

ENOC

European Network of Ombudspersons for Children



European Network of Ombudspersons for Children - ENOC

ENOC's Standards for Independent Children's Rights Institutions

October 2001

with revision of membership criteria agreed 2006



European Network of Ombudspersons for Children Standards for Independent Children's Rights Institutions

Introduction and background

At its fourth annual meeting in Brussels in October 2000, ENOC - the European Network of Ombudspersons for Children - agreed to develop Standards for independent national human rights institutions for children. The Standards were drafted by a working group of ENOC members and advisers, circulated for comments and endorsed unanimously by ENOC's fifth annual meeting in Paris in October 2001.

ENOC believes that the development of independent statutory institutions to monitor, promote and protect children's human rights should be considered within the context of the broader development of national human rights institutions. The 1993 World Conference on Human Rights in its Vienna Declaration and Programme of Action reaffirmed "... the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights...". It encouraged "... the establishment and strengthening of national institutions...".

ENOC's Membership Criteria

At its third meeting in Madrid in 1999, ENOC agreed an interim statement to define membership criteria. Then when ENOC's statutes were adopted in 2006, the following Articles set out conditions for full and associate membership:

Article 4: Membership

There are two categories of membership of ENOC – full and associate. Full membership of ENOC is open to independent children's rights institutions within Council of Europe member-states which meet all of the following criteria:

- The institution is established through legislation approved by parliament, which provides for its independence.
- The institution has the function of protecting and promoting children's rights. This function is established through legislation.
- There are no provisions in the legislation which limit the institution's ability to set its own agenda in relation to this function, or which prevent it carrying out significant core functions suggested in the Paris Principles and ENOC's Standards (see annex 1).
- The institution must include or consist of an identifiable person or persons concerned exclusively with the protection and promotion of children's rights.
- Arrangements for appointment of ombudspersons, commissioners and members of a commission must be established by legislation, setting out the term of the mandate and arrangements for renewal, if any.

Institutions may be constituted separately or may form part of an independent national or regional human rights institution. In all cases they must meet the above criteria.

Article 5 Applying for membership

5 Requests for membership are addressed to the Bureau of ENOC. Applications will only be considered for full membership. Where the Bureau decides that the criteria in article 4 are not met, the institution may be considered for associate membership, if it demonstrates it is actively seeking to meet these criteria...

The World Conference also affirmed that "the rights of the child should be a priority in the United Nations system-wide action on human rights"(Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, June 1993, UN General Assembly A/CONF.157/23, paras. 21, 36 and 45 et seq). The almost universal ratification of the Convention on the Rights of the Child indicates the global commitment to recognising and realising the rights in the CRC for all children. The Treaty Body for the

CRC, the Committee on the Rights of the Child, has consistently advocated the establishment of independent human rights institutions for children.

ENOC is committed to promoting the establishment of independent statutory human rights institutions for children in every state. It recognises that the concept is a developing one and that individual states will need to design a model appropriate to their governmental and legal systems, which takes account of existing institutions and makes the most effective use of available resources.

ENOC recognises that independent HRIs for children may be established as separate bodies (Children's Ombudsman, Children's Rights Commissioner, *Defenseur des Enfants*, etc) or as an integral part of a human rights commission or general ombudsman. National and/or regional institutions may be established. ENOC believes that in all cases, account must be taken of the special status and needs of children.

The Paris Principles

In 1993, following a series of workshops and seminars throughout the UN system, the General Assembly endorsed a set of "Principles relating to the Status of National Institutions" (known as the "Paris Principles").

The Principles affirm that national human rights institutions are to be vested with competence to promote and protect human rights and given as broad a mandate as possible, "clearly set forth in a constitutional or legislative text".

The International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights has established a Credentials Committee (comprising one institution from each major geographic region). The Credentials Committee has developed a questionnaire for applicants for accreditation, based on conformity with the Paris Principles. In reviewing applications, the Credentials Committee considers national institutions' mandate, pluralism in composition, jurisdiction, stability of operation and independence. ENOC may consider in time developing a similar process.

These Standards incorporate and use the Paris Principles as their basis. Any independent institution established to monitor, promote and protect the human rights of children should conform with the Paris Principles. In addition, in designing and establishing such institutions, states will need to recognise the special status of children. Institutions that are designed only with adults in mind are most unlikely to serve children effectively.

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Standards for Independent Children's Rights Institutions

These Standards are aspirational; not all ENOC member-institutions meet all of the Standards. But its members agree that parliaments and governments should be encouraged to review the status of existing institutions in the light of the Standards and to ensure that the design of new institutions conforms with the Standards and with the Convention on the Rights of the Child (CRC).

ENOC believes that in order to be effective in monitoring, promoting and protecting the human rights of children, a human rights institution must conform with the Paris Principles, the CRC and the European Convention on Human Rights. The full text of the Principles is reproduced below. The following is an unofficial summary of the key implications of the Principles, relating them, where appropriate, to children's human rights in particular:

Competence and responsibilities

An independent institution set up to monitor, promote and protect the human rights of children must:

- be established by legislation;
- have as broad a mandate as possible in relation to the monitoring, promotion and protection of children's human rights, based on the CRC;
- have the right to provide and to publicise opinions, recommendations, proposals and reports on its own initiative or at the request of other authorities on any matter concerned with the promotion and protection of children's human rights, including:
 - * legislative or administrative provisions and provisions relating to judicial organisation, intended to preserve and extend the protection of human rights. The institution will consider legislation, etc., in force and proposed and when necessary recommend adoption of new legislation, etc., or amendment;
 - * any violation of children's human rights which it decides to take up;
 - * preparation of reports on human rights in general, or on more specific matters;
 - * drawing the attention of the Government/Parliament to violations, making proposals for remedies and when necessary commenting on the position and reaction of Government/Parliament.
- promote and ensure harmonisation of national legislation with the Convention on the Rights of the Child and all other international human rights instruments relevant to children's rights to which the state is a party, and promote their effective implementation;
- encourage ratification of or accession to any such instruments;
- contribute independently to the monitoring and reporting process under the CRC and other relevant instruments;
- co-operate with the United Nations and with UN and other agencies, regional institutions and national institutions of other states competent in the promotion and protection of children's rights;
- assist in formulating and executing programmes for the teaching of and research into human rights;
- publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, through information, education and making use of the media.

