



STRENGTHENING DEMOCRATIC INSTITUTIONS FOR HUMAN RIGHTS IN MACEDONIA - FOCUS ON NATIONAL HUMAN RIGHTS INSTITUTIONS

-Policy Paper-

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EXECUTIVE SUMMARY

Subsequent reports from Human Rights monitoring bodies and international organisations have highlighted the need of reforming the institutional framework re Human Rights in Macedonia, in view of bringing it in line with the international standards on National Human Rights Institutions. Frequently highlighted points for improvement of the two currently existing NHRIs in Macedonia - the Ombudsperson and the Commission for Protection Against Discrimination are in relation to their independence, membership, mandate, and resources. However, this issue has not been given an adequate treatment.

This policy paper aims to outline the scope of the policy issue, to assist in defining the goals and objectives that need to be pursued in order to resolve it, and to point out to possible alternatives for resolving it. Its ultimate aim is to serve as ground for opening of a wide consultative process for reforming the institutional framework in relation to Human Rights in the country.

The analysis points to the need of revising the mandates, positioning, guarantees for independence and pluralism, as well as available resources of these institutions in view of bringing them in line with international standards, enabling them to take upon a more active and systematic approach to Human Rights issues as opposed to the present one which is largely responsive and focused on individual complaints, and in resolving the overlaps in the mandates resulting ultimately *inter alia* with an enhanced legal certainty. Such a revisiting needs to be done through a wide public participative consultation process that will reconsider every piece of the institutional framework through all relevant aspects and only then arrive to a policy choice that will both answer the challenge of alignment with international standards and will fit in the local context.

I. WHY OPENING THE DEBATE ON NHRIs IN MACEDONIA?

Following independence, Macedonia started to reform the existing and to erect new institutions in view of building its institutional framework inter alia in relation to Human Rights. Part of these efforts is related to the National Human Rights Institutions (NHRIs). NHRIs are defined as bodies 'established by a Government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights'.¹ The idea of NHRIs goes hand in hand with the idea of building or strengthening of democratic institutions.² The protection of Human Rights at national level depends on the existence of effective and accessible state institutions for addressing Human Rights violations, including NHRIs.³ The building of democratic institutions is closely tied to the building of strong NHRIs. This gains in importance when placed in a context of a state in transition, as NHRIs can also assist the development of a stronger Human Rights culture.⁴

International standards on NHRIs do exist, though they are not very detailed. This framework is mainly outlined by the Paris Principles and the ECRI recommendations, as well as in other documents, most of which are legally non-binding. However, both the UN and the CoE, as well as to an extent the EU have found ways to add pressure to their member countries to consider the issue of NHRIs seriously, and to work on bringing their national institutions in line with these standards.

Following the independence, initial discussions on NHRIs resulted with continuing of the tradition of an Ombudsperson, under a new law. Although the idea of establishing an additional institution that would deal with promotion and would have a more pro-active approach was raised in these discussions, in the end such an institution was not established. The Ombudsperson stood as the only NHRI in the country until January 2011, when the Commission for Protection Against Discrimination was established and started to function.

However, both the CPAD and the Ombudsperson are not fully in line with the international standards on NHRIs. This has been noted in several subsequent reports by Human Rights monitoring bodies. In 2008, the Committee Against Torture called upon the country to

¹ UN Office of the High Commissioner for Human Rights, 'National Human Rights Institutions. A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, 1995, HR/P/PT4', *UNHCR Website*, <<http://www.unhcr.org/refworld/docid/4ae9acb7289.html>>. Last accessed: 23 November, 2012

² Reif, Linda C, 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection' *13 Harvard Human Rights Journal 1 (2000)*. p.1

³ *ibid.* p.3

⁴ *ibid.* p.2

strengthen the Ombudsperson institution, in order to have the capacity to investigate into acts committed by police officers.⁵ That same year, the Human Rights Committee said that the Ombudsperson should be strengthened and the country should introduce a NHRI with a wider mandate,⁶ and similar concerns were shared by the Special Representative of the Secretary-General on the situation of human rights defenders in the country.⁷ The 2009 Universal Periodic Review on Macedonia noted in the list of conclusions and recommendations that the country should consider taking appropriate measures to ensure the institution of the Ombudsperson was in conformity with the Paris Principles or to envisage the establishment of a NHRI in conformity with those principles, one that would be accredited by the ICC.⁸ The Committee on the Rights of the Child's findings are along the similar lines in 2010.⁹ Thomas Hammarberg, former Commissioner for Human Rights of the Council of Europe, following a visit to Macedonia, recommended that the country review the role and mandate of the Ombudsperson, particularly in the area of non-discrimination and police misconduct, and take necessary action to guarantee that the institution has sufficient resources to fulfil its mission adequately.¹⁰ In 2010, the European Commission Against Racism and Intolerance urged that the Ombudsperson does not fulfill the criteria of an independent specialised body to combat racism and discrimination at a national level, and that such a body was necessary.¹¹ Adding to this, is the non-compliance with the Copenhagen criteria in their core requirements - notably they state that in order

