Taking the Paris Principles to Norway (and back again).

Match or mismatch?

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1. Introduction

Human rights law tends to be highly standardized both at global and regional levels. In addition to the global legal treaties, there are regional treaties that are binding on states, such as the European Convention on Human Rights.[[1]](#footnote-1) National human rights institutions (NHRIs) are types of in-between agencies, created by individual states, yet designed to keep a watchful eye on state performance. Their mandate may vary considerably from state to state and in some cases there are agencies at the subnational, even municipal levels. Standardization also apples to soft law, as the so-called Paris Principles have an important role in assessing the legitimacy of NHRIs and their capacity to evaluate the human rights performance of states.[[2]](#footnote-2) The purpose is to have a close look at the Principles and to draw lessons from their applications to NHRIs. In particular we are interested in seeing whether the Principles are fully au courant with the rapid diffusion of NHRIs or in need of revision. Norway is selected as a test case to see how well Norway fits in with the Principles and how well the Principles fit in with the Norwegian system and practice. The first part of the paper deals with the Paris Principles as such and the second part with its application to Norway.

1. The evolution of guidelines for national human rights institutions

The initial discussions on NHRIs go back to the establishment of the United Nations. As early as 1946, a resolution by the United Nations Economic and Social Council (ECOSOC) invited member states to consider the desirability of establishing local information groups or human rights committees to serve as vehicles for collaboration with the United Nations Commission.[[3]](#footnote-3) The issue of local bodies was raised again in 1960 and an ECOSOC resolution was adopted, going beyond the role of providing a contact point for the UN locally and encouraging active participation in and monitoring of the local situation.[[4]](#footnote-4) With UN standard-setting expanding in the 1960s and 1970s, the role of national institutions as a medium for promotion of the standards was recognised, inter alia, by organising a seminar in Geneva in 1978 on “national and local institutions for the promotion and protection of human rights”. This seminar was significant because it opened for an active role of NHRIs in reviewing national policy on human rights, covering legislation as well as implementation through the administration and the courts. This development marked a step beyond the previous more limited function of information and awareness-raising. The recommendation of ensuring a representative cross-section of society in the composition of the institutions (pluralism) was another addition to the tasks of a national human rights institution.

General Assembly resolutions drew attention to the importance of securing the integrity and independence of the institutions[[5]](#footnote-5) and provided for a broad mandate in which the consideration of civil and political rights as well as economic, social and cultural rights should be equally important. This broad mandate was intended for the institutions to go beyond an exclusive focus on civil and political rights and judicial procedures. The potential danger, however, of a very broad mandate was that the institutions could become unfocused and hence create a problem of differentiating an NHRI from other institutions tasked with monitoring other areas of public governance. In the first reports of the Secretary General in 1981 and 1983 on the National Human Rights Institutions, the range of activities were listed without specifying the legal and organisational framework of the institutions themselves. Briefly, the activities could be sorted into protective and promotional functions.

*Protection* covers a broad range of tasks, including investigating complaints, seeking settlements, referring matters to the courts or public prosecutors, providing legal counselling etc. It did not include the competence to issue final decisions on matters or to undertake independent investigations on their own initiative. A distinction was made between judicial and non-judicial bodies, though it was not clear whether NHRIs were to be classified as the former or the latter. *Promotion* was similarly broad-ranging, from advocating appropriate legislation and participating in public awareness campaigns to working with educational and other public institutions in disseminating information about human rights and the work of the institutions and to take action to safeguard the rights of special groups.

3. The Paris Principles[[6]](#footnote-6)

The standard-setting process did not reach fruition until the holding of the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris, 7–9 October 1991. The workshop resulted in a set of principles and guidelines briefly titled the *Paris Principles* which was adopted by the Human Rights Commission the following year.[[7]](#footnote-7) The Principles are divided into four main sections, dealing with *competence and responsibilities*, *composition and guarantees of independence and pluralism*, *methods of operation* and *additional principles concerning the status of commissions with quasi-jurisdictional competence*, respectively.

Regarding the *competence and responsibilities* of NHRIs, they have, as stated above, the competence to promote and protect human rights. The mandate should be as broad as possible and to be laid down in a constitutional or other legislative text, specifying its composition and competence. The responsibilities are laid out in a series of paragraphs which, however, were not meant to be exhaustive. Briefly, they are as follows:

(a) To submit to government, parliament or other competent authority opinions, recommendations, proposals, reports on any matter relating to the promotion and protection of human rights, whether on request or on own initiative. These shall be related to the following areas:

(i) legislative and administrative provisions of pertinence to the promotion and protection of human rights, including the amendment of such legislation and administrative provisions:

(ii) any violation of human rights;

(iii) the preparation of national reports on human rights generally and specifically;

(iv) drawing the attention of the government to human rights violations in any part of the country and proposing initiatives to stop such violations and monitoring government efforts towards that end;

(b) To promote and ensure harmonisation of national legislation with international instruments ratified by the state;

(c) To promote ratification of international instruments and to ensure implementation;

(d) To contribute to state reporting on ratified international instruments and to the extent necessary, to comment on state reporting;

(e) To cooperate with the UN, regional and other national institutions competent in the areas of promotion and protection of human rights;

(f) To take part in programming for teaching and doing research on human rights in schools, universities and in the professions;

(g) To take part in public awareness creation about human rights through information and education.

These sets of responsibilities are basically *promotional*, though monitoring may also have a protective dimension. The institutions have an assisting role by helping the government in various ways to ensure that human rights broadly and specifically are promoted and protected. The final section of the Principles concerns the quasi-jurisdictional status of the NHRIs which specifies the extent to which the commissions also have a *protective* function to directly ensure the respect of human rights. As we shall see, this function is hedged with qualifications.

Having said so far *what* national institutions shall do, *what* are the qualifications and on what conditions? The Paris Principles include a section on the *composition and guarantees of independence and pluralism* of the institutions. The main point regarding the composition of the institutions is “to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights”. Specifically, social forces are to include, as members or as cooperating partners, non-governmental organisations, including trade unions and professional associations; representatives of trends in philosophical and religious thought, universities and qualified experts; parliament; and government departments.

The institutions have to be guaranteed an adequate infrastructure, particularly adequate funding, in order to employ staff, to ensure independence from government and to be secure from financial controls.

The mandate of members shall have to be regulated by an official act, specifying the duration of tenure and its renewal, provided that the independence of members are ensured.

Keywords as regards composition and operational ability are *pluralism* and *independence*. Institutions have to be as representative of society as possible and they have to be as free from financial and administrative controls as possible to prevent these controls being used to exert governmental pressure on the operations of the institutions.

The Principles go on to provide guidelines for the *methods of operation* of the institutions. These are as follows:

(a) freely consider any question falling within its competence, whether submitted by government, petitioner or on its own accord;

(b) hear any person or obtain any information necessary to assess the situation;

(c) address the public directly or through the media;

(d) meet regularly, if necessary, with all members present;

(e) establish working groups and local/regional sections;

(f) maintain consultations with jurisdictional and other bodies of relevance for the promotion and protection of human rights; and

(g) develop relations to non-governmental organisations devoted to promoting and protecting human rights and the opportunities of vulnerable groups.

The methods of operation show that institutions need not be purely reactive; they can of their own choosing adopt a much more proactive posture and take up and pursue any question falling within their competence. As the institutions are public institutions, though not governmental, they can offer a channel into the government if they develop good relations with non-governmental organisations and if these NGOs see the utility of the institutions as a channel for their petitions and complaints.

Finally, the Principles offer guidelines concerning the status of commissions with *quasi-jurisdictional competence*.[[8]](#footnote-8) Institutions may be authorised to hear and consider petitions and complaints concerning individual cases brought before it by individuals, third parties, NGOs, trade unions and other representative organisations. In these circumstances, the commissions may be entrusted with the following tasks:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by law, through binding decisions or, where necessary, on the basis of confidentiality;
2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by law;
4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights

These additional tasks are important in specifying the extent to which the institutions have *protective* powers on top of the considerable promotional powers vested in them. The principles are careful in avoiding language that could be taken to mean that the competence of NHRIs overlaps with that of the courts. Institutions may assist in seeking legal remedies, transmit complaints to other competent authorities or make recommendations on law amendments or even seek binding decisions through conciliation, but outside the courts. The institutions have no powers to apply the law, not even within their fields of competence. That task rests entirely with the courts.

