and to develop further its tasks of giving advice about equality issues and awareness raising and promotion of equal treatment norms. A danger is that the specialised expertise of the Institute in the area of (EU and national) ET legislation will fade away. According to Goldschmidt, the NIHR can only continue to be an Equality Body under EU Law, when it succeeds in maintaining enough expertise and experience in the area of ET law. Or in the words of Triesscheijn: “The ADVs are mainly concerned about the question whether the NIHR will be able to combine its old and new tasks and whether the new tasks will push aside the old ones.”

According to Zwamborn, the fact that the ETC dealt with individual complaints (and that the equal treatment section of the NIHR will continue to do so) is an inheritance from the past. He mentions three factors that were decisive to give the ETC this function in the past: (A) There was little confidence that judges would deal with equal treatment cases in a competent manner. (B) Equal treatment law became a legal speciality. (C) There was a fear that ‘mainstreaming equal treatment law’ would mean its disappearance. In order to overcome this inherited focus on complaints procedures, a ‘cultural transition’ (in the Equal Treatment Section of the NIHR) is necessary, according to him. In this perspective, a complete reconsideration – re-evaluation of these tasks could become feasible in the future.

Compatibility between the pseudo juridical tasks of the ETC and advisory tasks of the NIHR?

Some of the stakeholders expressed the fear that the authority of the ETC (now: the equal treatment section of the NIHR) could suffer from (much wider and more ‘political’) activities

116 The only place where relevant EU Law is mentioned is the Preamble of the NIHR Act.

117 Interviews with Marcel Zwamborn (31 October 2012), Laurien Koster (16 November 2012), Jan Peter Loof (28 November 2012) and Jenny Goldschmidt (16 November 2012).

118 Interview with Jenny Goldschmidt on 16 November 2012.

119 Cyriel Triesscheijn interview 11 December 2012.

120 Marcel Zwamborn interview 31 October 2012.

121 See also par. 2.2. where other concerns about this task have been summarised.

122 Also expressed by Alex Breninkmeijer interview 3 December 2012.
of the NIHR. It was considered a difficult / problematic issue that the NIHR would be combining the task to give Opinions about complaints in (un)equal treatment cases while at the same time promoting human rights in general.\textsuperscript{123} This could mean that the section assigned with these complaints would lose its image of neutrality and objectivity.\textsuperscript{124} Goldschmidt argued strongly in favour of maintaining the semi-juridical task of the ETC, even if the Commission were to be merged into a wider Human Rights Institute in the future.\textsuperscript{125} This is “both because of the need for an accessible procedure, but also because without this function the majority of discrimination cases would remain hidden. The insight provided by ETC cases into the practice of discrimination is essential in developing effective policies.”\textsuperscript{126} However, in the interview she acknowledged that indeed this could become problematic from the point of view of the independence / neutrality of the ET-section of the Institute.\textsuperscript{127} Others thought that this need not be a problem as long as the Institute would make it perfectly clear to the outside world that it has two functions: giving Opinions about equal treatment claims and giving advice about human rights issues.\textsuperscript{128} In fact, the ETC also gave advice to the Government on legislative issues.

\textit{The substantive advantages of integration of equal treatment in the wider human rights framework.}

There is general agreement among the academic commentators / interviewees that the principle of equality or equal treatment is ‘of course’ part of the general human rights normative framework. The fact that, instead as operating as a separate institution, there now is an integrated ‘Equal Treatment Section’ within the NIHR, may mean that this section will now will grasp / develop opportunities to evaluate (possible) violations of the non-discrimination principle in the wider framework of human rights protection (instead of in the narrow and restricted framework of ET legislation). Already in 2006, Goldschmidt mentions this as an important advantage of a possible future merger of the ETC with the new to be established human rights institute.\textsuperscript{129} Especially the closed system of justifications for instances of direct discrimination, makes it very difficult to make a more holistic or balanced

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\textsuperscript{123}See the editorial of the NTM-NJCM-bulletin 2010-, pp 459-461.

\textsuperscript{124}See footnote 107.

\textsuperscript{125}Goldschmidt 2006, p. 337. This was not really an option in the official reports at that moment in time; Goldschmidt apparently did not exclude that developments would take that turn in the future!

\textsuperscript{126}In the same paragraph of this paper, the author states that the same function is not necessary for other human rights violations “as there are many competent and well-equipped NGOs and others who can, and do, take fundamental rights cases to court.” See about this issue also par. 3.4 of this Report.