⁵ Committee Against Torture, 'Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations - The former Yugoslav Republic of Macedonia, 21 May 2008', *United Nations Website*, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/421/49/PDF/G0842149.pdf?OpenElement>>. Last accessed: 20 November 2012. para.7

⁶ Human Rights Committee, 'Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations - The former Yugoslav Republic of Macedonia' 17 April 2008', *United Nations Website*, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/411/69/PDF/G0841169.pdf?OpenElement>>. Last accessed: 20 November 2012. para.7

⁷ Human Rights Council, 'Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani: Addendum - Mission to The former Yugoslav Republic of Macedonia, 3 March, 2008'. *United Nations Website*. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/114/55/PDF/G0811455.pdf?OpenElement>>. Last accessed: 20 November 2012. para.82

⁸ Human Rights Council, 'Universal Periodic Review: Report of the Working Group on the Universal Periodic Review - The former Yugoslav Republic of Macedonia'. *United Nations Website*. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/139/80/PDF/G0913980.pdf?OpenElement>>. Last accessed: 20 December 2010.

⁹ Committee on the Rights of the Child, 'Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - The former Yugoslav Republic of Macedonia, 23 June, 2010', *United Nations Website*. <[http://www2.ohchr.org/english/bodies/treaty/CD_Concl_Obs_2010/CRC/54th%20session/CRC-C-MKD-CO-2%20\(e\).pdf](http://www2.ohchr.org/english/bodies/treaty/CD_Concl_Obs_2010/CRC/54th%20session/CRC-C-MKD-CO-2%20(e).pdf)>. Last accessed: 20 November 2012. para.15

¹⁰ Commissioner for Human Rights Thomas Hammarberg, 'Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to "the former Yugoslav Republic of Macedonia 25 - 29 February 2008'. *Council of Europe Website*. <<https://wcd.coe.int/ViewDoc.jsp?id=1341983>>. Last accessed: 15 October 2010.

¹¹ European Commission Against Racism and Intolerance, 'Report on "The Former Yugoslav Republic of Macedonia" 15 June, 2010'. Council of Europe Website. <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/former_yugoslav_republic_macedonia/MKD-CbC-IV-2010-019-ENG.pdf>. Last accessed: 20 November 2012. paras.28-31.

to become a member a candidate country needs to have achieved, *inter alia*, a ‘stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’.¹² The European Commission notes in several subsequent reports, including in the last 2012 progress report,¹³ that the institutional framework on Human Rights and the protection of minorities is not completed.¹⁴ Adding to this argument is also the fact that the Ombudsperson was accredited with a ‘B’ status in 2011, which means it is not fully in line with the Paris Principles.

In view of this, the issue of NHRIs poses itself as an open one. Resolving this issue is of utmost importance due to its impact on the overall Human Rights situation in the country, on building strong institutional framework, and on bringing it in line with international standards. Moreover it is also tied to the fundamental values stated in the Constitution of the Republic of Macedonia, notably ‘the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution; [...] the rule of law; [...] [and the] respect for the generally accepted norms of international law’.¹⁵

II. OUTLINING THE ISSUE: NHRIs IN MACEDONIA AGAINST THE INTERNATIONAL STANDARDS

This part gives an overview of the two NHRIs with regard to their establishment, functions, competences and responsibilities, membership, operating principles, and resources, in order to understand the scope of the policy issue which is the subject of this paper. It evaluates the current set up against NHRIs international standards. The sections on the international law standards give summaries¹⁶ of the standards per issue. Possible solutions for the problems are given in the following section - recommendations.

¹² European Council, ‘European Council in Copenhagen 21-22 June 1993 Conclusions of the Presidency’. *EUROPA Website*. <http://ec.europa.eu/bulgaria/documents/abc/72921_en.pdf>. Last accessed: 20 December 2010.

¹³ European Commission, ‘Commission Staff Working Document - The Former Yugoslav Republic of Macedonia; 2012 Progress Report’. *EUROPA Website*. <http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mk_rapport_2012_en.pdf>. Last accessed: 16.11.2012. Information after the cut-off date for the study.

¹⁴ For example, please see: European Commission. The Former Yugoslav Republic of Macedonia 2010 Progress Report. *EUROPA Website*. <http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mk_rapport_2010_en.pdf>. Last accessed: 19 December 2010. p12.

¹⁵ Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*. <<http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>>. Last accessed: 27 March 2012. Art.8

¹⁶ The summaries are made based on documents from the UN (General Assembly Resolution 48/134 adopting the Principles relating to the status of national institutions – or Paris Principles; Vienna Declaration and Programme of Action; Convention on the Rights of Persons with Disability (Art.33), Optional Protocol of the

1. Formal Establishment

International standards

The legal ground for the establishment of a NHRI should be in either a constitution or a law. The terms of reference of the NHRI should determine its composition, competences, statutory powers, accountability, funding, and guarantees for pluralism. The NHRI should be in a position to determine its internal organisation with an internal organisation act. In this sense, it needs to be independent.