These are the Principles which represent the international consensus on the framework, mandate, composition, operations and powers of the NHRIs. They represent the yardstick by which to assess the structure and operations of the institutions. They enumerate a minimal set of conditions for how to operate human rights institutions at the national level. It should be noted that they do not speak at all about the effectiveness of these institutions or about whether one model may be more likely of achieving results than another. But there is an unstated assumption that an institution compliant with the Principles is more likely to be effective than one only partially compliant or not at all.

Another question is whether the Principles represent the wide range of NHRI models across the continents. As deBeco and Murray observe in their commentary on the Principles, they were principally designed with the consultative body or the classic commission in mind. Today there are ombudspersons, national human rights commissions, human rights ombudsmen and hybrid bodies. So, “do they adequately take into account the diversity of bodies and the different challenges they present?”[[9]](#footnote-9) More generally, are they still fit for purpose? I shall pursue this question through a case study of Norway, detailing the various institutions set to protect and promote human rights and the place of an NHRI within this framework.

1. Selection of NHRI and method of assessment

The very first NHRI was established in France as purely a consultative body in 1948. Canada was the first to adopt the commission model in 1978 which later became the default model in the African and Asian regions. In the same year, Spain established the office of the Defensor del Pueblo, a human rights ombudsman, which subsequently became the default model for the Latin American region.[[10]](#footnote-10) More countries joined in the 1980s, but it was only in the 1990s that institutions mushroomed across the world with newcomers appearing on all continents. Currently, there are, according to information from the Office of the High Commissioner of Human Rights, 105 accredited NHRIS in all, 70 of which with an A status, 25 with a B status and 10 with a C status. As Table 1 shows, they are now spread over the entire globe with numerous NHRIs within each region. The table shows that the most compliant region is by far Latin America, but perhaps more surprising, the least compliant region is Europe. We might expect that a region with a good human rights record overall would also score well on compliance, but that is clearly not the case. In what follows, I will try to show why, although a case study can only offer a partial explanation.

Table 1. NHRIs with accreditation status

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Status  Region | A | B | C | Total | Percentage with A rating |
| Asia and the Pacific | 15 | 8 | 2 | 25 | 60 |
| Africa | 19 | 9 | 2 | 30 | 63,3 |
| The Americas | 15 | 2 | 3 | 20 | 75 |
| Europe | 23 | 11 | 3 | 39 | 58,9 |
| Central Asia |  | 3 |  | 3 | 0 |
| Total | 72 | 33 | 10 | 117 | 61,5 |

Source: Adapted from Global Alliance of National Human Rights Institutions. Chart of the Status of National Human Rights Institutions. Accreditation Status as of 24 January 2017 at <http://nhri.ohchr.org/EN/Documents/Status%20Acrreditation%20Chart.pdf>.

How to assess the application of the Principles? An assessment will have to cover the legal framework, the mandate, the composition, the independence, the operations and to the extent possible, some estimate of the effectiveness of the commissions in changing the human rights situation for the better. The assessment of performance and impact is strictly speaking beyond the scope of the Paris Principles which speak to the structural and substantial requirements of national human rights institutions.

In brief, the assessment will examine the following points:

1. legal basis;
2. composition, including the pluralistic representation of society;
3. independence, financial and operational;
4. mandate, including quasi-judicial function, if applicable;
5. operational priorities: which (categories of) human rights are given precedence and why;
6. assessment of effectiveness based on performance;
7. assessment of impact, to the extent possible

The latter two points are from the point of view of the Principles of less importance than the others, and would require a much closer scrutiny than what can be accomplished within the scope of this paper.[[11]](#footnote-11) Hence in examining our case, the emphasis shall be put on points (a) to (e). The main question is: How well do the Norwegian system fit with the Principles and how well do the Principles fit with the Norwegian system? Does one or the other have to be revised? We want to know how the Principles are diffused, how they are applied to a national system and how the national system can provide feedback as to the fitness and applicability of the Principles.

Julie Mertus delineates three approaches to assessing the performance and effectiveness of NHRIs: (a) structural; (b) mandate-based; and (c) impact-based. [[12]](#footnote-12)

The structural approach is predicated on the notion that a predetermined set of formal criteria constitutes the most appropriate basis for measuring effectiveness. Arguably, formal structural design criteria nevertheless do have a bearing on performance such as those applied in the accreditation process by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions. However, Mertus claims that the accreditation process is so highly politicised that it undermines the applicability of formal accreditation criteria. Be that as it may, the focus of this paper is about the compliance of one NHRI with the Paris Principles and the discussions and revisions leading towards better compliance.

1. The case of Norway – the Ombud institutions

In Norway there is a combined or two-fold system of accountability institutions with regard to human rights. On the one hand, there is the National Institution for Human Rights, which was established in 2001 and located at the Norwegian Centre for Human Rights which is lodged within the Faculty of law at the University of Oslo. As from 2015, it has been replaced by a new NHRI and in the following, I shall trace the process towards the new NHRI. On the other hand, there are a number of Ombud institutions, some with a general mandate and others highly specialized. They are the following:

* Sivilombudsmannen (The Parliamentary Ombudsman) – established 1962
* Stortingets Ombudsmann for forsvaret (Parliamentary Commissioner for the armed forces) – established 1952
* Ombudsmann for sivile vernepliktige (Parliamentary Commissioner for civil service for conscientious objectors to military service) – abolished 2012
* Likestillings- og diskrimineringsombudet (Equality and Discrimination Ombud) – established 1972 and re-established with a new mandate 2006)
* Forbrukerombudet (The Consumer Ombudsman) – established 1973
* Barneombudet (The Ombudsman for Children) – established 1981
* Pasient og brukerombudet (The Health and Social Services Ombudsman) – established at the municipal (kommune) and county (fylke) levels
* Datatilsynet (The Norwegian Data Protection Authority) – established 1980
* Elev- og lærlingsombudet (Ombud for higher education and vocational training) – established 1996

As can be seen from the list, there is quite a wide range of ombud institutions, some with a wide mandate (Sivilombudmannen) and others with a specialized mandate (Datatilsynet). It would be beyond the scope of the paper to cover all ombud institutions listed and not all have an obvious reference to human rights. We shall hence concentrate on those we regard as the most relevant ombud institutions, namely Sivilombudsmannen, Likestillings- og diskrimineringsombudet and Barneombudet because these three have mandates and tasks directly related to the UN human rights treaty bodies. They were established well before the National Institution for Human Rights and their presence and mandates have implications for what the National Institution was tasked to do. Further, the structural placement of the National Institution has created problems with regard to accreditation status with the ICC and we shall spend some time detailing the problems and what solutions have been suggested to remedy these problems.

It should, however, be said that Datatilsynet has an important function in protecting the right to privacy, the right to information and the duty to ensure that informed consent is given in the collection of data of a private nature. Pasient- og brukerombudet has also a key function with regard to social rights, in particular rights related to the health sector, for the population in general.

However, the three aforementioned ombud institutions are arguably the most central ones and as noted, they link up directly with the treaty bodies. Starting with Sivilombudsmannen, this ombud is the “classic” ombud whose main function is to act as complaint board for citizens who have felt themselves wronged by public administration. Briefly it can be described as follows: “The Parliamentary Ombudsman supervises public administration agencies. Supervision is carried out on the basis of complaints from citizens concerning any maladministration or injustice on the part of a public agency. The Parliamentary Ombudsman processes complaints that apply to government, municipal or county administrations. The Ombudsman may also address issues on his own initiative.”[[13]](#footnote-13) Sivilombudsmannen was established by law on 22 June 1962, last amended on 21 June 2013.[[14]](#footnote-14) The objective is set out in Art.3 providing that the Sivilombudsmannen is “to ensure that public administration is not doing injustice to the individual citizen and to contribute towards public administration respect for and protection of human rights (own translation H.S.).” For an NHRI, a legal grounding in constitutional or statutary law is crucial.

