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NATIONAL SYSTEMS FOR MONITORING DISCRIMINATION: building on international experience

International Study



The study contains an analysis of the existing discrimination monitoring systems with a particular focus on gender discrimination. It compiles examples of good practices and lessons learned in a range of countries in the field of monitoring and reporting of National Human Rights Institutions (NHRIs). The study analyses an array of cases from which to draw models and lessons for the purpose of clarifying and strengthening the role of NHRI within Ukraine's anti-discrimination system.

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The report was produced within the framework of "Democratization, human rights and civil society development in Ukraine" Project, which is implemented by UNDP with the financial support of the Ministry of Foreign Affairs of Denmark.

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ISBN 978-966-23-44-28-8



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National Systems for Monitoring Discrimination:

Building on International Experience

Kyiv – 2013

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LIST OF ACRONYMS AND ABBREVIATIONS

AHRC	Australian Human Rights Commission
BPFA	Beijing Platform for Action
CASHRA	Canadian Association of Statutory Human Rights Agencies
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CESCR	Convention on Economic, Social and Cultural Rights
CGE	Commission for Gender Equality (South Africa)
CHRA	Canadian Human Rights Act
CHRC	Canadian Human Rights Commission
CRPD	Convention on the Rights of Persons with Disabilities
DO	Equality Ombudsman (Sweden)
ECRI	European Commission Against Racism and Intolerance
ECNI	Equality Commission for Northern Ireland
EEA	Employment Equity Act (South Africa)
EHRC	Equality and Human Rights Commission (Great Britain)
EU	European Union
GIF	Gender Integration Framework
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
LGBTI	Lesbian, Gay, Bisexual, Transsexual, Intersex
MDG	Millennium Development Goals
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe
PCHR	Parliament Commissioner for Human Rights (Ukraine)
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act (South Africa)
SAHRC	South African Human Rights Commission
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UPR	Universal Periodic Review
WGEA	Workplace Gender Equality Agency (Australia)

Objectives of this study

The main objective of this study is to examine existing monitoring systems for discrimination in general, and gender discrimination in particular, in order to compile examples of good practices and lessons learned in a range of countries. The goal is to provide Office of the Parliament Commissioner for Human Rights (PCHR) with an array of cases from which to draw models and lessons for the purpose of clarifying and strengthening its own role within Ukraine's anti-discrimination system. Thus the main focus is on the experiences in the field of monitoring and reporting of National Human Rights Institutions (NHRIs), the sister organizations of the PCHR.

Scope and methodology

This study first examines the broad outlines of national anti-discrimination monitoring and particularly the role played by NHRIs. It attempts to clarify the various meanings of "monitoring" in this context; broadly sketch the discrimination monitoring functions of NHRIs in relation to domestic legislation and international treaty bodies; outline the implications of NHRI structural issues for those functions; and discuss issues around data collection and indicators. The core of the report is the five case studies examining the system of discrimination monitoring and the role of the NHRI within it in Australia, Canada, Poland, Sweden and South Africa. From these case studies and a wide-ranging literature review, examples of international good practices and lessons learned were compiled. It is envisioned that this compilation could be the beginning of an ongoing living database which PCHR could draw upon. The final section of the report contains a brief list of recommendations for PCHR in moving forward with its discrimination monitoring mandate. A final section provides a mapping and annotation of key relevant documents identified in the course of the research, followed by a list of references, internet resources and tools. In this regard it should be emphasized that, due to the large amount of available material, this is only a small sample of the full range of documents, tools, guidelines, resources guides, handbooks, etc. that potentially could contribute to this project.

The research was conducted primarily by means of internet research. A preliminary scan of the literature available on the internet was performed in order to develop an overall portrait of the measures, institutions and modalities most commonly used to monitor discrimination in general and gender discrimination in particular at the national level. This preliminary scan enabled the researcher to identify a "long list" of appropriate countries to include in the sample, according to a set of criteria which are outlined in Section 3.1.1 as well as others suggested by UNDP and/or the PCHR. Further, more extensive data-gathering, with a focus on assessing the availability of documented and verifiable results and lessons learned, helped to narrow down the "short list" of countries to be included in the sample. For the five countries selected, it may be advisable in the future to supplement and validate the present research by contacting the relevant national institutions, UNDP offices or other sources, however given the breadth of material available, it was not considered necessary to do so at this stage.

2. NHRIS AND ANTI-DISCRIMINATION MONITORING

- 2.1 INTERNATIONAL HUMAN RIGHTS COMMITMENTS ON DISCRIMINATION AND GENDER EQUALITY
- 2.2 NATIONAL HUMAN RIGHTS INSTITUTIONS' ROLE VIS-À-VIS DISCRIMINATION / GENDER DISCRIMINATION
- 2.3 DISCRIMINATION MONITORING FUNCTIONS OF NHRIS
- 2.4 NHRI ORGANIZATIONAL STRUCTURE AND IMPLICATIONS FOR MONITORING SEX DISCRIMINATION
- 2.5 INDICATORS AND DATA COLLECTION
- 2.6 NHRIS AND UPR/TREATY BODY REPORTING

2. NHRIs and Anti-discrimination Monitoring

2.1 International human rights commitments on discrimination and gender equality

The international human rights normative framework commits states to preventing and combating discrimination of all kinds. The core human rights treaties and binding documents address discrimination on the basis of a non-exhaustive list of grounds including sex¹, race, religion, colour, gender identity, disability, and a host of other variables.

Non-discrimination and equality are considered to be cross-cutting human rights norms or principles, which are invoked in all the international human rights treaties (in particular, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR), and are the focus of several specific ones, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Elimination of Racial Discrimination (CERD). The various treaty-specific declarations, principles, guidelines, rules and recommendations, while non-binding, provide practical guidelines and updated standards for the implementation of the binding treaties and covenants (OHCHR 2012, p. 14).

Discrimination on the basis of sex is clearly prohibited, and the details of what constitutes sex discrimination are spelled out in CEDAW and its associated General Recommendations. These definitions have been expanded and elaborated over time. In addition, a number of other documents have elaborated the meaning of sex discrimination and gender equality as it applies to the other human rights treaties, for example the *Montreal Principles on Women's Economic, Social and Cultural Rights*.