It needs to be positioned as an independent institution. This means that it should be able to exercise its mandate independently, without asking for prior authorisation from government. It should also be in a position to maintain its financial functioning independently and to be in a position to require funds from the government annually.

The establishing act also needs to foresee the accountability of the NHRI. It should report annually to the parliament and inform the government about its activities. This report should then be discussed by the members of parliament, with a recommended presence of a (high) representative from the executive on that parliament session. The NHRI should also make results of its work publically available. Such publishing of results could play a role for the raising of the credibility (see operating principles below).

CPAD was established with the Law on Prevention and Protection against Discrimination (Anti-discrimination Law) adopted in April 2010. It has several inconsistencies in respect of CPAD'S formal establishment. Some of them are *de jure*, while other are *de facto*.

Inconsistencies about the resources, independence and pluralism guarantees are the most notable ones. The guarantees for pluralism of the CPAD cannot be considered as sufficient, as the Anti-discrimination Law regulates pluralism only in terms of pluralism of ethnic groups,¹⁷ but fails to introduce any guarantees for a true pluralism of the composition of the CPAD which will ensure that its composition mirrors society.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (Part IV - Art.17-23)), the CoE (ECRI General policy recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, ECRI General policy recommendation No. 7 on national legislation to combat racism and racial discrimination, and Committee of Ministers Recommendations 85-13 and 97-14), and the EU (Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation - recast).
17 *Ibid.* Art. 19(3)

With regards to accountability, and in relation to the reporting of CPAD to the Assembly, the CPAD is obliged to report to the Assembly on its activities once a year.¹⁸ This obligation falls under its mandate, as established by law. However, there is no obligation on the part of the Assembly to discuss the CPAD annual report. There is also no obligation on the part of the executive to be present if such a discussion is held. This might result in just formal submission of the report to the Assembly, which can result in ignoring any possible issues which CPAD might raise in its report. And indeed, the Assembly has not held a discussion on the first annual report submitted by the CPAD.

With regards to the formal establishment of the Ombudsperson, there are small gaps from the international standards. Notably, there is no public call for selecting the Ombudsperson. The process of selection itself is not participatory. Also, pluralism is limited to ethnicity only. Provisions do not secure that the institution can mirror the society as a whole, which is the essence of pluralism.

2. Functions, Competences and Responsibilities

International standards

Functions, competences and responsibilities of NHRIs should include the following:

- **Domestic Human Rights legislation and policies:** monitor content and effect of domestic legislation, executive acts and practices; advise on Human Rights legislation and policy standard setting and advancement; make recommendations on any issue relating to their mandate.
- **Individual cases:** provide independent assistance to victims, including legal aid; have recourse to the courts or other judicial authorities as appropriate and when necessary; hear and consider complaints and petitions; have appropriate powers to obtain evidence and information; seek settlements either through amicable conciliation or, within the limits prescribed by the law, through binding and enforceable decisions; enable access to protection for members of ethnic communities and marginalised communities, by sensitised internal procedures regarding receiving, processing and reporting about cases (including language sensitivity).
- **International Human Rights law:** promote and ensure harmonization of domestic legislation with international Human Rights standards; encourage ratification of instruments; enhance cooperation with relevant international organisations; promote

¹⁸ *Ibid.* Art. 24(1-4)

and contribute to training of key groups (without prejudice to primary training role of professional organisations); promote and ensure harmonization of domestic legislation with minority standards laid out in universal or in regional documents.

- **Human Rights education and capacity building:** initiate or assist Human Rights education programmes and research in formal education; initiate or assist Human Rights education in vocational training; make education and capacity building activities and materials accessible to marginalised communities, including to all ethnic communities.
- **Human Rights situation monitoring:** monitor the Human Rights situation in the country and in parts of the country; alert the authorities on the Human Rights situation in the country and/or in parts of the country; alert the public on the Human Rights situation in the country and/or in parts of the country; conduct independent surveys concerning discrimination.
- **Human Rights information and awareness raising:** publish independent reports; provide information and advice to relevant state and other bodies and institutions on standards on anti-discriminatory practice; produce and publish pertinent information and documents; work towards promotion of equality and elimination of the various forms of discrimination; promote equality of opportunity and good relations between persons belonging to all the different groups in society, including marginalised groups and ethnic communities, through: information and education, and the media.

The first year of the implementation of the Anti-discrimination Law showed that the CPAD exercised only its protection mandate. This can be seen from the first annual report of the CPAD submitted to the Assembly. It was also the conclusion of a comprehensive CSO shadow report on the first year of the functioning of the CPAD.¹⁹

The competences vested in the CPAD by the Anti-discrimination Law do not cover all competences that a NHRI should have. With regards to domestic Human Rights legislation, the mandate should be extended and clarified to explicitly include monitoring of all legislation, executive acts and practices of relevance for the CPAD mandate, including a special focus on the impact they might have on ethnic communities and on marginalised groups.