However, the mandate of the Sivilombudsmannen is constrained in a number of ways. The Sivilombudsmannen cannot deal with issues on which the Parliament has taken a position; resolutions in the Council of State; the activities of the judiciary; the activities of the Auditor General; issues that Parliament has decided shall sort under other Ombud institutions (as for instance the Parlimentary Commissioner for the armed forces); and decisions taken by county and municipal representative bodies unless the Sivilombudsmann finds that the decisions endanger the rule of law or other special considerations and so can take action on its own initiative. It is fully up to Parliament to determine what public institutions and agencies fall or do not fall under public administration and hence are exempt from or beyond the mandate of the Sivilombudsmannen. As the Sivilombudsmannen is legally placed under Parliament, it cannot check Parliament or legislative bodies at lower levels and nether can it check other accountability institutions, such as the Auditor General. Its main function is directed towards the executive branch and anything having to do with public administration at any level of governance. The judiciary is also off-limits to Sivilombudsmannen, implying that this ombud institution has no quasi-judicial function as per the Paris Principles.

As stated above, its mandate is very broad, and hardly any topic pertaining to public administration is exempt. Opinions on issues deemed to be in the public interest are published on the official web site, including human rights cases. Sivilombudsmannen has given opinions in cases concerning the best interests of children, patients’ right to information and residence on humanitarian grounds for asylum seekers.

Perhaps more important, because it links directly to the UN Human Rights Treaty Bodies, is the status of Sivilombudsmannen as the National Preventive Mechanism against Torture and Inhuman Treatment (NPM). This follows from Norway’s ratification of the Optional Protocol to the Convention against Torture (CAT) which obliges the State Party, inter alia, to set up a National Preventive Mechanism.[[15]](#footnote-15) The Mechanism enables the Ombud unit to visit places of detention, but it does not allow for individual complaints from detainees, though, but the NPM may refer those to other units of Sivilombudsmannen with the authority to deal with them. Its main function is to report and make recommendations to the relevant authority on the basis of its findings and it has a large advisory committee, composed of other accountability institutions and a wide assortment of civil society organisations that can supply advisory inputs to the work of the Mechanism.

In general, the mandate of Sivilombudsmannen is protective as it provides a complaint mechanism for individual citizens and as we saw above, a preventive mechanism against torture. However, Sivilombudsmannen has no accreditation status with the international accreditation body (SCA). Many countries have similar ombud institutions accredited with the SCA, but Norway does not. There are reasons for this state of affairs, as we shall see below. Suffice it to say here that it has taken on an important protective function directly linked to one of the UN Human Rights Treaty Bodies, but it should be acknowledged that its mandate goes considerably beyond standard human rights concerns.

The two other ombud institutions are in some sense narrower as they cater either for a determinate group (children) or a somewhat determinate issue (equality and discrimination), though it can be argued that the latter can be quite wide in actual practice. Starting with the latter, the Equality and Discrimination Ombud was established by law 10 June 2005 which amalgamated three previous institutions, Likestillingsrådet (Equality Council), Likestillingssenteret (Centre for Equality), both of which were basically concerned with gender equality, and Senter mot etnisk diskriminering (Centre against Ethnic Discrimination).[[16]](#footnote-16) With the Discrimination and Accessibility Law of 20 June 2008, as amended on 21 June 2013, dealing with discrimination on the basis of disability or reduced functioning, disability has been added to the Ombud’s mandate.[[17]](#footnote-17)

With the amended and expanded mandate, the Ombud links up directly with the UN Human Rights Treaty Bodies, first with the treaty body on the Convention on the Elimination of Discrimination against All Women (CEDAW). Gender equality was, as recalled above, the main function of the Equality Ombud, the precursor of the present Ombud when it was established in 1978 concurrently with the adoption of Likestillingsloven (Equality Act).[[18]](#footnote-18) Secondly, the Ombud links up with the Convention against Racial Discrimination (CERD) as the expanded mandate now covers discrimination on the basis of ethnicity, religion etc., in addition to gender. Thirdly, with the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) and the adoption of the Discrimination and Accessibility Act, the Ombud’s mandate has been further expanded to cover the rights of persons with disabilities.

Administratively, the Equality and Discrimination Ombud is under Barne- og likestillings- og inkluderingsdepartmentet (Ministry for Children, Equality and Inclusion). In contrast to the Sivilombudsmannen, which is placed under Parliament, the Equality and Discrimination Ombud is placed under a government ministry, which might give rise to problems regarding independence as per the Paris Principles. However, in Art. 2 of the Diskrimineringsloven, it is stated that “the Ombud is an independent administrative agency under the King and the Ministry. The King and the Ministry cannot instruct the Ombud in the treatment of individual cases or in the professional activities of the Ombud in general. The King and the Ministry cannot reverse the decisions of the Ombud.”

As stated above, the mandate of the ombud is quite broad. It shall work to promote real equality independent of gender, disability, ethnicity, religion, world view, sexual orientation, gender identity, gender expression and age.[[19]](#footnote-19) Further, the mandate extends to parts of Arbeidsmiljøloven (Working Environment Act) and to sections of laws pertaining to ownership of apartments in housing cooperatives, renting of apartments, housebuilding cooperatives and housing cooperatives generally. The mandate is to monitor that the relevant laws are being followed and to issue a statement if there are reasons to believe that practice is in conflict with relevant laws. The Ombud can make investigations on its own initiative or respond to complaints from others. The Ombud cannot intervene in cases in which a court of law has made a judgement or in cases that have been brought before a court of law.

In cases where one of the parties is dissatisfied with the statement of the Ombud, it can be appealed to the Equality and Discrimination Committee.[[20]](#footnote-20) The Committee can impose termination, corrections or other necessary measures to ensure that discrimination, harassment, instruction and retaliation is brought to an end and prevent repetition and set a deadline for the fulfilment of the imposition. It can impose a penalty if the deadline is not met. However, the Ombud Committee cannot annul or revise decisions taken by other administrative agencies or instruct these agencies in how authority to make decisions shall be exercised to prevent discrimination. If one or both parties are still dissatisfied with the decision of the Ombud Committee, the matter can be brought before the courts. The public authorities are under obligation to provide information on the matter under review and penalties can be imposed if the obligation to provide information is not followed and the Committee can utilize the courts to collect evidence. The decisions of the Committee, however, are not binding on the King and the Ministries.

The Ombud and the Committee, as should be evident from the above, have considerable protective powers, in particular through the complaint procedures, but cannot overrule decisions taken by other administrative agencies or take decisions that are binding on the Government as such. It would be beyond the scope of this paper to examine individual cases, but statistics on complaints by type of discrimination and decisions on individual cases are available online as well as cases before the Committee and its decisions.

Barneombudet (Children’s Ombudsman) was established by law on 6 March 1981, as amended on 19 June 2009. The general objective is to promote the interests of children in society. More specifically, it is (a) on its own initiative and as an interested party to safeguard the interests of children in planning and commissions within all fields; (b) to monitor whether legislation on the protection of the interests of the child is being followed, including whether Norwegian legislation and administrative practice is in compliance with Norway’s obligations under the Child Rights Convention; (c) suggest measures to strengthen due process of law for children; (d) suggest measures than can resolve or prevent conflicts between children and society and (e) monitor whether sufficient information is provided to the public and private sector on the rights of the children and on needed measures.

As can be seen from the list, the mandate is tilted towards promotion, but Barneombudet can receive communications from children or from adults acting on behalf of children, normally with the consent of the child or children concerned. Barneombudet cannot intervene in cases concerning parental responsibilities or conflicts between child and parents or guardians, unless it can be proven that non-intervention is not in the best interests of the child. Communications concerning the application of relevant law shall have to be referred to Sivilombudsmannen, if it is within the competence and authority of this ombud. Barneombudet can also on its own volition refer cases to an administrative agency or to the prosecution authority or to a relevant protection agency.

Barneombudet can take positions and issue statements on all cases under review, usually in writing and with reasons given for its position. It can choose what and who is its main addressee, but it shall refrain from making statements in cases that have been decided by Sivilombudsmannen or by a judgement in court or are before a court.