Apart from the UN system, other international bodies have frameworks which oblige their member states to address sex-based and other forms of discrimination. For example, the European Charter states: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited." Membership in the EU commits countries to anti-discrimination regimes with explicit requirements for monitoring discrimination on all prohibited grounds including sex, and the EU equal treatment directives require members to establish or designate bodies for the promotion of equal treatment on the grounds of gender and of racial or ethnic origin at the very least.

The OSCE likewise holds its member states to their human rights commitments, including the elimination of sex discrimination: "Participating States, individually and collectively, bear the primary responsibility and are accountable to their citizens for the implementation of their commitments on equality of rights and equal opportunities for women and men. They have committed themselves to making equality between women and men an integral part of policies both at State level and within the Organization" (OSCE 2004, p.9).

All states which subscribe to these international anti-discrimination agreements have an obligation to incorporate them into their own domestic legislation, policies and programmes. They also have an obligation to file periodic reports detailing their implementation; these reports are scrutinized by the treaty bodies which make comments and recommendations for strengthening implementation. These commitments and the associated reporting regimes mean that of necessity, all states in some way or another must monitor discrimination and the impacts of anti-discrimination measures.

¹ Because the treaties refer to "sex" rather than "gender" as the prohibited grounds of discrimination between males and females, and because the gender equality literature makes a clear distinction between sex (biological attributes) and gender (socially-ascribed roles), this paper will primarily use the term "sex discrimination". This is particularly apt as "gender" is now being used increasingly in relation to LGBTI rights.

2.2 National Human Rights Institutions' role vis-à-vis discrimination / gender discrimination

Broadly speaking, the mandate of Ombudsman offices and other National Human Rights Institutions is the responsibility to protect and promote human rights.² The scope of their activities depends on the specific responsibilities ascribed to the NHRI by its governing legislation, which varies from country to country. While the original Ombudsman model generally did not address discrimination, today the key role of NHRIs in monitoring and combating discrimination, including sex-based discrimination, is widely recognized.

For example, according to a 2008 study of the role of NHRIs in implementing women's rights guarantees under the International Covenant on Economic, Social and Cultural Rights (ICESCR) "The OHCHR has placed NHRIs at the front lines of implementing international human rights obligations. As independent institutions with a mandate to combat discrimination and promote and protect universal human rights, NHRIs should also protect and promote the ESC rights of women" (Equitas 2008, p.48).

More explicitly, in 2008 the CEDAW Committee issued a detailed statement on its relationship with national human rights institutions. It emphasized the "important role" of NHRIs in the "promotion of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women at the national level, the protection of women's human rights as well as the enhancement of public awareness of such rights." It also exhorted NHRIs "to ensure that their work ... is based on the principle of formal and substantive equality between women and men and non-discrimination, as contained in the Convention, and that women have easy access to all services for the protection of their rights provided by national human rights institutions." It specifically expressed the expectation that NHRIs will monitor their country's implementation of the Convention and Optional Protocol, including "the provision by national human rights institutions of country-specific information on States parties' reports" (Commission on the Status of Women 2008).

Reinforcing the commitment of NHRIs to promoting gender equality and combating sex discrimination, the theme of the recent 11th International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) was "The human rights of women and girls: Promoting gender equality – The role of national human rights institutions." The outcome document of this conference, the *Amman Declaration and Programme of Action*, outlines 17 broad principles and areas of work, as well as a series of action points for the next decade and beyond on the themes of NHRIs and women's political and public participation, economic and social rights, violence against women and girls, and women's health and reproductive rights.

All of these commitments place women's rights and sex discrimination front and centre in the work of NHRIs. However, many documents point to significant gaps between commitments to women's rights and the actual priorities of NHRIs in practice.

Depending on their specific mandates, there is a broad range of instruments available to NHRIs to protect women's rights and prevent/combat discrimination, including monitoring and data collection, complaint handling, systemic initiatives, remedial powers, alternative dispute resolution, and advisory opinions (OSCE 2012). There appears to be great variation, however, in the actual extent to which different NHRIs make use of these instruments.

As an ECE regional study of national gender machineries noted in regards to ombudsman institutions: "Not all offices of Ombuds in the region explicitly list women's rights and gender-based discrimination among their priorities and/or make specific efforts to address flagrant violations in this area in their practice. This happens even in the case when the institute of the Ombud is granted by the law the specific mandate and substantial authority to address gender-based discrimination (for example in Ukraine). The potential of these institutes to combat gender-based discrimination and protect women's rights is not yet fully used in the region" (UNECE 2010, p.21-22).

² These are defined as follows: **Human rights protection**: helping to identify and investigate human rights abuses, to bring those responsible for human rights violations to justice, and to provide a remedy and redress for victims. National human rights institutions should have a legally defined mandate to undertake these functions and to issue views, recommendations or even seek remedies before the courts. **Human rights promotion**: creating a national culture of human rights where tolerance, equality and mutual respect thrive (OHCHR, 2010, p.21).

2.3 Discrimination monitoring functions of NHRIs

Monitoring and reporting on discrimination is a key function of NHRIs. They do this for several purposes: to monitor the implementation of domestic anti-discrimination legislation, identify, analyze and publicize key discrimination issues, trends and target groups, provide advice and policy support to government, support anti-discrimination promotion activities, suggest areas for priority action, and finally to feed into UN treaty body and UPR reporting requirements as well as those of other bodies in which they participate, such as the EU or OSCE. In short, monitoring provides the foundation for evidence-based anti-discrimination programming by NHRIs, and evidence-based support to policy-making by governments – including the expression of independent opinions based on concrete data.

It is important to emphasize that discrimination monitoring needs to be established as a systematic and ongoing function of the NHRI. The *UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions* advises that “NHRIs should prepare rigorous and regular reports on the human rights performance of the government based on priorities established through strategic planning and carried out through a regular monitoring program.”