¹⁹ “Извештај во сенка за комисија во сенка” [Shadow Report for a Commission in Shades]. Mirjana Najcevska. *FOSIM Website*. <<http://soros.org.mk/dokumenti/izvestaj-vo-senka-za-komisija-vo-senka-MKD.pdf>>. Last accessed: 28 June 2012.

Adjustments towards minorities and marginalised groups need to be also made in relation to the individual cases. Namely, the Anti-discrimination Law does not show that there is room in the CPAD mandate to pay special attention to the dealing of cases involving persons from ethnic communities, or from any marginalised group. The only indication of adjustment is the adjustment in terms of language. However, the Anti-discrimination Law, although in line with the Law on Languages, can be seen as discriminatory upon applicants living in units of local self-government where their mother tongue is not official language of that unit, as oppose to those who do live in units where it is official language. Such a claim is supported by the fact that the CPAD does not have local offices, nor is its procedure in any way directly connected with the working of the units of local self-government. When one takes into consideration the nature of this body, this does not seem to be a legitimate difference of treatment nor does it seem to be proportional.

The CPAD's competences are underdeveloped when it comes to international Human Rights law. It lacks competences to: promote and ensure harmonization of domestic legislation with international Human Rights standards; encourage ratification of instruments; promote and contribute to training of key groups (without prejudice to primary training role of professional organisations); and promote and ensure harmonization of domestic legislation with minority standards laid out in universal or in regional documents.

In terms of Human Rights education, and capacity building, and information and awareness raising, the competences could also be widened, especially in terms of a clearer obligation for initiating or assisting Human Rights research, formal education and vocational trainings, providing information and advice to all relevant actors on the topic of its mandate. Monitoring of the Human Rights situation in the country needs to be spelled out as part of the mandate. This will be complemented by the already existing obligation for collection of statistical and other data, as well as creation of databases and conductance of studies.

The Ombudsperson is vested with a very clear mandate when it comes to its protection mandate. However, there is an evident need for strengthening and expanding of the list of competences with ones in the area of promotion and advancement of Human Rights. In view of this, the institution would benefit from expanding its mandate to assisting Human Rights formal education and vocational training, as well as Human Rights information and awareness raising, in a form of more active engagement in such activities. Promoting excellence in Human Rights standards through these activities, as well as through its own work, would also assist in further raising the credibility and accessibility of the institution. The monitoring function can be further expanded with an additional research competence,

including the publication of specialised studies to assist Human Rights education, information and awareness raising.

Moreover, if awarded sufficient resources, this institution can consume a larger mandate. Expanding its mandate beyond the public sector should be seriously considered. Additionally, although international law treaties ratified by law in accordance with the Constitution are considered part of domestic law, considering the low direct use of these documents, it seems that the article on the mandate of the Ombudsperson in the Constitution and in the law would be improved by adding an explicit mentioning of these treaties.

3. NHRI Members

International standards

Although international standards do not prescribe requirements on the education or experience of the members of a NHRI, the underlying idea that these bodies need to provide expert opinion and recommendations, offer services to victims in the specific area of Human Rights, and even prepare studies, shows the need for recruiting cadres which would be educated and experienced in Human Rights. The selection procedure needs to be public and participatory. There should be a public advertisement of the vacancies.

When it comes to the composition of the NHRI, the principle of pluralism requires that all social forces involved in the promotion and protection of Human Rights are represented in the body. Representatives of the government can be included only in an advisory capacity, or as representatives in the governing bodies of the institutions and without a decision making/voting capacity. This is also related to the need to keep the autonomy and independence of the NHRI from the government, but to also be able, at the same time, to have access to the government.

When it comes to the appointment of the NHRI members, it needs to be done with an official act, which determines the mandate, as well as its duration and conditions for removal. In the course of this, the pluralism principle needs to be respected. Regarding the status of the members, although they would generally be enjoying more privileges if they have a civil servants status, it is considered that such a status puts them in a less independent position.

The selection and appointment of the first composition of the CPAD showed that the provision of the Anti-discrimination Law providing for CPAD membership criteria (being a

citizen of the country, and having education and experience in Human Rights or social sciences²⁰) does not provide guarantees against appointing persons which would not be skilled enough to deal with a complex area such as discrimination. The formulation of the condition for education and experience as 'education and experience in Human Rights or social sciences' rather than only Human Rights is already problematic, as it opened the possibility for persons without specific experience or education in Human Rights to become members, if they have any social sciences experience or education (which is a too general formulation). This was already the case, as in the appointment of the first composition of the CPAD persons who have no education, experience or expertise on equality and non-discrimination, or even on Human Rights in general, were elected members.²¹