Barneombudet produces a supplementary report to the official State party report on the Child Rights Convention and has done so since 1998. The Forum for Child Rights did also produce a supplementary report in 1998 and 2004 and the Norwegian Centre for Human Rights produced theirs in 2009. The supplementary report, as the title indicates, contains information on issues that in the view of the rapporteurs are insufficiently covered in the official report.[[21]](#footnote-21)

All in all, the three different ombud institutions have important contributions to make regarding the protective and promotional functions of an NHRI. However, none of them is officially accredited with the international accreditation body as a National Institution. The official accreditation is with the National Institution for Human Rights, originally located at the Norwegian Centre for Human Rights at the Faculty of Law, University of Oslo. Given that the array of ombud institutions perform many of the functions that are part and parcel of a National Institution, what is left for the “real” National Institution to do? Is it needed considering the present domestic institutional system? To that we now turn.

1. The National Institution for Human Rights: Tracing the process towards a new National Institution

The establishment of Norway’s National Institution for Human Rights came out of the recommendations of the Government’s National Plan of Action for Human Rights 1999-2004.[[22]](#footnote-22) It was established by Royal Decree on 21 November 2001 which provided “The Foundation and Mandate for a National Institution for the Protection and Promotion of Human Rights at the Norwegian Institute of Human Rights.”[[23]](#footnote-23) The Decree pointed to the 1993 UN General Assembly resolution that recommended that each state designate a National Institution for the protection and promotion of human rights in accordance with the Paris Principles. These principles allowed for flexible interpretation, but independence from the national authorities was emphasized. According to the Decree, the main purpose was to assist the general public, non-governmental organisations and individuals by providing advice, documentation, analysis and dissemination in the field of human rights. The mandate was broad, but significantly, should not handle individual complaints, but instead redirect complaints to the existing Ombud institutions, the judiciary and non-governmental organisations.

The National Institution should have an advisory role in relation to both public authorities, private associations and individuals based upon research and research co-operation, nationally as well as internationally. The emphasis on research indicated its location at the Norwegian Centre for Human Rights and initially the role of a National Human Rights Institution (NHRI) was given fully to the Centre for Human Rights without considering the possibility of a separate unit within the structure of the Centre. An additional 5 million NOK was allocated to the Centre in order to fulfil its function as a National Institution (NI). However, this was considered not quite good enough for the international Sub-Committee on Accreditation (SCA) as the Centre was awarded an A(R) status at its first accreditation review. The (R) indicated reservations, first with regard to its financial independence. The SCA considered that an earmarked funding for the NI should be put on the State budget, independently of the funding for the Centre. Secondly, pluralism was not assured by present arrangements and accordingly, an Advisory Committee was added to the NHRI Statutes, thus guaranteeing representation by a broader selection of social forces, two of which were nominated to the Centre’s Board. With these modifications, the NHRI was deemed worthy of full A status with the SCA. Allocations were slightly raised to 6.3 million NOK to cover the full range of tasks to be undertaken by the NHRI.

At the outset it was considered unproblematic that a university entity could fulfil the role of an NHRI and the function was seen as an extension of the Centre, given its activities within research, education, international work and documentation. It would furthermore be a fairly cost-effective way of organizing an NHRI. But, as became clear over time, this was not at all an unproblematic arrangement. It led to core researchers devoting approximately one-fifth of their time to work for the NHRI, irrespective of whether their research interests were on domestic affairs or not. A great deal of Centre research either concerns human rights at the international level or within foreign countries, often beyond the European continent. As the Centre received considerable funding for commissioned work from the Ministry of Foreign Affairs, it goes without saying that most of it does not deal with domestic affairs. Secondly, the adequacy of funding for the NHRI was considerably undercut by the University charging a 55 per cent overhead on salary costs on the use of their premises and facilities.

More seriously, perhaps, was whether the role of an NHRI can be squared with being a university entity. An NHRI would need to take a clear advocacy role and lobby the powers that be to push for legislative and policy changes in order to promote human rights domestically. It would have to have an institutional voice and an institutional presence in the public domain that may not be squared with the tasks of a research-based knowledge producing institution, which may approximate that of a think tank, but not that of an advocacy and lobby agency.

The main output over the years was a yearbook on human rights in Norway.[[24]](#footnote-24) This was primarily a legal compendium with a thematic section, comments on draft legislation, comments on national reporting to international treaty bodies, summaries of statements by international treaty bodies as well as national judicial bodies and ombud institutions. Its method was primarily legal analysis and less social science methodology and it was not as such based on own research, even though the Centre is multi-disciplinary. While there has been research on human rights in Norway more broadly conceived, these have not primarily been publications of the Centre and the NHRI as such.[[25]](#footnote-25) While the Centre runs a number of international programmes, it is not known whether collaboration with other NHRIs or ombud institutions is part of these activities[[26]](#footnote-26)

At the request of the Centre, a review of the Centre’s role as an NHRI was commissioned by the Ministry of Foreign Affairs and their report was presented in March 2011.[[27]](#footnote-27) The Sveaass report was quite critical on a number of points. It found that independence was not formally guaranteed by a Royal Decree. An NHRI must be able to take positions on human rights generally and not only on those issues based on its own scientific research and the research interests of its staff would tend to prevail over the NHRI requirements of human rights research on Norway, given constraints of time and priorities.

More fundamentally, the issue remained whether a university entity can function effectively as an NHRI in compliance with the Paris Principles. Its academic standing would, according to the Sveaas report, limit its interactions with civil society organisations with no academic accreditation. While academic freedom may have a protective role against government interference in setting academic priorities, it might also preclude developing a strong institutional voice. But, as indicated above, this presumes that the basic funding is sufficient to have a truly independent role and for the Centre as for other similarly situated entities, the brunt of funding comes from external sources and tied to the priorities of the funding agency, usually a Government Ministry. This means that the agenda to a large extent is set by outside forces.

Fundamentally, the absence of a law on an NHRI or, even better, a constitutional basis was a recurring issue that has dragged down its formal independence. Further, its lack of capacity to fully monitor the situation of human rights in Norway, to take initiatives and to draw the attention of government and public authorities to violations happening in all parts of the country were tasks that an NHRI should be able to undertake as per the Principles. This may be so for a number of reasons. The NHRI was precluded from handling individual complaints, though general advice and counselling could be provided on where to direct claims and complaints. The official view was that complaint mechanisms were provided by two of the Ombud institutions and assigning these functions to an NHRI would duplicate the efforts of the Ombud institutions.[[28]](#footnote-28) Maintaining close contacts with civil society organisations would provide the NHRI with sources of information that may have been more difficult to uncover by own efforts. That implied taking a view beyond research and legal analysis towards methods of fact-finding and verification.

Considering what model to recommend on the future organization of the NHRI, the Sveaass report advised against the Ombud type, whether the classic ombud (Sivilombudsmannen) or the thematic ombud (Likestilling og diskrimineringsombudet), the former because it does not have a primary advocacy role and is precluded from commenting on draft legislation and policy decisions, the latter because it is too specialized to cover the full range of human rights. Instead, the report recommended the commission model which in its view would be the best choice in assuring the principle of pluralism in the composition of the NHRI. A commission might be better placed to represent the interests of the minorities and other vulnerable groups in society.[[29]](#footnote-29) Responsibilities and tasks could be distributed among commission members with one commissioner having a specific responsibility for the indigenous and national minorities. The report advised having three commissioners with one designated chief commissioner backed up by a secretariat and a communication section and further subdivisions on monitoring and advice, analyses and investigations and education. The proposed structure would come to approx. 25 million NOK in annual costs which would imply four times the level of budget as compared to the present arrangements at the time.

Following the Sveaass report, the Ministry of Foreign Affairs set up an inter-ministerial working group with the mandate to consider changes in the mandate of the National Institution for Human Rights. This was the second node in the process towards a new NHRI.[[30]](#footnote-30) Apart from following up the Sveaass report, the MFA note was propelled by two other decisions, first, the resolution by the Senate of the University of Oslo that the Centre would no longer be the National Institution with effect from 1 July 2014. The University had come to the conclusion that the principles of academic freedom and freedom of research were not compatible with the role of an NHRI. Secondly, the Sub-committee on Accreditation had evaluated the Norwegian NHRI to be only in partial compliance with the Paris Principles and consequently had downgraded the status of the NHRI from an A to a B.