Monitoring by NHRIs can take on many forms, depending on the specific mandate and the available resources of the institution, including (UNDP/OHCHR 2010, p.32):

- Issues-based monitoring, especially on thematic issues affecting specific groups such as migrants, minorities, indigenous peoples, disabled and the elderly. The focus may also be on women’s human rights and empowerment, as well as on the integration of gender equality, enforcement of children’s rights and other thematic issues that are priorities in the country;
- Monitoring of prisons and other places of detention;
- Monitoring progress in the realization of civil, political, economic, social and cultural rights;
- Monitoring progress in achieving development goals such as the Millennium Development Goals and other internationally-agreed standards;
- Undertaking public inquiries into significant human rights issues;
- Protecting human rights defenders.

OHCHR (2010, p. 114) advocates that monitoring by NHRIs should be aimed at systematically reviewing and reporting on the priority human rights in the country and should be:

- Focused on areas of strategic priority;
- Managed (planned, resourced, controlled and evaluated);
- Ongoing and regular;
- Usually cyclical;
- Proactive, while responding to priorities; and
- Focused on targets or results and, where appropriate, progressive realization of targets.

Monitoring should identify gaps and barriers to implementation of human rights standards, and should support the development of more effective implementation measures, including legislation, government policy and programs, as well as non-governmental initiatives. The results of NHRI monitoring should be transparent and widely disseminated to government, civil society organizations, and the general public, as well as internationally. In addition to issuing data and reports, NHRIs usually try for broader dissemination of their monitoring efforts, by engaging media, organizing public events, or encouraging public advocacy by NGOs and other social organizations.

The issue of adequate resources to support the monitoring function is a critical one. The Paris Principles very clearly stipulate: “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 be subject to financial control which might affect its independence.” Yet many NHRIs report that they are under-resourced in relation to the breadth of their mandates, and that often the complaint-handling function overwhelms their other responsibilities both in terms of time and financial resources.

2.4 NHRI organizational structure and implications for monitoring sex discrimination

Sex discrimination is included in the mandates of all NHRIs, and gender is a cross-cutting issue that is potentially implicated in any type of discrimination. However, the structure of NHRIs with respect to this part of their mandate varies greatly. There is a multiplicity of organizational structures among NHRIs, in accordance with the Paris Principles which do not dictate a single structure.

In terms of the implications of this for monitoring sex discrimination, a recent OSCE survey “did not reveal any particular organizational structure as being more effective than others in protecting women’s rights and promoting gender equality. NHRIs reported that a broad mandate with specific reference to women’s rights and gender equality, ability to address the private sector and an institutionalised relationship with specialized national bodies were factors that positively impacted on their ability to address women’s rights and gender equality. In addition, adequate resource allocation was essential, in particular when NHRIs were faced with additional responsibilities” (OSCE 2012a, p.7).

A subset of the literature on organizational structure deals with the issue of whether there should be one NHRI covering all grounds of discrimination, or separate structures dealing with, for example, sex discrimination, ethnic minorities, or people with disabilities. While there are arguments for both models, the trend appears to be towards a single agency, for economic reasons as well as coherence, and in fact a number of nations have merged (Australia, Sweden, UK, Slovakia) or are considering merging (Croatia, South Africa) their specialized institutions

“Measuring discrimination is not easy. A different treatment or outcome is not necessarily the result of clearly identified acts of discrimination, but the result of complex processes involving multiple and cumulative discrimination, or simply due to other factors. Moreover, victims are sometimes unable to identify the discrimination that they are subjected to. Certain social and cultural practices create high tolerance levels for discrimination among certain population groups, which results in the acts of discrimination being frequently overlooked. Also, they are often unaware of the available legal remedies or unable to use them. ... Given these limitations in using the events-based information in monitoring discrimination, statistical techniques, as well as direct surveys, are vital for assessing the prevalence of discriminatory practices in a country” (OHCHR 2012, p.82).

dealing with gender equality, women’s rights and/or sex discrimination. When this is the case, the NHRI’s effectiveness in addressing sex discrimination can be compromised. This can be counteracted however by ensuring that there is a division or unit that is explicitly responsible for addressing sex discrimination, that this unit is adequately resourced, and that this structure is complemented by a gender mainstreaming strategy across the agency. In the case studies below, Australia provides the strongest model for this type of arrangement.

2.5 Indicators and data collection

To conduct monitoring, NHRIs use their own internal data such as complaint and investigation statistics (“events-based data”), data generated by specific monitoring exercises, and results of national conferences or workshops on specific human rights issues. In addition, apart from their own primary research and fact-finding, most NHRIs rely heavily on secondary sources such as budget documents, national statistics, administrative data from government ministries, data from commissions of inquiry and other bodies, NGO and academic research, and intergovernmental body research. In some cases, such as Canada and Great Britain, NHRIs have developed systematic frameworks for monitoring human rights, but in many countries it is done on a more *ad hoc* basis. One determinant is the comprehensiveness and accessibility of national data – in Sweden for example, privacy laws severely curtail the compilation of certain kinds of sensitive information which include personal details such as race or religion. In other countries, the national statistical system may not be strong enough to produce reliable data.

There is an exhaustive literature on human rights indicators, and even specifically on indicators of discrimination, which is not possible to summarize in this report.³ However, there are several key points to keep in mind about data and indicators:

- Types of data: OHCHR counsels that “National human rights institutions should include **qualitative data** along with **quantitative data**. For example, existing data may show that girls are less likely to move from primary to secondary school than boys. Such data are quantitative and show that there is a potential problem. An institution may decide, through the use of surveys or focus groups, for example, to try to explain why the situation is occurring. The data generated from such efforts would be qualitative and could help the institution propose effective solutions to the problem” (OHCHR/UNDP 2010, p. 118).
- Disaggregation of data by sex and other variables: It is vital for NHRIs to collect **data disaggregated on the basis of sex and other variables** in relation to complaint handling and outcomes as well as other types of investigation. Monitoring reports should include disaggregated data on the sex of the complainants or victims, on the alleged grounds for discrimination, on alleged perpetrators and on the type of alleged violations or abuses (OSCE 2012a, p. 31).
- Setting indicators: NHRIs should establish **process indicators** and **result or outcome indicators** for monitoring discrimination. Briefly, **process indicators** can be used to assess the degree to which a law, regulation, policy or practice is actually being applied, and to identify how it must be modified or improved to ensure that the desired aims can be achieved. **Result/outcome indicators** can be used to form a baseline against which subsequent progress will be measured, track progress towards objectives, and support follow-up analysis (OHCHR/UNDP 2010, p. 119).