Moreover, this body does not abide with the plurality principle, as mentioned above, as it formulates it only in terms of pluralism in relation to ethnic background,²² which does not ensure that its composition will mirror society. On the first call for members of the CPAD there were applicants representing marginalised groups (people with disability, LGBTI). But although these persons are well known for their knowledge and experience in the area of discrimination, they were not selected for appointment as members of the CPAD. On the contrary, several of the CPAD members have no Human Rights related experiences. Taking this into consideration together with the fact that some of the most prominent experts on equality and non-discrimination in the country were not selected for members, and with the content of the debate on the appointment procedure, one can only mark the whole process of the establishment of the first composition of the first equality body in the country as a highly politicised one.²³

It seems that certain improvements can be done also when it comes to the election procedure of the Ombudsperson, in view of securing the principle of pluralism. As noted above, the only guarantee with regards to pluralism is pluralism in terms of ethnic origin, and in relation to the deputy-Ombudspersons. Considering the election procedure of the Ombudsperson, and the fact that in order for a person to be elected she/he needs the votes of MPs with ethnic background other than ethnic Macedonian, one can consider this

20 *Закон за спречување и заштита од дискриминација* [Law on Prevention and Protection against Discrimination], Official Gazette of the Republic of Macedonia, No.50/10. Art. 18

21 For more on this, please see: Flash report "The Assembly of the Republic of Macedonia appointed the members of the first Commission for Protection against Discrimination". European Network of Legal Experts in the Field of Non-discrimination, February 2011. <http://www.non-discrimination.net/content/media/MK-7-Members_of_first_equality_body_appointed.pdf>. Last accessed: 06 April 2012

22 *Закон за спречување и заштита од дискриминација* [Law on Prevention and Protection against Discrimination], Official Gazette of the Republic of Macedonia, No.50/10. Art. 19(3)

23 "The Assembly of the Republic of Macedonia appointed the members of the first Commission for Protection against Discrimination". *LegalNet Website*. <http://www.non-discrimination.net/content/media/MK-7-Members_of_first_equality_body_appointed.pdf>. Last accessed: 28 June 2012.

can be guaranteed for it too. However, such a guarantee does not enable full pluralism, as it enables only mirroring of the ethnic diversity in society, but no other diversity.

4. Operating Principles

International standards

The daily operation principles under which the NHRI should go by include: competence, credibility, independence, transparency, and cooperation. A NHRI needs to excel in Human Rights understanding and practice, including understanding of Human Rights standards at both domestic and international level. This needs to be always reflected in its work, thus building a sound image of its competence, and credibility, which will also assist in building trust and raising the accessibility of the institution. This accessibility of the NHRI should be for all groups, and particularly for the marginalised ones. A NHRI needs to be accessible not only in terms of in terms of trust and receptiveness, but also in terms of infrastructure, cost and language.

A NHRI should be open for cooperation on domestic level and on international level. On domestic level, it should cooperate with the government, support and encourage organisations with similar objectives to those of the NHRI, and cooperate with all relevant social actors, including CSOs. On international level, it needs to cooperate with relevant international organisations, and should try to join networks of interest to its operation.²⁴

The legal framework does leave a lot of space for the CPAD to exercise its cooperation competences. It would benefit, however, from an additional provision that would put an accent on cooperation with CSOs, alike the provision in the 2000/43 and 2006/54 EU equality directives.

If one moves away from the legal framework, and looks at the 2011 annual report of the CPAD, one can easily see that the CPAD has barely exercised its cooperation competence. One would expect that the CPAD would first initiate and enter cooperation with the Ombudsperson, as an institution with which CPAD has overlapping competences. However, from the information provided in the 2011 annual reports of the CPAD²⁵ and the

²⁴ The RECAST directive specifically mentions the cooperation re exchange of information with the European Institute for Gender Equality.

²⁵ “Годишен извештај за работа на Комисија за заштита од дискриминација” [Annual Report of the Commission for Protection against Discrimination]. Commission for Protection against Discrimination. *Website of the Assembly of the Republic of Macedonia*. <<http://www.sobranie.mk/ext/exporteddocumentdownloadwindow.aspx?Id=f45c2520-330f-4f50-8b77-5d42a4714b0d&t=pdf>>. Last accessed: 29 June 2012.

Ombudsperson,²⁶ it seems as this cooperation remains at meetings level, and is not yet formalised with a Memorandum for Understanding (or similar) between the two institutions, that would formalise this cooperation.