At its 2011 meeting, the Sub-Committee issued the following statement on the Norwegian NHRI:

**Recommendation**: The SCA informs the NCHR of its intention to recommend to the ICC

Bureau that the NCHR be accredited with **B status**, and gives the institution the

opportunity to provide, in writing, within one year of such notice, the documentary

evidence deemed necessary to establish its continued conformity with the Paris

Principles. The NCHR retains its **A status** during this period.

The SCA notes:

During the 2009 Universal Periodic Review of Norway, the NCHR submitted a

stakeholder report in which it requested that the Norwegian Government review the work,

organizational structure and resource base of the NCHR. The Norwegian Government

responded positively to this request and initiated a comprehensive review in collaboration

with the NCHR in early 2010.

The NCHR has a dual role as a department of the University of Oslo and a NHRI, and

the SCA understands that the University of Oslo intends to terminate the NCHR’s role as

a NHRI by the end of 2012. The NCHR, in collaboration with the Norwegian Government,

intends on developing a strategy for follow-up and establishment of a Paris Principle

compliant NHRI.

The SCA notes that the NCHR, as presently constituted, is not fully Paris Principle

compliant, but given the stated intention of the NHRC to develop a strategy for the

establishment of a Paris Principles compliant NHRI before the end of 2012, the SCA

wishes to provide guidance to the NCHR and the Norwegian Government for matters to

consider in developing the strategy.

The SCA recommends that:

1. An inclusive and consultative process to ensure broad support for a new NHRI

should be initiated by the Government without delay. The process should include the

NCHR, civil society groups and other stakeholders;

2. Irrespective of the institutional model chosen, the new national human rights

institution must be established in conformity with the Paris Principles, in particular be

established by an Act of Parliament, or preferably by Constitutional provision;

3. The legislation should ensure that the new NHRI is an independent body with the

necessary resources and capacity to fulfil a broad mandate to both protect and

promote human rights;

4. Without delay and in close consultation with the NCHR, the Norwegian government

should develop a strategy for the interim period with clear commitments to uphold as

a minimum, the current level of NCHR work until a new NHRI has been established.

That portion of the existing budget earmarked for the NHRI should go directly to

NHRI work;

5. In the interim period, the NCHR should make every effort to continue the NHRI work

it undertakes, particularly in relation to conducting human rights monitoring,

documentation and advocacy, and to enhance its current knowledge base, work

methods, and independent functioning.[[31]](#footnote-31)

The SCA had given the NCHR one year to supply information that would enable it to keep its A status, but as no information was forthcoming within the time limit set, the SCA notified the NCHR at its November 2012 meeting that:

**Recommendation:** The SCA recommends that the NCHR be accredited **B status.**

At the SCA’s session in October 2011, it gave the NCHR the opportunity to provide, in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles.

The Norwegian Government has established an inter-ministerial working group to consider whether changes should be made to the NHRI, including whether a new NHRI should be established on the basis of a different institutional model, with reference to the Paris Principles.

The SCA notes with appreciation the efforts of the NCHR throughout the restructuring process and encourages the NCHR to continue to advocate for the establishment of a NHRI in full compliance with the Paris Principles. However, the NCHR in its present form is not operating fully in compliance with the Paris Principles. [[32]](#footnote-32)

Considering that Norway had cultivated a self-image of being in the Premier League of human rights, this downgrading must have come as something of an embarrassment, not the least due to the fact that Denmark had no problems passing the hurdle and several of Norway’s development partners in the South, including Tanzania and Zambia, likewise.[[33]](#footnote-33) One reason for the downgrading was that the inter-ministerial working group was still at work preparing its note, which eventually was completed 28 June 2013 and sent out for hearing with the deadline set at 24 September 2013. The Inter-Ministerial Working Group (hereafter IMWG) had asked for written inputs from various stakeholders, including the current NHRI, the University, the Ombud institutions as well as from civil society organisations. Among those heard, there was a strong presumption in favour of strong independence with a clear institutional voice, a preference for a commission model and hesitation about the integration with any of the existing Ombud institutions and a continuation of the present arrangements, also supported by the existing NHRI.

According to the viewpoints of the IMWG, Norway has an established, but fragmented system for monitoring the implementation of human rights. An NHRI should have professional expertise that can assist the government and civil society on human rights issues while also having an active monitoring and advocacy role. The NHRI should cover tasks outside the mandate of the existing Ombud institutions, take independent initiatives, have a clear institutional voice, also within the UN system, and contribute professionally to debates in the public sphere. It should have a focus on domestic issues and be more outwardly visible in its activities, implying that research per se will be of less importance than before. While the IMWG did not recommend the NHRI to handle individual complaints, it should provide advice about complaint options, including complaints addressed to the UN and regional human rights bodies. The IMWG did not recommend an additional complaint mechanism with the NHRI due to the considerably extra costs involved. It should have a coordinating role in relation to civil society associations and the Ombud institutions, but not a superordinate role.

More controversially, perhaps, was that the IMWG did not consider that compliance with the Paris Principles required that NHRIs should have unlimited access to information and documents, but only to information that is essential to review cases under its authority and within the frame of its work. Of course, it may be noted that the difficult point in this regard is to determine who has the authority to decide on what is essential and what information should be accessible for the NHRI to exercise its duty to provide advice, if not individual case treatment.

In considering the various organizational models, the IMWG would not recommend transferring the functions of an NHRI to another research institute. Further, integrating the NHRI under one of the existing Ombud institutions was not fully satisfactory as the function of the Sivilombudsmannen was to exercise control over public administration and not to take up the advocacy role associated with an NHRI. However, the IMWG chose not to conclude on this point as the authority to revise the mandate of the Sivilombudsmannen was under Parliament and hence beyond the authority of a Government ministry. Drawing conclusions would thus intrude on the territory and authority of another government branch. However, it did note that the Paris Principles did not specify that the authority to nominate the leadership of an NHRI necessarily will have to reside with Parliament and that the decisive factor was not the location of the nomination authority, but the independence of the NHRI leadership.

Further, the IMWG advised against the commission model. While admitting that its strength lay in its pluralist composition and was the default model internationally, a large commission could hamper its effectiveness, create unclear divisions of labour and responsibility internally and be the most costly of the models available. Hence, it was not recommended.[[34]](#footnote-34) Instead, the IMWG opted for an administrative agency model to be promulgated by law in order to make it compliant with the Principles. It should be under the King (as the Head of State) and the Ministry of Foreign Affairs with a board representing various professional expertise, ensuring gender balance and with an attached advisory body representing the pluralism of society. The Director should be appointed by the Board and have a Secretariat to take care of daily operations. The NHRI could take on commissioned work by the government, but did not find that an annual report to Parliament was required for an administrative agency. Finally, it recommended that the suggested administrative entity should be lodged under the Ministry of Foreign Affairs and that the entity and its operative work would be feasible under the existing budget of 6.3 million NOK, though no argument was presented to that effect.

It is highly uncertain whether the IMWG believed this to be the best model or the one it felt it had the authority to recommend, given that it was precluded to recommend alternate models that would come under the authority of the legislature. In one or the other sense, the note was oddly inconclusive (and in retrospect, perhaps somewhat disingenuous as well). As the responses to the note made clear, it was quickly shot down. Hardly any of responses supported the recommendation of an administrative entity under the Ministry of Foreign Affairs.

The response from the NHRI was clearly in favour of attaching the NHRI to Parliament. It would enhance the NI’s independence, authority, accountability and legitimacy. The execution of its mandated tasks would be unfeasible given its present annual budget and recommended a doubling which was realistic, but still moderate compared to the budgets for the Ombud institutions. It objected to the inclusion of Ministry representatives on the Board with voting rights which went against the Principles and to potential restrictions in access to information and documentation on special themes and on activities within closed institutions, not for case treatment, but for highlighting issues of general interest for human rights protection in Norway, so-called “emblematic cases.”