Types of data can include:

- Socioeconomic statistics disaggregated by prohibited grounds of discrimination (e.g. life expectancy or unemployment rates broken down by sex or ethnic origin) in order to measure disparities and differential outcomes;
- Econometric models to help in estimating the portion of differences in outcomes attributable to discrimination as opposed to observable variables (e.g., percentage of the wage differential between women and men that cannot be explained by other criteria such as the number of working hours or seniority, etc.);

³ A number of these resources are listed in Annex 1 of this report, and some are also referenced in Section 4, International Good Practices and Lessons Learned.

- Population surveys measuring experiences, perceptions and attitudes regarding discrimination;
- Discrimination or situation-testing surveys to measure discrimination in specific instances, such as those related to access to work, housing, health care, educational institutions or other public services (e.g. comparing results using job applications that do or do not identify the applicant's sex, age or race).

Given the complexity of the issues, the broad range of data that can potentially be used, and the realities of national data systems, building the technical capacity for monitoring discrimination is a complex undertaking. In order to support the monitoring function of NHRIs (as well as government organizations, NGOs and others), numerous monitoring tools, guidelines and frameworks have been developed by various treaty bodies and the OHCHR, as well as by regional organizations and NHRIs themselves. The OHCHR has recently published a particularly comprehensive guide to developing frameworks for human rights indicators.⁴

2.6 NHRIs and UPR/Treaty Body reporting

NHRIs have distinct functions in relation to treaty bodies and the UPR process. In essence, their job is to monitor independently the domestic implementation of the country's international human rights commitments. The statement by the CEDAW committee on the role of NHRIs makes it clear that they are not charged with producing State Party reports. However, the OSCE comparative review (OSCE 2011, p. 17) found that "In terms of reports to Treaty bodies, many NHRIs state that they either prepare their own independent reports on a regular basis ... In addition, some NHRIs support the government in preparing the state report."

This role varies considerably from country to country depending on a number of factors including the specific legislative mandate of the NHRI in question, the actual degree of independence of the NHRI from government, and the capacity of the government (in the case of CEDAW, the national gender machinery) to monitor implementation of the treaty and compile the reports. The norm appears to be for the NHRI to contribute information toward the preparation of the national report, while preparing independent reports based on their own monitoring as well as their responses to the national report. This key role in treaty body reporting reinforces the need for a strong independent monitoring function for NHRIs, both in terms of contributing data to the national reports, in for the purpose of compiling independent submissions.⁵

One purpose of the ICC accreditation process is to give NHRIs a place at the treaty body table: institutions accredited by the ICC with "A status", indicating full compliance with the Paris Principles, are usually accorded speaking privileges and seating at UN human rights treaty bodies such as CEDAW, the Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Racial Discrimination (CERD), and Committee on the Rights of Persons with Disabilities (CRPD). In many cases (and this seems to be highly dependent on the capacity of the NHRI as well as financial resources available), NHRI representatives do attend the treaty body sessions, independent of government. However many documents note that NHRIs could be playing a much larger role in monitoring for the purpose of reporting to treaty bodies than they currently do. The UN system has developed a number of tools to support the ability of NHRIs to engage effectively with treaty bodies (UNDP/OHCHR. 2010).

⁴ See Office of the United Nations High Commissioner for Human Rights (OHCHR). 2012. *Human Rights Indicators: A Guide to Measurement and Implementation*. This document (p. 135) refers to NHRIs as one of several "monitoring stakeholders" – others are line ministries and statistical bureaus, with the NHRI often taking the role of "lead agency" in national monitoring.

⁵ "Independent reports" refer to reports prepared by arm's-length or independent institutions that are part of the State, such as NHRIs. This is in distinction to "shadow reports" which are reports to Treaty bodies prepared by NGOs.

3. CASE STUDIES

- 3.1 INTRODUCTION TO CASE STUDIES
- 3.2 AUSTRALIA
- 3.3 CANADA
- 3.4 POLAND
- 3.5 SOUTH AFRICA
- 3.6 SWEDEN
- 3.7 SUMMARY OF CONCLUSIONS FROM CASE STUDIES

3. Case Studies

3.1 Introduction to case studies

The following sections present brief case studies of the systems of discrimination monitoring and reporting in place in five countries: Canada, Australia, Sweden, Poland, and South Africa. The selection criteria are outlined in the following section. For each, the following topics were addressed:

- Constitutional and legal guarantees of non-discrimination;
- National Discrimination Monitoring System:
 - Institutional framework, organizational structure, main actors;
 - Instruments and indicators used to monitor and report (nationally and to international bodies) on gender discrimination and/or other types of discrimination;
 - Role of non-governmental actors in monitoring/reporting;
- Particularly successful or significant programs, practices and achievements;
- Strengths and weaknesses of monitoring systems, lessons learned.

It was not always possible to gather complete information on each one of these topics for each country examined due to language limitations and thus incomplete accessibility to data. Nevertheless, these cases reveal a great deal of diversity in the NHRI model, mandate, monitoring mechanisms and other factors as they relate to discrimination in general and sex discrimination in particular. Yet they all yield interesting and relevant lessons and many good practices. Combined with a review of the more general literature on NHRIs and discrimination monitoring, a fairly comprehensive set of issues, priorities, lessons learned and good practices can be compiled; this will be the subject of Section 4 of this report.

⁶ In order to select from the very broad range of potential case studies, the following criteria were considered:

- Relevance to Ukraine in terms of factors such as political system, geographical location/regional affiliations, historical circumstances;
- Geographic representation and language constraints;
- Countries for which significant and verifiable documentation exists (in English) on NHRIs and discrimination monitoring systems (including internal reports and external appraisals);
- Countries which have reflected on their experience and documented lessons learned regarding monitoring discrimination/sex discrimination;
- Recommendations of OPCHR and/or UNDP.