Composition, independence

The institution must have adequate funding to enable it to have its own staff and premises in order to be independent of Government. It must not be subject to financial control which might affect its independence.

Arrangements for appointment of ombudspeople, commissioners and members of a commission must be established by an official act, setting out the duration of the mandate and any arrangements for renewal. The composition and methods of appointment of the institution must be appropriate to enable effective co-operation with, for example, appropriate NGOs and professional organisations, universities, Parliament and Government departments.

Methods of operation

The institution must be able to:

- freely consider any questions falling within its competence, whether submitted by Government or taken up on its own initiative;
- hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- speak freely to the public, directly or through any media;
- meet regularly and whenever necessary in the presence of all its members duly convened;
- establish working groups and set up local or regional sections to assist it in discharging its functions;
- maintain relationships with other bodies responsible for the promotion and protection of human rights including with a broad range of non-governmental organisations.

Hearing and considering complaints

Some institutions will be authorised to hear and consider complaints from individuals or groups. If this is the case, additional principles are proposed to base such functions on. Without prejudice to the other principles, the institution may:

- seek an amicable settlement through conciliation, or through binding decision within limits prescribed by law; or, where necessary, on the basis of confidentiality;
- inform the complainant of his rights and of available remedies and promote access to them;
- hear complaints or transmit them to any other competent authority within the limits prescribed by the law;
- make recommendations, in particular for changes in law, regulations and administrative practice which might have remedied the situation complained of.

Designing human rights institutions for children

In addition to conforming with the Paris Principles, ENOC believes that the design and development of the institution must take full account of the special status of children and the particular difficulties for children in exercising their rights.

The legislation establishing the institution must be linked explicitly to promoting implementation of the Convention on the Rights of the Child - thus covering children's economic, social and cultural rights as well as civil and political rights.

Conformity with the Paris Principles requires the institution to consider all other relevant human rights instruments which the state has ratified or acceded to.

The legislation must include provisions setting out specific functions, powers and duties relating to children and their rights, linked to the Convention. "Children" should be defined as in Article 1 of the CRC. For example:

- duties to pay particular regard to the views of children, to take active steps to maintain direct contact with children, organisations of children and organisations established to promote children's rights; and to promote respect for the views of children throughout society;
- the institution must be readily accessible to children and able to respond to any individual communications from children.
- powers to have regard to the situation of children in the family, in schools and in all other institutions;
- powers to consider the promotion and protection of children's rights in relation not only to government but also to private bodies;
- the right to have access to children in all forms of alternative care and all institutions which include children;
- the right to report freely and separately on the state of children's human rights.

The institution must review whether children have access to advice and advocacy and complaints procedures and services, and make appropriate recommendations.

The institution must seek to ensure that children and adults are aware of the principles and provisions of the CRC.

The institution must include or consist of an identifiable person or persons concerned exclusively with the promotion of children's human rights - a Children's Ombudsman, Children's Rights Commissioner or Children's Rights Commission. This should be a person/people who can bring status and public and political respect to the office. They should have a high public profile and so enhance the status and visibility of children. The institution will need to ensure awareness of its existence and mandate amongst children, using appropriate channels including for example schools, other institutions which accommodate children, youth organisations and media used by children.

The institution needs to have appropriate, multi-disciplinary staffing dedicated to the promotion and protection of children's human rights and a ring-fenced minimum budget to enable it to work effectively.

A transparent procedure for appointments should be established, for example including advertising the appointment publicly and/or establishing an appointments committee including, eg, children, children's NGOs, governmental representatives, etc.

Responding to complaints from children and their representatives

If an institution includes in its mandate considering and responding to complaints from children it will need to take account of the particular difficulties for children in making complaints. Complaints procedures designed with adult complainants in mind are most unlikely to be used significantly by children. The institution will need to ensure, for example:

- that its mandate and powers are well and appropriately publicised to children and their representatives throughout the jurisdiction in a form and language they can understand, with special attention to very young children, disabled children, children in difficult circumstances and in all institutions;
- that children have free and easy access to the institution, for example through free telephone lines, e-mail access and local offices;
- that it is able to give advice and refer children to appropriate bodies;
- that there are clear confidentiality policies, explained to children and others before they use the institution's services.

Children themselves should be involved in the design and review of complaints procedures and advice and advocacy systems.

PRINCIPLES RELATING TO THE STATUS OF INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTIONS - THE 'PARIS PRINCIPLES'

Following discussion and debate by United Nations agencies and non-governmental organisations concerning the need for national human rights institutions, the "Principles relating to the Status of National Institutions" (known as the Paris Principles) were adopted by the UN General Assembly in 1993.

This is the text of the Principles:

Principles Relating to the Status of National Institutions

Competence and Responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, *inter alia*, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicise them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organisation, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

- (b) To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (e) To co-operate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness; especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members; whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective co-operation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organisations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not to be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the

specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence
- (c) Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by non-governmental organisations in expanding the work of national institutions, develop relations with non-governmental organisations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas.

Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorised to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) 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.

General Assembly Resolution 48/134 of 20 December 1993, Annex