The cooperation with CSOs seems to be very limited too, as is the cooperation with international organisations. The annual report of the CPAD²⁷ shows that it has requested funds for 2012 for joining the European Network of Equality Bodies 'EQUINET'. However, the shadow report on the work of CPAD reveals that the motivation behind seeking membership in EQUINET is tied to use of EU funds (through the IPA programme), thus rightfully noting that there seems to be a lack of a deeper understanding among the CPAD members of the purpose and possible benefits of gaining an observation status in this network.²⁸

Accessibility, as both an operating principle, and a founding principle, seems to be a big problem for CPAD. This body seems to be inaccessible as infrastructure, language, and psychological barriers keep people from approaching it. Its premises are in a building where the Ministry of Interior has part of its offices. Moreover, the physical accessibility of these premises is questionable.²⁹ It has no local offices. The language barrier was elaborated above, in the section on the functions, competences and responsibilities of CPAD. Finally, the politicisation process which marked the appointment procedure, including the fact that some of the CPAD members are working for the executive and the legislative authorities, could adversely affect the willingness of (potential) victims to approach the CPAD. Results from a survey results reveal a low level of trust and familiarity of people with the CPAD.³⁰

In relation to the Ombudsperson, the election procedure can be improved if the Ombudsperson and its deputies are selected following a public add, as recommended by the ICC, alongside a recommendation for a wider consultation of CSOs in the selection process.³¹ In terms of language accessibility, the institution accepts complaints in any of the official languages.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ "Извештај во сенка за комисија во сенка" [Shadow Report for a Commission in Shades]. Mirjana Najcevska. *FOSIM Website*. <<http://soros.org.mk/dokumenti/izvestaj-vo-senka-za-komisija-vo-senka-MKD.pdf>>. Last accessed: 28 June 2012.

²⁹ See: *Ibid.* Annex II.

³⁰ *Ibid.*

³¹ "ICC Sub-Committee on Accreditation Report - October 2011". *OHCHR Website*. <[http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20(with%20annexes).pdf)>. Last accessed: 08 July 2012.

In terms of operating principles, it seems that the institution is well positioned. A recommendation was made, however, by the ICC in its evaluation on the Ombudsperson that the cooperation with the international Human Rights system should be enhanced.³²

5. Resources

International standards

Resources, such as human resources, infrastructure and funding, are a crucial issue when it comes to the operation of NHRIs. The NHRI needs to be able to decide by itself on hiring of staff, and in this regard it should be served by an administrative support sufficient in numbers and in skills to fulfil its mandate. This would include, for example, when it comes to the protection role, engagement of a sufficient legal staff. Also, the administrative support of the NHRI enables the creation and preservation of an institutional memory, regardless of any changes in composition.

Considering the variety which a NHRI mandate can have, it is understandable if the NHRI cannot have in-house experts to cover it all. Thus, it should be given a possibility to outsource some of the activities, for example the research studies, the surveys, etc. It is not recommendable that any section of the protection mandate is outsourced.

The NHRI infrastructure and funding need to be sufficient so that the institution can afford having its own staff and premises. The offices of the institution need to be in a building which will be easily accessible, including to marginalised groups. Such offices cannot be shared with other state bodies or government institutions. If appropriate, the NHRI should also have local offices. The organisation of the work of the institution needs to be decided internally.

Independent financial working is part of the criteria. The NHRI is usually financed by the government. The NHRI needs to be in a position to require from the government the funds it annually needs to function properly. It should report to the parliament on its annual expenditures on a parliament session, as it does on its activities.

The Anti-discrimination Law does not foresee establishment of a secretariat or any other kind of administrative support for the CPAD, and it does not foresee the establishment of local offices. Such legal framing of the potential for resources seems to be problematic both in terms of human and in financial resources (including premises).

³² *Ibid.*

Not having any administrative support of its own, in its first year CPAD relied on administrative support from the MLSP, which poses itself as highly problematic in terms of both independence and efficiency, and especially as in the first months the complaints were also received in the MLSP. Later volunteers were hired to assist with the receipt of the complaints. This is highly non-recommendable, as is any outsourcing of the protection mandate, due to its sensitive nature. But, even beyond this protection mandate, it cannot be expected that all competences foreseen as part of the mandate of the CPAD under the Anti-discrimination Law can be undertaken without any administrative support for that amount of foreseen work load, even if some of the tasks (for example studies, research) are outsourced. Thus, it seems impossible to read together the provision on the CPAD competences together with the one on the expert and administrative support, as such reading renders exercise of the full range of competences impossible. Moreover, it creates a potential for a major loss of institutional memory with the expiry of the mandate/replacement of the members of the CPAD.

Financial resources can also be a problem, as the funds for its functioning come from the Government, but CPAD does not seem to be in a position to negotiate its funds. This was already a problem in practice. For the first year of its functioning, funds allocated to the CPAD were not enough to cover even only the honoraria for the members in the amount provided for by law (monthly honoraria equals two average monthly salaries in the country),³³ let alone to provide funds for starting up the CPAD office as 2011 was the first year of functioning of this body.

The premises of the CPAD hinder further its independence. Its premises are currently in the building of the national radio and television broadcasting company, where sections of the government are also based, including the Ministry of Interior. As mentioned above, accessibility of these premises is questionable. CPAD does not have local offices.

As was noted above, under the Anti-discrimination law, the administrative support of the CPAD should be done by its members. Since the start of its functioning, the administrative support of the CPAD was provided by civil servants from the MLSP, and later by volunteers.³⁴ Thus, human resources seem to be a big problem for CPAD.