A preliminary scan of the available internet and print literature enabled the identification of a “long list” of appropriate countries to include in the sample, according to the criteria identified above as well as others suggested by UNDP and/or the OPCHR. More extensive data-gathering, with a focus on identifying documented and verifiable results and lessons learned, helped to narrow down the “short list” of countries to be included in the sample.

AUSTRALIA

3.2.1 Constitutional and legal guarantees of non-discrimination

Rather than a single anti-discrimination law, Australia has a series of targeted laws to protect people from various types of discrimination and from breaches of their human rights, including the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Australian Human Rights Commission Act 1986*, *Disability Discrimination Act 1992*, and *Age Discrimination Act 2004*. The Australian Human Rights Commission (AHRC) has statutory responsibilities under these laws, and the authority to investigate and conciliate complaints of alleged discrimination and human rights breaches. Consolidation of all this legislation is under discussion and is strongly supported by civil society group in order to fill in gaps in the legislation and ensure a stronger monitoring system.

The *Australian Human Rights Commission Act 1986* established the Human Rights and Equal Opportunity Commission (now known as the Australian Human Rights Commission) and gives its functions in relation to an array of international instruments including (among others), CEDAW, the *International Covenant on Civil and Political Rights* (ICCPR), *Convention Concerning Discrimination in Respect of Employment and Occupation* (ILO 111), *Convention on the Rights of Persons with Disabilities*, and *Convention on the Rights of the Child*. In addition, the Aboriginal and Torres Strait Islander Social Justice Commissioner has specific functions under the AHRC Act and the *Native Title Act, 1993* to monitor the human rights of Indigenous people.

The AHRC's mandate vis a vis sex discrimination is written into the *Sex Discrimination Act*. In 2011, significant amendments to the *Sex Discrimination Act* came into effect, including ensuring that protections from sex discrimination apply equally to women and men; prohibiting direct discrimination against male and female employees on the ground of family responsibilities; strengthening protections against sexual harassment in workplaces and schools, prohibiting sexual harassment conducted through new technologies, and establishing breastfeeding as a separate ground of discrimination. In addition, in 2013, the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* was passed into law. All of these legislative changes greatly extended the anti-discrimination remit of the AHRC.

CASE STUDY: AUSTRALIA

3.2.2 National Discrimination Monitoring System

Institutional framework, organizational structure, main actors

► The Australian Human Rights Commission has a President and six Commissioners, including the Sex Discrimination Commissioner (others are Aboriginal and Torres Strait Islander Social Justice Commissioner, Age Discrimination Commissioner, Children's Commissioner, Disability Discrimination Commissioner, Race Discrimination Commissioner). The AHRC is the accredited NHRI and as such is mandated to receive and act upon human rights complaints and initiate investigations.

► The Sex Discrimination Commissioner "leads the work of the Commission to address gender-based discrimination, sexual harassment and other barriers to gender equality in Australia." She is also responsible for monitoring Australia's progress on the implementation of CEDAW. Her mandate derives directly from the *Sex Discrimination Act*. The current Sex Discrimination Commissioner is extremely proactive in establishing a profile for the division, lobbying for legislative change, conducting research and national fact-finding, and disseminating information through multiple media. A good example is the publication of the *Gender Equality Blueprint (2010)*, which she authored. This document was the product of a nationwide "Listening Tour" conducted by the Sex Discrimination Commissioner in order to identify priority issues with different groups around the country.

► The Workplace Gender Equality Agency (WGEA) is a government agency that implements the *Workplace Gender Equality Act 2012* (which updates the *Equal Opportunity for Women in the Workplace Act 1999*). It has a monitoring role in regard to sex discrimination in the workplace (against both women and men), in that all non-public sector employers with more than one hundred employees are required to report on their progress towards workplace gender equality. The WGEA has a very robust research division which develops and disseminates tools and templates for monitoring and reporting on workplace discrimination, gender equity and diversity issues. The statutory functions of the WGEA in relation to monitoring discrimination in the workplace include developing indicators and benchmarks, issuing guidelines and reviewing compliance, reporting to government and providing legislative guidance, undertaking research and educational programs, promoting public discussion on gender equality in the workplace, etc.⁷

The monitoring role of the WGEA, appears to be quite distinct from that of the AHRC and limited specifically to workplace equity issues. There is little if any evidence of collaboration between the two bodies; rather they have parallel but complementary roles in monitoring and addressing sex discrimination.

Instruments and indicators used to monitor and report (nationally and to international bodies) on sex discrimination and/or other types of discrimination

Although the legislation is not explicit on the monitoring function of the AHRC, the Commission clearly identifies monitoring as part of its role. Its website describes this function as follows:

"Some people in Australia are especially vulnerable to discrimination, exclusion and unfair treatment. We have a particular responsibility to monitor the situation facing these groups, identify issues of concern and propose solutions that will improve their lives. Sometimes we do this through holding national inquiries that examine human rights issues in detail. We also undertake regular monitoring and reporting work, such as the Social Justice Commissioner's annual Social Justice Report and Native Title Report on issues affecting Aboriginal and Torres Strait Islander communities."

⁷ See <http://www.wgea.gov.au/about-wgea/about-agency>. For monitoring and reporting resources, see <http://www.wgea.gov.au/learn/research-and-resources>. For a statement by the Sex Discrimination Commissioner on the respective roles, see <http://www.humanrights.gov.au/news/speeches/face-gender-based-discrimination-australian-workplaces>: "In terms of oversight of the progress in this area, in addition to my own position, there has been the work of the Workplace Gender Equality Agency. This Agency is an Australian Government statutory authority which aims to improve gender equality in Australian workplaces. The Agency works collaboratively with employers, offering advice and assistance to promote and improve gender equality in their workplaces."