\textsuperscript{127}Interview with Jenny Goldschmidt 16 November 2012.

\textsuperscript{128}E.g. interview with Laurien Koster 16 November 2012.

\textsuperscript{129}Goldschmidt 2006, p. 337: This “opens up perspectives for maintaining the advantages of specialised bodies and at the same time recognising the broader human rights context of anti-discrimination.”
assessment of the interests at stake. Although according to Howard “it is not quite clear whether the integration of the ETC into the NIHR means that “the Institute can review or take account of the human rights aspects of the case as well”131, several interviewees expressed the hope that this might indeed happen.132

3.4. Issues concerning the future functioning of the NIHR from the perspective of protection and promotion of human rights

The commission structure of the Institute

The decision to integrate the NIHR with the ETC (or in fact: the other way around!) meant that the NIHR would not have the form of an independent Institute with a head / director, a small management team and a staff (as was originally proposed by the Consortium), but would have the same form as the existing ETC: a Commission with independent Members and a Chair (as primus inter pares). The ‘commission model’ of the ETC followed logically from its main task: to hear and decide about individual complaints about discrimination, i.e. from being a tribunal type of Equality Body. Such a model is not indicated per se for the good functioning of a NIHR. In fact it may be a hindrance for a good functioning. It appears that the ‘Institute model’ was favoured by several stakeholders in the process of establishing a NIHR between 2009-2012.133 On the contrary, the wider tasks of such an Institute may fit better into a promotion type of Equality Body. It was argued that a one-headed Institute would be able to act more efficiently and more adequately than a Commission with several Members (at the time of the ETC 9, to be extended to a maximum of 12 according to the NIHR Act). According to Goldschmidt, the commission structure with 12 Members is not a very quick-witted or resolute format for a NIHR. It is also very expensive because the Members receive a high salary (similarly to the independent judiciary).134 Brenninkmeijer, the NO, calls this structure “disastrous”; a real new start would have been necessary to create an effective and authoritative institute. “As a consequence of this inheritance of the ETC’s structure and profile, the Institute has an inherently weak profile.”135 According to

130 See text around footnote 39 in par. 2.2. of this Report.

131 Howard 2102, p. 64; she is not sure whether the NIHR Act provides the legal basis for such a broader assessment. The earlier mentioned Elsevier case (Opinion 2011-69) shows that the ETC had already left that strict interpretation of its scope of review.

132 E.g interviews with Marcel Zwamborn (31 October 2012), Jenny Goldschmidt (16 November 2012), the civil servants (22 November 2012) and the NGO representatives (28 November 2012).

133 Critics of this decision were Olde Monnikhof, Zwamborn, Goldschmidt, Brenninkmeijer and Fernhout (interviews). They would have favoured the Institute model over a Commission model, mainly for reasons of coherence, efficiency and visibility of the NIHR. The model was also criticised by the Council of State in its Advice on the NIHR bill: Tweede Kamer 2009-2010, 32 467, nr 4, pp. 2 ff. See Goldschmidt 2012a, p. 188. It was not a big issue during the Parliamentary discussions on the bill.

134 Interview with Jenny Goldschmidt 16 November 2012.

135 Interview with Alex Brenninkmeijer 3 December 2012.
Zwamborn, these negative consequences could be overcome by delegating various themes or areas of attention in its strategic plan to Members with specific expertise, and providing these Members with substantial powers to execute tasks in these areas, the negative effects of the commission structure can be turned to its advantage.\footnote{Interview with Marcel Zwamborn 31 October 2012.}