³³ *Закон за спречување и заштита од дискриминација* [Law on Prevention and Protection against Discrimination], Official Gazette of the Republic of Macedonia, No.50/10. Art. 21(2)

³⁴ “Годишен извештај за работа на Комисија за заштита од дискриминација” [Annual Report of the Commission for Protection against Discrimination]. Commission for Protection against Discrimination. *Website of the Assembly of the Republic of Macedonia*. <<http://www.sobranie.mk/ext/exporteddocumentdownloadwindow.aspx?Id=f45c2520-330f-4f50-8b77-5d42a4714b0d&t=pdf>>. Last accessed: 29 June 2012.

Accessibility of the CPAD is also hindered by the language barrier. The language barrier was elaborated above, in the section on the functions, competences and responsibilities of CPAD.

Although the formulation of the law with regards to the funding of the Ombudsperson is not problematic, the practice seems to be. The Ombudsperson has been reporting in the past few years that it lacks funds to exercise all competences vested to it, as well as lack of funds for promotion of the institution. In its 2010 annual report, the Ombudsperson noted lack of funds designated for the functioning of the National Preventive Mechanism.³⁵ The ICC evaluation report also noted the same in its evaluation report.³⁶

III. APPROACHING NHRI REFORMS

The section above pinpointed areas where improvements can be made in order to bring the CPAD and the Ombudsperson in line with international standards. Recommendations for such improvements are given here below.

1. General Recommendations

Two main problems stand out in relation to the way the issue of NHRIs was dealt in the past, and which might arise again if a consultation process opens: lack of serious consideration and strategic approach to Human Rights, and lack of resources. These are also problems when it comes to the way the country is dealing with Human Rights in general. The lack of strategic approach can be seen from the fact that Macedonia does not have a National Action Plan for Human Rights or any other strategic or policy document on Human Rights.³⁷ Most of the Human Rights related reforms in the past decade were driven by the EU integration of the country; the most recent case being the adoption of the Anti-discrimination Law and the establishment of one of the institutions considered herein, CPAD. However, even when this is the case, these reforms are more done like patchwork, and not based on the findings and recommendations grounded in serious evidence-based

³⁵ *Годишен извештај за работата на народниот правобранител на Република Македонија* [Annual Report of the Ombudsperson of the Republic of Macedonia]. *Website of the Ombudsperson*. <<http://ombudsman.mk/upload/documents/Izvestaj%202010-MK.pdf>>. Last accessed: 08 July 2012

³⁶ "ICC Sub-Committee on Accreditation Report - October 2011". *OHCHR Website*. <[http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20(with%20annexes).pdf)>. Last accessed: 08 July 2012.

³⁷ Recently, a Strategy on Equality and Non-discrimination on grounds of Gender, Ethnicity, Age and Disability was adopted. This document only confirms the above statement about not having a serious approach to Human Rights. See: 'First Equality Strategy Adopted'. Non-discrimination Network Website. <<http://www.non-discrimination.net/content/media/MK-22-Equality-strategy-adopted.pdf>>. Last accessed: 12 July 2012

research and a public participatory consultation process. The second problem, the lack of resources, does not purport that the country lacks funds for such processes, but rather that not enough resources are allocated to allow for a serious approach to Human Rights. There are many examples of campaigns and recent projects which have been done in the country which show that when it comes to fulfilling its Human Rights obligations, the country has not been using its maximum available resources.

The recommendations sections on the two NHRIs against international standards suggest that there are many options at disposal for approaching the reforms of the institutional framework. Some of these reforms are more burning, especially re the CPAD, while others can be done only once a wide public consultation process of all stakeholders is opened, one that will have a wide and meaningful participation of CSOs, and that it will be backed with serious political will and sufficient funds to implement the envisaged reforms. A detailed consideration of all possible models for reforming the institutional framework is beyond the scope of this paper - that would be the task of an open consultative process. A note can be added here that many options for designing a NHRI model are at disposal. All options revolve around the two institutions assessed here, the CPAD and the Ombudsperson, such as: both CPAD and the Ombudsperson continue to function and the recommendations given above are implemented; both CPAD and the Ombudsperson continue to exist, and the recommendations given above are implemented, and additionally a new centre that will be concerned with Human Rights research is established; discontinue the CPAD and transfer in full its competences to the Ombudsperson; merge the CPAD and the Ombudsperson into one Human Rights Centre.

Consultations done within the frame of the process of compiling of the study on which this policy paper is based on pointed to a prevailing option among the participants. This is that both the CPAD and the Ombudsperson should continue to exist, but that their mandate, membership, independence, and other aspects discussed above, need to be improved. This model was mostly favoured based on two arguments. The first argument is that the Ombudsperson should continue to exist as it is already an institution with a tradition and an institutional capacity. The second argument is that the CPAD should not be discarded yet regardless of the many deficiencies in the act it has been established with, and the problems with its functioning in practice thus far, as it is still a very new institution.