Barneombudet thought it might be difficult to explain in international forums how the suggested model ensured independence and might draw the NHRI’s legitimacy into question. The budget was too tight given an expanded mandate and the assurance of access to essential information was somewhat vague. The Lawyers’ Association thought it important that the NHRI should not be attached to any of the existing organs charged with monitoring and implementation of Norway’s human rights obligations. It should be established as an independent institution directly under Parliament with funding from a separate State Budget post of sufficient magnitude to fulfil its role in society. The Association did not see any reason for an attachment to the Ministry of Foreign Affairs and warned against a model in which the Director can be overruled by the Board.

The Norwegian Organisation for Asylum Seekers (NOAS) was also skeptical about the NHRI being attached to Sivilombudsmannen or other existing institution. The Human Rights Alliance, a CSO, was concerned about whether the existing Ombud institutions would cover the full range of minority concerns and recommended the NHRI to include those with “other status.” Juss-Buss, a free legal aid service organized by law students, preferred the NHRI to offer a low threshold service for individuals requesting legal advice in matters not covered by existing institutions and to take a proactive role as far as legal aid was concerned. It also doubted whether an organizational model as an administrative entity would secure sufficient independence. The Norwegian Association for the Disabled, The Council for Mental Health, the Association for Education, the Human Ethical Association and the Holistic Association, a CSO for alternative world views, all recommended a direct attachment to Parliament.

The Ministry of Justice saw advantages of attaching the NHRI to Sivilombudsmannen, but purely for purposes of coordination. The Likestillings og Diskrimineringsombudet, on the other hand, saw such an attachment as a disadvantage as the Sivilombudsmannen does not have a mandate for a proactive advocacy. The experience of the LDO as such an administrative entity under a Ministry has shown that there is a fine line between genuine professional dialogue and administrative subordination and recommended a direct attachment to Parliament, referring to the Belgrade Principles.[[35]](#footnote-35) The Helsinki Committee found the IMWG note to be remarkably similar to the present arrangements for the NHRI and advised against attaching the NHRI to an existing Ministry. The proposed model is for organs with administrative functions, and the NHRI should not have such functions. The Committee also wondered about who shall decide on what is “essential” information for monitoring purposes and advised that it should be the NHRI to decide what is “essential” and it did not see any justification for why the NHRI should enter into agreements with public authorities for the solution of specific tasks. The authorities should not be privileged in relation to other organisations and individuals in requesting services.

The next node in the process towards a new NHRI was a proposal from the Speaker of Parliament Mr. Olemic Thommesen.[[36]](#footnote-36) The proposal referred to the MFA note recommending the establishment of an administrative entity under the MFA. It also referred to the Belgrade Principles that recommended closer contact between the NHRI and Parliament, including presenting strategic plans for Parliament in conjunction with annual budget discussions, reporting to Parliament and establishing a framework for dialogue and cooperation. It also referred to the Venice Commission statement that the nomination authority for monitoring and protection of human rights should reside with Parliament and should be established with a qualified majority. Specifically, the proposal recommended that the NHRI should be an internal unit within Sivilombudsmannen with its own director and for reasons of economy and convenience, should be physically located at Sivilombudsmannen. Such a placement would require amendments to the law and instructions for the Ombud. A public hearing was organised by the Office of the Speaker on 29 April 2014.[[37]](#footnote-37) It became apparent in the course of the public hearing that an organizational location as an entity under Sivilombudsmannen was less than ideal. In a letter from the acting NHRI addressed to the Office of the Speaker, it was questioned whether an attachment to Sivilombudsmannen would be an acceptable solution as competing mandates might constrain the effective execution of both. The NHRI recommended the NHRI to be an independent entity and to be the institution to seek accreditation with the SCA. The NHRI should be established by law or preferably by a constitutional provision. The Director of the NHRI should be elected by Parliament and not by Sivilombudsmannen. It should be given a broad mandate which should include all rights and all public authorities, including Parliament. The mandate should include access to all relevant documents and all closed institutions.[[38]](#footnote-38)

In view of the objections from the organisations attending the public hearing, it was clear that the original proposal was no longer tenable and the Office of the Speaker in their recommendation to Parliament accepted many of the objections to the original proposal with regard to independence (including Parliament), the attachment to Sivilombudsmannen and concluded that the NHRI should be an independent institution under Parliament, that a new law and instructions for the NHRI should be drafted, that the Director should be elected by Parliament, and that the Advisory Council should be nominated by Parliament. However, the Office of the Speaker did not recommend that the NI should be given competence to handle individual complaints as it might interfere with the mandate and tasks of the existing Ombud institutions.[[39]](#footnote-39) The Recommendation was dispatched to Parliament with the recommendation to (a) establish a new national institution for human rights from 1 January 2015, organizationally under Parliament, which was expected to fulfill the criteria in relation to the UN principles on national institutions (Paris Principles) and (b) ask the Office of the Speaker to draft a Bill and instructions for a National Institution for Human Rights. The Recommendation was unanimously adopted.[[40]](#footnote-40)

The next node in the process was the drafting of a Bill and instructions for the NHRI. This was entrusted to a Parliamentary working group under the Office of the Speaker (PWG).[[41]](#footnote-41) The PWG proposed that the mandate should cover all internationally recognized human rights and that the NHRI should independently assess any issue within its field of competence. It should be open for any individual inquiry, but not have the competence to treat individual complaints. The mandate should be broadly conceived, and the PWG emphasized the protection of minorities against discrimination, but the NHRI should be free to set its own priorities. The mandate should cover monitoring and reporting on the situation on human rights in Norway, including making recommendations to ensure that Norway´s human rights obligations are fulfilled; advise Parliament, the Sami Parliament and other public organs and private actors on the implementation of human rights; inform about human rights, including advising individuals about national and international complaints mechanisms; promote teaching, education and research on human rights; and arrange for cooperation with relevant public agencies and other actors engaged in human rights. The latter includes the existing Ombud institutions as well as civil society associations. Finally, the NHRI should participate in international cooperation to promote and protect human rights. This, however, is contingent on it regaining its A status with SCA. Pluralism in society was to be ensured by the appointment of an Advisory Council with consideration given to minority representation. The NHRI was to be led by a Director, but not by a Board as per the recommendation of the IMWG, nominated by Parliament in plenary session. With regard to access to closed institutions, this will have to be arranged with the institutions concerned and with Sivilombudsmannen.

The report of the PWG was again sent out for public hearing and based on the comments that were received, a new Recommendation was dispatched to Parliament from the Office of the Speaker.[[42]](#footnote-42) The main change from the report from the PWG was that the Recommendation from the Office included a provision for appointing a Board to oversee the NHRI. Parliament will be charged with appointing the Director and the Board with appointing the Advisory Council. The election of the Board would be fully under the authority of Parliament, based on the recommendations of the Office of the Speaker. This was not recommended by the PWG and it is not clear what may have spurred a change of heart in the Office of the Speaker. Another minor note was that Office did not see it necessary to specify any particular right under the NHRI´s mandate, despite being requested by Sametinget to state explicitly that indigenous rights are under the broad mandate of the NHRI. Finally, with regard to economic and administrative conditions, the Office saw the current budgetary allocation as covering start-up costs, to be adjusted as needed to enable the NHRI to fulfill its legally mandated activities and that locating the NHRI at the premises of Sivilombudsmannen might save costs and allow the NHRI to purchase services from Sivilombudsmannen.

The final node in this process was the draft Bill on Norway’s National Institution for Human Rights and the attached instructions. The Bill was discussed in Parliament 0n 14 April 2015 and adopted there, entering into force on 1 July that year.

According to the Law on Norway’s National Institution for Human Rights, the main tasks of the Institution are to:

1. Monitor and report on the status of human rights in Norway, including making recommendations to secure that Norway’s human rights obligations are fulfilled;
2. Advice Parliament, the government, the Sami Parliament and other public agencies and private actors on the implementation of human rights;
3. Inform about human rights, including guiding individuals about national and international channels for lodging complaints;
4. Promote training, education and research on human rights;
5. Facilitate cooperation with relevant public agencies and other actors working on human rights;
6. Participate in international cooperation on promotion and protection of human rights.[[43]](#footnote-43)

It was emphasized in the Law, as we have noted earlier, that the NHRI shall not handle individual complaints about human rights. The NHRI is to be led by a Board appointed by Parliament. The Board will carry the main responsibility for operations, budgets and management and shall design a strategy for the coming years. An obligatory output is an annual report to be submitted to Parliament. On of the members shall be familiar with Sami affairs. The Director, who is also appointed by Parliament is responsible for day to day management and answers to the Board which has the overall responsibility for the Institution. Further, an Advisory Council of 10 – 15 members shall be appointed by the board, representing pluralism in society.