National inquiries are very wide-ranging investigative activities initiated by human rights complaints received by the Commission. The AHRC resolves complaints of discrimination through its complaint handling service, which can also include actions that address systemic discrimination issues. Information about trends in complaints is used to trigger national inquiries, develop targeted education programs and suggest policy reforms. In the past, national inquiries have been conducted on a range of issues, including: workplace discrimination against same-sex couples; employment and disabilities; separation of Aboriginal children from their families; children in immigration detention; homeless children; pregnancy discrimination; inquiry into the accessibility of new service and information technologies for older Australians and people with disabilities.⁸

The AHRC also undertakes major research projects and provide policy advice to government and others regarding sex discrimination. As the NHRI, it engages with treaty bodies by providing independent reports tracking Australia's progress in meeting its obligations. It has also instituted annual implementation reports on UPR outcomes to the UN Human Rights Council.

In relation to sex discrimination monitoring, the 2010 *Gender Equality Blueprint*, authored by the Sex Discrimination Commissioner, outlines the key actions necessary to address substantive discrimination against women in Australia in five priority areas:

- Balancing paid work and family and caring responsibilities;
- Ensuring women's lifetime economic security;
- Promoting women in leadership;
- Preventing violence against women and sexual harassment;
- Strengthening national gender equality laws, agencies and monitoring.

Under the final category, the Blueprint recommends: "To genuinely chart our progress on gender equality: the Sex Discrimination Act should be amended to require the Sex Discrimination Commissioner to monitor progress towards eliminating sex discrimination and achieving gender equality and report to Parliament every two years; the Australian Bureau of Statistics should be resourced and required to generate gender disaggregated data and analysis to enable independent monitoring of progress towards gender equality" (Australian Human Rights Commission 2010, p. 7).

As noted above, workplace gender equality monitoring is the specific remit of the Workplace Gender Equality Agency. It monitors (based on mandatory annual reporting from employers) and reports on six Gender Equality Indicators: 1) gender composition of the workforce, 2) gender composition of governing bodies of relevant employers (e.g. boards of directors), 3) equal remuneration between men and women, 4) flexible working arrangements for employees and working arrangements supporting employees with family or caring responsibilities, 5) consultation between employers and employees concerning gender equality in the workplace, and 6) other relevant matters as requested by the responsible Minister.

Data on sex discrimination comes from Commission complaints, research, inquiries and other internal data. A very detailed breakdown of inquiries and complaints by ground and other variables is contained in the AHRC annual reports (AHRC 2012, Appendix 3), AHRC also publishes reports based on its wide-ranging research and inquiries into number of areas related to sex discrimination, including employment discrimination against pregnant women, combining paid work and family care, the treatment of women in the Australian Defense Force, the Sexual Harassment National Telephone Survey, etc.

⁸ For example, the 2006 National Inquiry into Employment and Disability was conducted by the Disability Discrimination Commissioner and included the commissioning of six issues papers, a series of consultations, roundtables, and forums with government, employers, unions, employee groups and other interested parties, and a call for submissions from a broad range of stakeholders including employer groups, individual employers, people with disabilities, groups representing people with disabilities, disability service providers, etc. For more details, see <http://www.humanrights.gov.au/national-inquiry-employment-and-disability>.

CASE STUDY: AUSTRALIA

The Sex Discrimination Commissioner's ongoing review of the Australian Defense Force, which was instituted to investigate systemic discrimination against women in the armed forces and training institutes, provides a good example of the breadth of such research. The review panel is chaired by the Sex Discrimination Commissioner; the review has its own web site, which gives regular updates on the progress of the review, and for the most recent phase of the review is soliciting online submissions as well as confidential telephone submissions through a special toll-free number (see <http://defencereview.humanrights.gov.au/>). It has already published three reports, covering such areas as: the recruitment and retention of women; women's representation; opportunities, pathways and barriers to women's advancement; support mechanisms; balancing a military career and family; and sexual harassment, sex discrimination and sexual abuse in the military.

However, despite the extensive work of the AHRC and specifically of the Sex Discrimination Commissioner on investigating, reporting on and developing strategies to prevent and eliminate discrimination, the *Gender Equality Blueprint* notes that "there is currently no formal arrangement in place for an independent agency to report to Parliament and the Australian public on progress towards achieving gender equality. Regular independent monitoring and reporting against an integrated set of national gender equality indicators would provide an evidence-based assessment of progress towards gender equality, benchmarked over time" (Australian Human Rights Commission 2010, p. 29).

Although many of the recommendations of the Blueprint have been incorporated in the most recent revision of Australia's *Sex Discrimination Act*, these recommendations to strengthen the statutory monitoring function of the Sex Discrimination Commissioner so far have apparently not been acted upon. However, it is important to note that the existing legislation does not prevent monitoring from taking place, and the AHRC and particularly the Sex Discrimination Commissioner appear to have interpreted the monitoring mandate as broadly as possible.

Role of non-governmental actors

The AHRC website states that it works in partnership with a broad range of non-government groups to promote gender equality and counter discrimination, sexual harassment, violence against women and other barriers to equality, as well as discrimination, harassment and hostility toward lesbian, gay, bisexual, intersex, trans and gender diverse people.

The development of the *Gender Equality Blueprint* was informed by a nationwide series of consultations carried out over six months in 2007-08 by the Sex Discrimination Commissioner, called the "Listening Tour," which included visits to every state and territory, including cities, regional towns and remote communities, with a focus on reaching marginalized groups of women. An online blog was also set up for people to share their views in an alternative format, and the report from the tour was published on the AHRC website. The findings of the Listening Tour fed directly into the themes and objectives of the *Gender Equality Blueprint*.

Australian NGOs play a very active and visible role in monitoring and addressing sex discrimination, and especially in holding the government and AHRC to account for its CEDAW commitments.⁹ The 2012 CEDAW Shadow Report was the result of collaboration between six government-funded National Women's Alliances and 105 non-government organizations.

⁹ See, for example, YWCA Australia's *CEDAW Action Plan*: "The CEDAW Project Advisory Group, led by YWCA Australia, is launching online a 15-point CEDAW Action Plan for Women in Australia. The Action Plan sets out what the Australian and State and Territory Governments should do to put into action the UN's recommendations on women's human rights in Australia. YWCA Australia led a project with community and women's organizations ... Across Australia, women were consulted to find out the issues of importance to them and to strengthen their understanding of the rights in CEDAW. A seven-woman delegation travelled to New York to lobby the CEDAW Committee to ensure that the issues of women in Australia were raised at the UN." <http://www.ywca.org.au/news/cedaw-report-doing-better-women-australia>.