**The lack of authority and human rights-expertise of the NIHR**

One of the main fears in circles of human rights activists, expressed by \textit{inter alia} the editors of the NTM-NJCM bulletin\footnote{See footnote 107. Also expressed by Marcel Zwamborn, interview 31 October 2012 and the NGO representatives, interview 28 November 2012.}, was that the new NIHR would not be an authoritative human rights body because it would be associated with a topical ‘one issue’ organisation, namely the ETC. The ETC, it was argued, only had expertise in the field of equal treatment legislation; to simply add a few extra Members with human rights expertise would not be enough to remedy that shortcoming.\footnote{See footnote 107} Also, most of the Members and staff of the old institute, as a consequence of its focus on dealing with complaints about discrimination, were trained as lawyers and specialised in (national and EU) equal treatment law. As a consequence of that, the new Institute has a shortage of persons trained in other disciplines, but also seems to suffer from “a lack of representation from groups like disabled people, ethnic and religious minorities, and so forth.”\footnote{Howard 2012, p. 65.} Or, as this was voiced by Goldschmidt: “As for the role of the Advisory Council: it appears that the composition of this board is not really divers, for example not when looking at religious minorities / churches in the country. Another shortcoming may be that hardly any persons who are ‘intimate’ in the political and governmental circles in The Hague are present in the Advisory Council or in the NIHR itself. Moreover, the Council seems rather homogenous in the sense that the groups who are most critical towards the establishment of a NHRI are not represented.”\footnote{Interview with Jenny Goldschmidt 16 November 2012.}

**The lack of sufficient resources for the NIHR**

A third issue, mentioned by \textit{inter alia} the editors of the NTM-NJCM-Bulletin\footnote{Editorial Comments, \textit{NTM-NJCM-Bulletin} 2010.}, the Council of State\footnote{Tweede Kamer 2009-2010, 32 467 nr 4, p. 2. This (highest) Council of State gives advice on all bills that are submitted to Parliament.} and Fernhout & Wever\footnote{Fernhout & Wever 2011, p. 352.}, is that the new NIHR in fact is ‘fumbled under’ the old ETC, meaning that only a few extra people were / will be added to the existing group of
Members and staff who until recently all were (only) specialists in the area of equal treatment. The concern that the new Institute probably does not (yet) have enough broad and thorough expertise on human rights was also voiced in some of the other interviews.\(^{144}\) However, more emphasis on fulfilling this need (especially when recruiting new Members and Staff) could also lead to a weakening of the necessary expertise in the area of equal treatment law and developments in that area (e.g. in the context of EU Law and EU jurisprudence).\(^{145}\)

At the same time there is some concern that the equal treatment section of the NIHR will continue to consume a lot (or even most) of the time, manpower and resources of the Institute. The NIHR still has the same task as the former ETC as far as dealing with complaints about discrimination is concerned. Some interviewees stressed the fact that in the past couple of years the ETC has already ‘streamlined’ this part of its work and made it far more efficient.\(^{146}\) Often people who ask for information about their rights under the equal treatment legislation, are referred to earlier Opinions of the ETC.\(^{147}\) Nowadays, a lot (more) of the preparatory work is being done by members of the staff (legal advisors) instead of by Commissioners / NIHR Members. It remains to be seen whether this brings enough relief for the organisation as a whole to concentrate (more) on human rights issues in general.

\textit{A restructuring of the ‘human rights landscape’ in The Netherlands}

One of the objectives of the establishment of the NIHR was to bring more structure in the scattered landscape of official and non-governmental organisations in the area of human rights promotion and protection. Gaps needed to be filled, and there was a desire for more coordination between activities of various organisations and more efficiency.\(^{148}\) For the Government, in terms of subsidies for this sector, it was an aim to ‘redistribute’ resources in such a way that tax money would be spent more effectively. It is clearly the aim of the Government not to spend more money on the issue of equality and human rights: in the long run, the establishment of the Institute should be ‘budget neutral’. This means that each of the involved Ministries will have to find savings within their own budgets in order to compensate for the extra expenses.\(^{149}\) This could mean that some Ministries will take away resources or

\(^{144}\) E.g. by Marcel Zwamborn and Jenny Goldschmidt.


\(^{146}\) Interviews with Marcel Zwamborn, Jenny Goldschmidt, Laurien Koster and Marjolein Olde Monnikhof.

\(^{147}\) Interview with Laurien Koster 16 November 2012. See also Goldschmidt 2008, p. 256, who describes this process.

\(^{148}\) These were already an important motives to establish a national institute on human rights in the very first publication about the issue; see Van Emmerik & Smals-van Dijk 2000.