The Storting deliberations on the Bill demonstrated an overall support for the establishment of the NHRI. The Speaker, who was commended for taking the lead on this matter, and representatives of the Labour Party, the Centre Party, Liberals, the Socialist Left Party and the Greens all came out clearly in favour of the NHRI. One speaker noted that the NHRI was to be evaluated after four years which would give the Parliament the opportunity to review the model selected and to make adjustments as necessary. Others highlighted the importance of adequate budgetary support to enable the NHRI to exercise its functions in a satisfactory manner. The only critical note was struck by Mr. Michael Tetzschner (Conservative) who worried that the broad mandate would lead to politicization, but as we have noted above, the Paris Principles explicitly recommend a broad mandate for NHRIs. He was also skeptical about the NHRI’s mandate to evaluate whether Norway fulfils its legal obligations under international treaties, pointing to international courts and treaty bodies tasked with the authority to do so. On this point, it should be added that NHRIs do not take an independent position on the implementation of Norway’s international human rights obligations. Their mandate is to push for revisions in those cases where there is a discrepancy between Norwegian law and practice and its treaty obligations. Finally, he was skeptical about the advocacy role of the NHRI, which might represent a type of outsourcing of politics which should be the main responsibility of Parliament. In the final analysis, the appointment of a Board with overall responsibility and the announced evaluation were factors that tipped him in favour of supporting the establishment of an NHRI.[[44]](#footnote-44)

At this point, only one crucial question remained, and that was the reaccreditation of Norway’s NHRI. A meeting was held at the SCA 13 – 17 March 2017 in which Norway was one of the countries reviewed. As of writing, the minutes of the meetings have been made public, so we do know what was the decision on the Norwegian case. In the event, Norway was awarded an A rating, meaning that the new NHRI is fully compliant with the Paris Principles, as interpreted by the SCA. However, some critical points were raised, but none was serious enough to put the A rating into doubt.

* The Act does not explicitly provide the NNHRI with a mandate to encourage ratification or accession to international human rights instruments. The SCA is of the view that encouraging ratification of, or accession to, international human rights instruments is a key function of an NHRI.
* The SCA acknowledges that the NNHRI reports that, in practice, the selection and appointment process is conducted in an open and transparent manner. However, the SCA is of the view that the selection process currently enshrined in the legislation is not sufficiently broad and transparent. In particular, it does not specify the process for achieving broad consultation and/ or participation in application, screening, selection and appointments process.
* Article 6 of the Act provides for the dismissal of the Director of the institution by the Parliament and lists the specific circumstances of dismissal. However, the Act does not provide further details on the dismissal process. Further, the Act is silent on whether other Board members can be dismissed, by whom and following what process. The SCA acknowledges that the NNHRI reports that it intends to propose amendments to its enabling law to specify the grounds and process for dismissal.
* The Act is silent on whether and how members enjoy functional immunity for actions taken in their official capacity in good faith in their official capacity. External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a member. For this reason, NHRI legislation should include provisions to protect members from legal liability for acts undertaken in good faith in their official capacity.

The fact of there being multiple bodies for the promotion and protection of human rights does not affect compliance with the Paris Principles:

* The SCA highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to fulfil their mandates effectively. In this regard it acknowledges the NNHRI’s engagement and cooperation with national Ombuds institutions. The SCA encourages the NNHRI to continue to develop, formalise and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including in particular Ombuds institutions in Norway as well as civil society organizations.

Cooperation with Ombuds institutions does not present a problem as per the Principles, but the question remains whether the Ombuds institutions by themselves would be sufficient to secure a top rating. The critical points address lacunae in legislation and it is implausible that the NHRI would disagree with any of the issues raised. Finally, it should be noted that none of the points speaks to effectiveness as such. As we have have said, the Principles list a series of structural conditions that are assumed to make NHRIs effective, but whether these are in any way sufficient is a different issue altogether.

1. Conclusions

This paper has traced the diffusion of international standards to a specific country. Diffusion can take place in a number of ways, by emulation as well as by forms of imposition. It is a sign of professionalization that standards are set at the international level, which can guide countries in setting up their own institutions. The Paris Principles have acquired an undisputed status as the international standard for national human rights institutions. As we have seen from the national case study, they have been a recurring thread through all reviews, notes, reports and Parliamentary recommendations and deliberations. The question has been how well the national arrangements match the standards set by the Paris Principles. As we saw, taking the Paris Principles to Norway did only result in a partial match and ever so much deliberation has been undertaken to make them match better. At some point they will be taken back to the ICC to verify if the reforms satisfy the Principles and restore Norway to its rightful place as an A status country in accordance with national aspirations.[[45]](#footnote-45) Eventually, they were taken back to Paris and were found to match the requirements of the Principles, though some minor issues remain to be resolved. But, as we have seen, the Principles are basically concerned with legislation and legal provisions guaranteeing the functional independence of the NHRIs and not with their effectiveness which would imply a more close scrutiny of their actual operations. The Principles may lay down some necessary conditions for their effectiveness, but not sufficient ones. Some NHRIs may indeed be highly effective, yet fall short of Paris requirements in terms of mandate, pluralism and other concerns, indicating that the Principles can only offer a partial view of the conditions for effectiveness.