3.2.3 Particularly successful or significant programs, practices and achievements

The Australian Human Rights Commission has been particularly effective in influencing the passing or amendment of significant human rights legislation, including substantial amendments to the *Sex Discrimination Act* 1984 and the *Equal Opportunity for Women in the Workplace Act* 1999. The proactive role of the AHRC in the legislative process is evident from the description on its website which details the steps taken by the Commission in response to the government's initiative to amend the two Acts, including very comprehensive submissions outlining the current state of knowledge and detailing the Commission's recommendations.

The AHRC also appears to excel at soliciting public and NGO input to its anti-discrimination efforts. One good example is the process leading up to the publication of the *Gender Equality Blueprint* which incorporated a number of methodologies: open community consultations, women's and men's focus groups, service provider and community group meetings, meetings with politicians and government agencies, academic roundtables, business roundtables, interactive website with blog, and a communications and media strategy. The full report of the tour is posted on the AHRC website in a very well-organized and accessible format (Australian Human Rights Commission 2008a).

3.2.4 Strengths and weaknesses of monitoring systems, lessons learned

The Australian case exemplifies a number of strengths including very progressive anti-discrimination legislation with a clear legislative mandate for each ground of discrimination, and very effective communications, advocacy and outreach. The structure of the Commission, with separate Commissioners responsible for distinct areas of discrimination, also contributes to its ability to target issues and address them from many different directions, including complaints resolution, research, monitoring of systemic discrimination, communication, etc. As one study has noted, "Australia provides one of the longest-standing examples of the merger of separate institutions to create a robust single body that has succeeded in protecting the interests of its constituent parts" (Carver, 2011).

In terms of monitoring and addressing sex discrimination in particular, the AHRC's greatest strength appears to be the independence and broad scope of the Sex Discrimination Commissioner in interpreting her mandate.

An apparent weakness is the relative downplaying of the monitoring function in the legislation itself. In addition, there is a plan in the works to consolidate the anti-discrimination legislation into a single law; it is not clear what implications this would have for the workings of the Commission. The CEDAW Committee has also noted that (similar to Canada), the federal structure of Australia can impede the harmonized implementation of CEDAW across the country, especially in sectors that are under the jurisdiction of individual states and territories.

On the whole, despite the lack of a clear legislative mandate and comprehensive data system, Australia appears to have a well-functioning system in place for monitoring discrimination, with some inadequacies as noted above. The Australian experience highlight several important success factors:

- An NHRI (AHRC) which plays a strong role in influencing and providing inputs to legislation and the actions of government;
- Very pro-active human rights commission, and in particular the Sex Discrimination Commissioner;
- Broad interpretation of the monitoring mandate even though it is not explicit in the legislation;
- Very strong national anti-discrimination context, with a serious national commitment to the implementation of human rights legislation and international conventions;
- Strong civil society engagement and public awareness, and numerous channels for public input into anti-discrimination activities.

CANADA

3.3.1 Constitutional and legal guarantees of non-discrimination

Guarantees of non-discrimination are found in the *Canadian Charter of Rights and Freedoms* 1982 (“The Charter”), the *Canadian Human Rights Act* 1977 (CHRA), and the *Employment Equity Act* 1995. The *Charter*, which is based on the Universal Declaration of Human Rights, applies to all Canadians and stipulates that:

“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

The *Canadian Human Rights Act* expands these grounds to include race, national or ethnic origin, colour, religion, age, sex (including pregnancy-related), sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted. The *Employment Equity Act* focuses on workplace equity and aims to correct disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities. These acts are considered to be quasi-constitutional, meaning they take precedence over other pieces of legislation, and other legislation must be interpreted in light of them.

Each of Canada’s ten provinces and three territories (provincial-level governments in the predominantly Aboriginal North) has its own human rights legislation covering areas under its jurisdiction, but the discrimination grounds covered are basically similar in all provinces.¹⁰ If an individual believes they have been discriminated against, Canadian human rights legislation provides several avenues for appeal, depending on the jurisdiction: the Canadian Human Rights Commission and tribunal, provincial human rights commissions and tribunals, and ultimately the provincial and federal courts.

¹⁰ Because Canada has a federal system of government, there is a clearly delineated division of jurisdiction and responsibility between the federal and provincial/territorial levels (for example, health and education are provincial rather than federal responsibilities.) This is not a hierarchical reporting relationship. Thus, while the Charter applies to all Canadians, the CHRA only governs matters that come within federal jurisdiction, including federal departments (ministries) and all arms of the federal government, chartered banks, national airlines, inter-provincial communications, telephone and transportation companies, other federally regulated industries, and First Nations (Aboriginal) employers. There is corresponding human rights legislation at the provincial levels that applies to a broader range of provincially-regulated private businesses and service providers, including retail stores, restaurants, hotels, construction, insurance, hospitals and health care facilities, educational institutions, non-profit organizations, the oil and gas industry, provincial or territorial governments and departments.

3.3.2 National Discrimination Monitoring System

Institutional framework, organizational structure, main actors

Due to the division of responsibilities between the federal and provincial/territorial governments in Canada, there is in fact no coherent national discrimination monitoring system covering the whole country. Instead, monitoring and other anti-discrimination activities are carried out by the Canadian Human Rights Commission (CHRC) (which is the accredited NHRI) at the federal level, as well as provincial/territorial human rights commissions or equivalents, and an array of other government and non-government organizations. The Canadian Association of Statutory Human Rights Agencies is the national umbrella association of Canada's statutory agencies charged with administering federal, provincial and territorial human rights legislation. It is not a coordinating body, but it does aim to foster collaboration among its members and to serve as a national voice on human rights issues.

In terms of reporting to treaty bodies, the federal Department of Canadian Heritage is responsible for the preparation of Canada's reports to UN treaty bodies, including CEDAW, in consultation with the provincial/territorial governments. In addition non-governmental organizations are also consulted, and there are also extensive public consultations nation-wide. The Canadian Human Rights Commission submits independent reports to the CEDAW Committee, and many NGOs submit shadow reports.