\(^{149}\) In the first three years 900.000, from there on 600.000 Euro. There are some concerns with Human Rights NGOs that these Ministries might cut on the subsidies for these organisations in order to be ‘budget neutral’. See e.g. editorial NTM-NJCM-Bulletin 2011-8. This concern was also voiced in the interview with the Human Rights NGOs 28 November 2012.
subsidies from other institutions or NGOs when it appears that some of their tasks have been taken over by the new NIHR. Consequently, there is also the co-ordination aspect. Especially civil servants have an interest in having to deal with less different stakeholders, e.g. when seeking advice on human rights aspects of proposed legislation or policies, or when consulting civil society about their human rights implementation reports to international organisations. Sasse van Yssel, a senior civil servant at the Ministry of I&KR, states that the NIHR could be of great value in all stages of development / adoption of new legislation. “(a) qualitative good expert advise can strengthen the expertise of the civil servants or can counteract political rationality.” One of the civil servants who were interviewed suggested that the NIHR could advise the Government about the gaps and overlaps in the ‘human rights landscape’; this could have consequences for which NGOs would be eligible for subsidies from the Government in the future. Other civil servants very strongly objected to any suggestion for a future role of the NIHR in that direction. Representatives of Human Rights NGOs that were interviewed expressed their deep concerns in this regard: “The NIHR should make it crystal clear that it is not in the position to replace the work of NGOs or to evaluate the effectiveness / usefulness of their work (also with a view of getting support from the government).” Also, according to the NGO representatives, the NIHR should not aim to fulfil the role of intermediate between the Government and the human rights organisations in society.

3.5. Challenges for the future success of the NIHR

In the academic literature and in the interviews, several suggestions are / were made to enhance that the NIHR will become a success. Six issues of special concern came out of these materials.

In the first place, the NIHR needs to find ways to overcome the possible negative effects / obstacles that could result from the fact that it has a commission structure, having 9 to 12 Members (or commissioners), instead of being a one-headed institute. By delegating various themes or areas of attention in its strategic plan to Members with specific expertise, and providing these Members with substantial powers to execute tasks in these areas, the negative effects of the commission structure can be turned to its advantage; this would mean that there is an effective and efficient use of the expertise and resources that are available to the NIHR.

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150 Suggested in the Cabinet’s Advanced Position Paper of 2009, pp 4 and 5. See footnote 58.

151 Sasse van Yssel 2012b, p. 35; translation RH.

152 Interviews with civil servants 22 November 2012.

153 Interview with Human Rights NGOs 28 November 2012. In the same vein interview with Marjolein Olde Monnikhof 6 December 2012.

154 The following is a synthesis of many views and remarks, and covers the main issues without extensive referencing to the various sources.
Secondly, the NIHR needs to execute its tasks as regards dealing with complaints about discrimination in a more efficient way in order to have sufficient time for the task of promotion and protection of human rights in general; at the same time it needs to safeguard that expertise and knowledge about equal treatment legislation (including EU law) will be maintained on a high level. One suggestion made was that it is worthwhile to investigate the possibility of taking precedent cases only, as is done by the Belgian Centre and by other Equality Bodies in Europe. The consequence might be that more discrimination cases will go to the regular courts, which will generate more case law and (hopefully) more expertise among the courts with regard to equal treatment law. The NIHR would then need to advise the Government on how to guarantee low threshold (court) procedures in discrimination cases in order to compensate for the loss of low threshold access to justice in discrimination cases.

A third point of much debate was whether the NIHR should have the power to investigate (individual) complaints about human rights violations in general (i.e. besides equal treatment cases). It was decided that it should not have this task, in order to prevent duplicating the tasks of other institutions, like the NO. Although the NIHR therefore does not have the power to give ‘Opinions’ in (individual) complaints about human rights violations – like it has in equal treatment cases – it does in fact have the power to clearly and loudly voice its opinions about (possible) human rights violations in the country. In this regard, it should keep a (difficult) balance between ‘jumping at every occasion’ to express its condemnation of particular practices and keeping too much distance from what is going on in the country.

In the fourth place, in continuation of its earlier preparatory work during which it had contact with several Institutes abroad, the NIHR needs to invest time and resources in identifying good practices from long-term established NIHRs in other countries, e.g. Australia or Ireland, and to develop methodologies that may enhance its effectiveness; it could learn from experiences with practices such as organising hearings with stakeholders when developing advice to (government) institutions, when drawing up shadow reports under international treaties or when investigating human rights issues, as well as in monitoring and evaluating the effectiveness of its own actions.