Regardless of which model seems to be the best option from today's perspective, there must be an open public participatory consultation process on a Human Rights National Action Plan, which will include discussions on reforming the institutional framework. The model needs to be a product of this consultation. However, such a process is expected to last longer, while as noted above some of the points for reforms are burning for these two

institutions. So, they need to be given priority. In the course of this, due focus of the efforts should be given to bringing the Ombudsperson in line with the Paris Principles and the recommendations of the ICC, in order to assist it in getting 'A' status accreditation.

A final note has to be that political will is essential for initiating and seeing an institutional reform process such as the one discussed in this study through. This is even more so in the context of Macedonia, as the opening of such a process would by default mean discussing amendments of the Constitution, which has proven in the past to be a hot political issue for all political actors. Any discussion on NHRI should be done in an open participatory process, involving as many stakeholders as possible.

2. Recommendations on CPAD

The following recommendations can be made with regards to CPAD, and in relation to the current legal framework. Most of them would entail amendments to the Anti-discrimination Law:

- Pluralism: enter a guarantee for pluralism of CPAD beyond ethnicity, one that will enable CPAD composition to mirror society as a whole.
- Accountability: enter an obligation for the Assembly to discuss the CPAD annual report. This should be accompanied with an obligation for representatives from the Government to be present at the session where this report will be discussed.
- Competences: expand CPAD competences to include also:
 - o Monitoring of all legislation of relevance for its mandate, including executive acts and practices. It would be recommendable that such a monitoring should be done especially with regards to possible impact on ethnic communities and on marginalised groups.
 - o Promote and ensure harmonization of domestic legislation with international Human Rights standards; encourage ratification of instruments; and promote and ensure harmonization of domestic legislation with minority standards laid out in universal or in regional documents.
 - o Initiating or assisting Human Rights research, formal education and vocational trainings, providing information and advice to all relevant actors on the topic of its mandate.
 - o Monitoring of the Human Rights situation in the country. This should be formulated in a way to complement the already existing obligation for

collection of statistical and other data, as well as creation of databases and conductance of studies.

- Accessibility:
 - Physical accessibility: change of premises to a place where it will be truly accessible to all, and especially to people with a disability.
 - Language accessibility: amend the provision on languages on which a complaint can be filed in a manner that will allow for complaints to be filed in any of the languages of the communities mentioned in the Preamble of the Constitution.
 - Public credibility:
 - Distance the CPAD from the government, which would include receiving no administrative support from MLSP or any other section of the government.
 - Increase the professionalism in the public appearances of the members of the CPAD, in a manner that will leave no doubt about the apolitical nature of this body.
- Members: delete social sciences from the provision, allowing only for people with specific equality and non-discrimination or Human Rights education and experience to be able to stand as candidates for members of the CPAD.
- Cooperation: enter special provision for cooperation of the CPAD with civil society and CSO.
- Resources:
 - Allow under law the creation of a secretariat, or any form of administrative support for the CPAD. Following this, CPAD might consider establishing working groups from amongst its members to work on specific issues which it will identify as most burning issues, or to work on specific grounds of discrimination. Such working groups can be assisted by internal or external experts. Under CPAD's bylaws, there is a possibility for establishing such working groups.
 - Due consideration should be given to the possibility for professionalization of the members of the CPAD, by making this their full time job and position.

- CPAD needs to be in a position, alike the Ombudsperson, to agree upon its annual budget with the Government. These funds need to be sufficient for CPAD to be able to exercise its full mandate.
- Consider establishing formal links with the regional offices of the Ombudsperson, in order to expand the reach of the CPAD.

3. Recommendations on the Ombudsperson

Recommendations for getting the Ombudsperson institution in line with the Paris Principles were already made by the ICC, and are contained in the accreditation report. The present analysis includes these recommendations, and makes a few additional ones:

- **Members:** amend the election procedure for the Ombudsperson to include a public call, as well as enhancing the participativeness of the procedure, including possible consultations with CSOs.
- **Pluralism:** enter guarantees for enhancing the pluralism in the Ombudsperson in a manner that will enable reflect the society as a whole, and not just ethnicity.
- **Competences:**
 - Consider expanding the Ombudsperson's mandate beyond the public sector.
 - Expand the mandate with a possibility for assisting Human Rights formal education and vocational training, as well as Human Rights information and awareness raising, in a form of more active engagement in such activities.
 - Enhance research competences, including the publication of specialised studies to assist Human Rights education, information and awareness raising.
 - Enter specifically rights of persons from international law treaties ratified by law in accordance with the Constitution and which are considered part of domestic law, in the article on the mandate of the Ombudsperson in the Constitution and in the law.
- **Cooperation:** enhance cooperation with the international Human Rights system.
- **Resources:** allocation of sufficient funds for the Ombudsperson to exercise its mandate.

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