1. On the ECHR, see, inter alia, Francis G. Jacobs, *The European Convention on Human Rights* (Oxford, Clarendon Press, 1975) and A.H. Robertson, *Human Rights in Europe* (Manchester, Manchester University Press, 1977). [↑](#footnote-ref-1)
2. On soft law in general, see Ulrika Mörth (ed.), *Soft Law in Governance and Regulation: An Interdisciplinary Analysis* (Cheltenham, Edward Elgar, 2005). [↑](#footnote-ref-2)
3. See ECOSOC Resolution 2/9 of 21 June 1946. This section relies on Birgit Lindsnæs and Lone Lindholt, “National Human Rights Institutions – Standard Setting and Achievements, in Birgit Lindsnæs, Lone Lindholt and Kristine Yigen (eds.), *National Human Rights Institutions. Articles and Working Papers* (Copenhagen, Danish Centre for Human Rights, 2001), pp. 1 – 48. Previously published in Hugo Stokke and Arne Tostensen (eds.); *Human Rights in Development Yearbook 1998. Global Perspectives and Local Issues* (The Hague, Kluwer Law International, 1998). [↑](#footnote-ref-3)
4. ECOSOC Resolution 772 B (XXX) of 25 July 1960. [↑](#footnote-ref-4)
5. A/RES/36/134 of 14 December 1981. [↑](#footnote-ref-5)
6. This section relies extensively on section 2 in Hugo Stokke, *Taking the Paris Principles to Asia. A Study of three human rights commissions in Southeast Asia: Indonesia, Malaysia and the Philippines* (Bergen, Chr. Michelsen Institute, Report R3, 2007), but has been updated to take account of recent literature, in particular Gauthier de Beco and Rachel Murray, *A Commentary on the Paris Principles on national Human Rights Institutions* (Cambridge, Cambridge University Press, 2015). [↑](#footnote-ref-6)
7. *Principles relating to the status of national institutions*, UN Commission of Human Rights Resolution 1992/54 of 3 March 1992, annex (E/1992/22. [↑](#footnote-ref-7)
8. Lindsnaes and Lindholt (2000) are puzzled by the use of the term *quasi-jurisdictional* instead of the more apposite *quasi-judicial* which has a precise meaning in legal dictionaries. The former term has been retained in later UN reference works which does speak to the legal power of precedence! [↑](#footnote-ref-8)
9. deBeco and Murray, *op.cit.*, p. 26. [↑](#footnote-ref-9)
10. For a comprehensive tracking of the diffusion of NHRIs, see Sonia Cardenas, *Chains of Justice. The Global Rise of State Institutions for Human Rights. Philadelphia*, University of Pennsylvania Press, 2014. [↑](#footnote-ref-10)
11. One possible area for research may be to examine one of the Norwegian institutions in more detail, for example the Equality and Discrimination Ombud. This Ombud has a narrower mandate than a standard NHRI. [↑](#footnote-ref-11)
12. Mertus, Julie A., ‘Evaluating NHRIs: Considering Structure, Mandate, and Impact’, in Ryan Goodman and Thomas Pegram (eds.), *Human Rights, State Compliance and Social Change: Assessing National Human Rights Institutions*, Cambridge: Cambridge University Press, 2012, pp. 74-90 [↑](#footnote-ref-12)
13. Taken off the official website at https://www.sivilombudsmannen.no/?lang=en\_GB. [↑](#footnote-ref-13)
14. For the full text (in Norwegian), see https://lovdata.no/dokument/NL/lov/1962-06-22-8. [↑](#footnote-ref-14)
15. For details, see https://www.sivilombudsmannen.no/about-torture-prevention/front-page/. [↑](#footnote-ref-15)
16. For the full text (in Norwegian), see <https://lovdata.no/dokument/NL/lov/2005-06-10-40>. The general Discrimination Law can be found here (in Norwegian): <https://lovdata.no/dokument/LTI/lov/2005-06-03-33> which provided for the amalgamation of the three earlier institutions. [↑](#footnote-ref-16)
17. See Diskriminerings- og tilgjengelighetsloven (in Norwegian) at https://lovdata.no/dokument/NL/lov/2013-06-21-61?q=diskriminerings+og+tilgjengelighet [↑](#footnote-ref-17)
18. See Likestillingsloven (in Norwegian), as amended, https://lovdata.no/dokument/NL/lov/2013-06-21-59 [↑](#footnote-ref-18)
19. Gender expression is here taken to mean the ways gender identity is expressed, either as a man or woman or outside/beyond the two-gender norm. [↑](#footnote-ref-19)
20. Committee seems to be the preferred usage of the term “nemnd” in English, but tribunal may also be apposite. [↑](#footnote-ref-20)
21. See the 2009 report at <http://barneombudet.no/wp-content/uploads/2013/07/supplerender-rapport-til-fn_norsk-web.pdf>. For a case study of Kenya, see Hugo Stokke, *Taking the inside or outside track – or both? NGO advocacy in state reporting under the Child Rights Convention. A case study of Kenya*. CMI Report 2016. NGOs contribute to the state report as well as produce their own complementary report. [↑](#footnote-ref-21)
22. See *Menneskeverd i sentrum: Handlingsplan for menneskerettigheter*. St.meld. no. 21, available at https://www.regjeringen.no/nb/dokumenter/stmeld-nr-21-1999-2000-/id192704/. [↑](#footnote-ref-22)
23. The name was changed to Norwegian Centre for Human Rights from 1 January 2003. This may have been motivated by the intention to be seen as being more than a pure university department doing academic research and teaching and advising students and to accommodate its role as a National Institution. Despite being multi-disciplinary, it is formally lodged under the Faculty of Law at the University of Oslo. [↑](#footnote-ref-23)
24. See <http://www.jus.uio.no/smr/om/nasjonal-institusjon/publikasjoner/aarbok/arbok-13-web.pdf>

    (in Norwegian). [↑](#footnote-ref-24)
25. See Njål Høstmelingen, Tore Lindholm and Ingvill T. Plessner (eds.),, *Stat, kirke og menneskerettigheter* (State, Church and Human Rights) (Oslo, Abstrakt Forlag, 2006). In all fairness, it should be added that the back cover identifies the editors as belonging to the Centre and that the Centre also has the status of an NI. [↑](#footnote-ref-25)
26. Indonesia has a NI, known as Komnas Ham. See <http://www.komnasham.go.id/>. The Centre has a programme on Indonesia, but it does not appear from its web site information that there is any collaboration with Komnas Ham. [↑](#footnote-ref-26)
27. See Protecting and Promoting Human Rights in Norway. Review of the Norwegian Centre for Human Rights in its Capacity as Norway’s National Human Rights Institution. Oslo, March 2011. To be found at <http://www.jus.uio.no/smr/om/nasjonal-institusjon/om/docs/NINorwayFinalUD-14.03.11.pdf>. Hereafter the Sveaass report (after the Chair of the review team). [↑](#footnote-ref-27)
28. There is as of now no complaint mechanism with Barneombudet which may be due to the fact that Norway has not ratified the Optional Protocol to the Child Rights Convention which opens for an individual complaints mechanism. [↑](#footnote-ref-28)
29. The commission model is the most common organisation model of NHRs throughout the world, and approximately 65 per cent of Nis are commissions. Ombud-type models are more common among Latin-American countries. [↑](#footnote-ref-29)
30. See <https://www.regjeringen.no/nb/dokumenter/horingsdokument-om-vurdering-av-endringe/id731938/>. Also included are the various replies to the note from the Ministry of Foreign Affairs. [↑](#footnote-ref-30)
31. See International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*. Geneva, 25 – 28 October 2011, p. 15f. [↑](#footnote-ref-31)
32. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*. Geneva, 19 -23 November 2012, p. 19f. The reports can be found at <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/SCA-Reports.aspx>. [↑](#footnote-ref-32)
33. Se bl.a. «Norge degradert», in *Morgenbladet*, 29 November 2012, but see also «Norge ikke degradert,» *Morgenbladet*, 6 December 2012.. The status of the NI was a recurring item in the review of Norway under the UPR mechanism. See *Report of the Working Group on the Universal Periodic Review. Norway*. UN General Assembly. Human Rights Council. 27th Session. Agenda Item 6. Universal Periodic Review. A/HRC/27/3. 7 July 2014. [↑](#footnote-ref-33)
34. It should be noted that the Paris Principles are not overly concerned with what are the most effective or efficient model on offer, but what model ensures independence and includes the plurality of society. [↑](#footnote-ref-34)
35. <http://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf> [↑](#footnote-ref-35)
36. <https://www.stortinget.no/globalassets/pdf/representantforslag/2013-2014/dok8-201314-032.pdf>. [↑](#footnote-ref-36)
37. The programme and the video from the Parliamentary hearing can be found here: <https://www.stortinget.no/no/Hva-skjer-pa-Stortinget/Horing/Horingsprogram/?dateid=10003642>. [↑](#footnote-ref-37)
38. Letter from Norwegian Centre for Human Rights, Faculty of Law, University of Oslo, to the Office of the Speaker, dated 29 May 2014. [↑](#footnote-ref-38)
39. https://www.stortinget.no/globalassets/pdf/Innstillinger/Stortinget/2013-2014/Inns-201314-240.pdf. [↑](#footnote-ref-39)
40. See <https://www.stortinget.no/globalassets/pdf/Referater/Stortinget/2013-2014/s140619-ny-des-2014.pdf>, pp. 3615-3619, in particular for the exchanges between MPs Trine Schei Grande and Michael Tetzschner. [↑](#footnote-ref-40)
41. https://www.stortinget.no/globalassets/pdf/dokumentserien/2014-2015/dok16-201415.pdf. [↑](#footnote-ref-41)
42. The public hearing can be found here: <https://www.stortinget.no/no/Hva-skjer-pa-Stortinget/Horing/Horingsprogram/?dateid=10003739>. The Recommendation came in two instalments, first with reference to the Bill: <https://www.stortinget.no/globalassets/pdf/innstillinger/stortinget/2014-2015/inns-201415-216.pdf> and then with reference to the instructions: <https://www.stortinget.no/globalassets/pdf/innstillinger/stortinget/2014-2015/inns-201415-217.pdf>.

    [↑](#footnote-ref-42)
43. The Law and other basic documents can be found at http://www.nhri.no/grunnlagsdokumenter/category826.html. [↑](#footnote-ref-43)
44. See the minutes of the Parliamentary deliberations at https://stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Stortinget/2014-2015/150414/. [↑](#footnote-ref-44)
45. On national self-image and aspirations, see <http://www.dagbladet.no/2014/02/13/nyheter/innenriks/samfunn/politikk/menneskerettigheter/31790631/>. [↑](#footnote-ref-45)