In the fifth place, the NIHR needs to establish and consolidate its role in the establishment of a “fundamental rights culture”155 by strengthening its relationships with all stakeholders in the field of promotion and protection of human rights, among others by conducting regular open and transparent consultations on its strategic choices for themes and topics. In doing so it may also balance the potential negative effects of the lack of transparency and involvement of the equal treatment and (some) human rights organisations in the decision making process about its establishment (and the integration of the ETC in it). It certainly needs to enhance the commitment of stakeholders in the non-discrimination field. The NIHR also needs to (better) represent the diversity of the wider Dutch society in its Membership, the Membership of the Advisory Council and in its staff. Particular sections of Dutch cultural, social and economic

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life are under represented or absent now, like for instance religious minorities and people of ethnic minorities.

Finally, the NIHR needs to find a balance between clearly filling gaps in the human rights landscape and fulfilling a coordinative role on the one hand, and taking away functions and money from existing organisations on the other hand. From the very beginning important motives to establish a NIHR were to ‘fill gaps’ within and to ‘co-ordinate’ the activities of ‘players’ in the scattered ‘human rights landscape’ in The Netherlands and to (thus) make human rights promotion and protection more efficient and effective. However, what exactly this means in terms of the NIHR’s role is not clear. Does it have a task in streamlining the landscape, not only in terms of surveillance and advocacy work but also in terms of cost-efficiency? On the one hand fulfilling this task could undermine its credibility and support among human rights organisations; on the other hand, it could undermine the Institute’s political credibility / political support when it does not at all contribute to these original goals of its own foundation. It will require careful manoeuvring to avoid loss of credibility and support on both sides of this spectrum. It is necessary that the NIHR’s policy in this regard is completely transparent.
4. The main findings from this study

By way of conclusion, this Chapter briefly summarises the three main findings relating to the process of the transformation or integration of the ETC into the newly established NIHR.

A first important outcome of this study relates to the choice to integrate the ETC into the NIHR and thereby in fact abolishing the ETC. Although backward looking (or with hindsight) this option may seem logical and well founded, it appears that during the decision making process there was a serious lack of clarity and transparency about what was going to happen and why. The study reveals that the process, at some point, got so much ‘political momentum’ and speeded up so fast that especially for outsiders it was not at all clear what was going on. But also some insiders appear to have experienced the process as lacking clarity and openness. One of the indicators for this was the vague language that was used to describe what exactly was decided and why. On the one hand, this vagueness facilitated that many people could somehow identify with the outcome of the decision making process. On the other hand, it also caused a lack of involvement of important outsiders in the process, most notable persons and organisations in the non-discrimination field. What can be learnt from this in-depth investigation of this process is that it is very important for any stakeholder in such a process not to be side tracked or to loose touch with what’s going on.

As a consequence of the speedy process (especially in the period 2008-2009), some choices relating to the organisational structure and the place/function of the NIHR in the ‘scattered human rights landscape’ were not really well thought through. Especially the fact that the commission structure of the previous ETC and its task of dealing with complaints about unequal treatment were not seriously reconsidered and were transplanted unmodified into the new NIHR, may turn out to be a ‘missed opportunity’ for a serious reform of the system of protection against discrimination. Also, some confusion still appears to consist as to what exactly is expected from the NHR in terms of co-ordinating human rights activities and filling gaps in the human rights landscape. Although all commentators and interviewees in the end expressed their happiness with the fact that The Netherlands finally does have a NIHR, many of them expressed concerns about the organisational structure of the Institute and about the fact that it continues to be a quasi juridical body as far as the issue of equal treatment is concerned.

A third finding of this study relates to the substantive dimension of the process of integrating the ETC and the NIHR. Compared to the more technical, procedural or organisational aspects of the process, this part was (and still is) very underdeveloped. Substantive congruence between equal treatment and human rights was mentioned only very briefly in the official papers that led to the decision to integrate the two institutes. It was acknowledged (mostly only after being asked about this issue) by most interviewees that ‘of course’ non-discrimination is part of the human rights normative framework, but there was hardly any elaboration of what this might mean for the practice of the NIHR’s work. Although it was stipulated (and formalised in the NIHR Act) that the tasks of the ETC would not disappear or
be diminished, the consequences of the integration of these tasks into the NIHR for the way in which these tasks could or should be performed were not well analysed or discussed during the integration process. This is in particular true for the task of dealing with complaints about discrimination. Until recently, on the basis of the text of the GETA and other equal treatment laws, the ETC was very reluctant to include ‘general’ human rights norms into the evaluation of such complaints about unequal treatment. An explicit legal basis for a more holistic and/or more human rights oriented evaluation of equal treatment cases is still lacking in the GETA and other equal treatment laws, as well as in the NIHR Act. Much more work / thinking and theorising about equality, non-discrimination and human rights protection in general appears to be necessary. But perhaps the integration of the ETC into the NIHR will offer new opportunities for this re-thinking of equality and human rights.

A final remark concerns the (recommended) methodology for this study. It appeared to be very useful and productive to complete an initial analysis of the official (Governmental and Parliamentary) papers and the academic literature with in-depth and pre-structured interviews with 16 of the most closely involved stakeholders and other participants in the process of establishing the NIHR. Although not often applied (in a systematic way) in legal studies and although very time consuming, it was a very positive and rewarding experience to conduct the research in this way. The interviewees held different positions and had different interests in the outcome of the process. They offered many observations and insights that could not be derived from written sources. The interviews shed light on what exactly had motivated particular ‘choices’ in this process, most notably the choice to integrate the ETC into the NIHR.

This study would not have delivered so many new insights without the time and effort that was spent on this project by the interviewees. I therefore conclude by expressing my deepest gratitude to all of them.
Annex:

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

**The Netherlands – Rikki Holtmaat**

**Annex 4**: List of persons who were interviewed for this research project on the basis of the questionnaire (Annex 3) or who filled in this questionnaire.

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation / function</th>
<th>Date Interview</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan Peter Loof</td>
<td>NIHR-Member and active member NJCM / secretary of the Committee that investigated possibilities to establish NIHR</td>
<td>12-10-2012</td>
<td>Preliminary interview (not on the basis of questionnaire)</td>
</tr>
<tr>
<td>Marcel Zwamborn</td>
<td>Independent researcher, Alternate Member of the ETC (2001-2013)</td>
<td>31-10-2012</td>
<td></td>
</tr>
<tr>
<td>Laurien Koster</td>
<td>NIHR – Chair (former Chair of ETC)</td>
<td>16-11-2012</td>
<td></td>
</tr>
<tr>
<td>Jenny Goldschmidt</td>
<td>Director of SIM, former Chair of the ETC (1994-2003)</td>
<td>16-11-2012</td>
<td>SIM = Netherlands Institute for Human Rights at the University of Utrecht</td>
</tr>
<tr>
<td>Hanna Fisscher, Frits Warnar, Sanne de Lint, Janny Brasker, Paul van Sasse</td>
<td>5 Civil Servants at the Ministry of Interior and Kingdom Relations + Ministry of Security and Justice</td>
<td>22-11-2012</td>
<td>Group Interview; interviewees stipulated that they did not express any personal views.</td>
</tr>
<tr>
<td>Name</td>
<td>Position and Details</td>
<td>Date</td>
<td>Notes</td>
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<tr>
<td>van Ysselt</td>
<td></td>
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</tr>
<tr>
<td>Gerbrig Klos</td>
<td>Gerbrig = Amnesty International; Coordinator of working group of Human Rights NGO’s in The Netherlands.</td>
<td>28-11-2012</td>
<td>Group interview</td>
</tr>
<tr>
<td>Franka Olujic</td>
<td>Franka = coordinator of the NJCM (Human Rights NGO)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan Peter Loof</td>
<td>Jan Peter = Member NJCM + NIHR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alex Brenninkmeijer</td>
<td>National Ombudsman (since 2005)</td>
<td>3-12-2-12</td>
<td>+ 1 of his Staff members who was most involved in the process</td>
</tr>
<tr>
<td>Roel Fernhout</td>
<td>Prof. University of Nijmegen; former National Ombudsman (1999-2005)</td>
<td>3-12-2012</td>
<td>Written answers to questionnaire</td>
</tr>
<tr>
<td>Marjolein Olde Monnikhof</td>
<td>Senior staff Member of the ETC / NIHR, responsible for preparing the transition</td>
<td>06-12-2012</td>
<td>Questionnaire + extra set of questions relating to transition process</td>
</tr>
<tr>
<td>Cyriel Triesscheijn</td>
<td>Director of Art.1 (main NGO in equal treatment sector) and of RADAR (local anti-discrimination bureau Rotterdam)</td>
<td>11-12-2012</td>
<td>Written answers to questionnaire + follow up e-mail</td>
</tr>
<tr>
<td>Cees Flinterman</td>
<td>Former Director of SIM, former member of CEDAW Committee and current member UN HRC</td>
<td>11-12-2012</td>
<td>Written answers to questionnaire</td>
</tr>
</tbody>
</table>