▶ The Canadian Human Rights Commission was created through the *Canadian Human Rights Act* to administer the CHRA and the *Employment Equity Act*. In parallel with the distribution of powers between the federal and provincial governments, there is a similar division of jurisdiction between the federal and provincial Human Rights Commissions.

The statutory responsibilities of the CHRC include:

- Handling of complaints regarding discriminatory practices;
- Conducting information programs to foster public understanding of CHRA;
- Undertaking or sponsoring research, on its own initiative or at the suggestion of the Minister of Justice;
- Maintaining liaison with provincial human rights commissions to promote collaboration and avoid jurisdictional conflicts or overlap;
- Reviewing federal regulations, orders, etc. on the basis of human rights principles;
- Using "persuasion, publicity or any other means that it considers appropriate" to discourage and reduce discriminatory practices.

It should be noted that there is no explicit monitoring mandate identified in the legislation, apart from that implied under research or reporting. The CHRC has three programming areas: Human Rights Knowledge Development and Dissemination; Discrimination Prevention; and Human Rights Dispute Resolution. The majority of CHRC's anti-discrimination activities are focused on prevention, knowledge dissemination, and dispute resolution. It established a Knowledge Centre in 2005 which, among other responsibilities, gathers and analyzes statistics in support of research, policy development, and management decision-making. The Knowledge Centre includes a Research and Statistical Analysis Division, Policy and Regulatory Affairs Division, National Aboriginal Program, and Strategic Initiatives. One of its accomplishments was to develop and administer CHRC's *Gender Integration Framework*, which is highlighted below.

CASE STUDY: CANADA

CHRC does not have a division or programming area specifically responsible for sex discrimination or women's rights. In the work of the Commission, gender equality is addressed through a mainstreaming approach, as outlined in the CHRC *Gender Integration Framework*. This document provides guidelines for CHRC staff to ensure that gender and intersectional issues are considered in all aspects of its work, ensuring that they systematically assess the differential impacts on women and men of its policies, programs and decisions. To do so, it provides a tool called the "Gender Relevance Assessment", which directs staff, in planning or executing projects, to identify "differences in the life experiences of women and men, and/or differences in potential impacts" and to identify any "multiple or intersecting grounds" that might affect their work. If these are present, they then must consider how these realities can be addressed. This is not a systematic monitoring tool for sex discrimination, but it does focus attention on potential areas of discrimination based on sex and/or intersecting grounds that might not otherwise be identified or addressed, and ensures that these are reflected in CHRC research and monitoring activities.

Despite the absence of a specific division or program for monitoring sex discrimination per se, a number of CHRC's activities have targeted various aspects of sex-based discrimination, including harassment in the workplace, unequal treatment of female prisoners, and discrimination related to pregnancy (on the latter issue, a "best practices" document has been developed).¹¹ CHRC annual performance reports include data on discrimination complaints, disaggregated by sex and other grounds. The 2008 CHRC submission to the United Nations Commission on the Status of Women (CSW) noted that sex-discrimination complaints account for 10% to 15% of all signed complaints received, the majority of which are filed by women. Of these, almost half included an allegation of harassment, either in the workplace or while receiving a service. Other forms of discrimination frequently raised included discrimination related to pregnancy, and lack of pay equity with male counterparts.

The Commission operates across Canada with a staff of fewer than 200 employees. In recent years the scope of its responsibilities has increased to include Aboriginal human rights, and this, combined with a growing backlog of complaints and curtailed budgets, has led to streamlining of its complaints system and a greater focus on discrimination prevention activities.

► Provincial human rights commissions exist in all provinces and territories, mandated with administering provincial human rights legislation (as distinct from the CHRC which administers the federal legislation). There is no hierarchical or reporting relationship between the federal and provincial human rights commissions; they all operate independently of each other although there is an organization, the Canadian Association of Statutory Human Rights Agencies (CASHRA) which facilitates collaboration among the federal and provincial bodies and hosts annual national conferences. Although not every provincial commission was researched for this report, it appears that, like the CHRC, they have no explicit discrimination monitoring function, however they all engage in research, publish reports on various aspects of discrimination, and summarize and disaggregate discrimination complaints in their annual reports.

Instruments and indicators used to monitor and report (nationally and to international bodies) on sex discrimination and/or other types of discrimination

Apart from the research and knowledge activities noted above, the CHRC and provincial human rights commissions publish annual performance reports which contain statistics on discrimination complaints, broken down by area of activity (employment, education, etc.) and grounds (sex, race, age, disability, etc.).

¹¹ See: Canadian Human Rights Commission. *Pregnancy & Human Rights In The Workplace: Policy And Best Practices*. http://www.chrc-ccdp.ca/sites/default/files/pregnancy_policy_0.pdf.

In addition, CHRC in 2010 published its *Framework for Documenting Equality Rights*. Its rationale is that “Statistical agencies collect a wealth of socio-economic data, but the lack of consolidated data on equality rights makes it difficult for Canadian institutions such as human rights commissions, provincial and territorial governments, non-governmental organisations and community organizations to make evidence-based decisions about policy and program interventions. To fill that gap, the Commission published the *Framework for Documenting Equality Rights*. The Framework is a tool for developing a consolidated portrait of equality in Canada. The Commission will use the Framework to support research and program activities as well as to produce reports.” The Framework covers seven “dimensions of well-being”: economic well-being; education; employment; health; housing; justice and safety; political engagement; and social inclusion. All data can be disaggregated by sex and other grounds such as race, religion, age, disability, etc.

For each of these dimensions, a number of indicators of equality rights are identified, one of which is “Discrimination” – measured by the rate of discrimination experienced by individuals in that sector and the rate of human rights complaints filed. Data on discrimination is gathered from the “General Social Surveys – Victimization” (conducted every five years by Statistics Canada), which asks about experiences of discrimination, as well as data from complaints filed and accepted for investigation with human rights commissions and tribunals across Canada (Canadian Human Rights Commission 2010). The specific indicators of discrimination specified under each of the dimensions are:

- Education: Data on the rate of **discrimination in education** are presented through the General Social Survey – Victimization, which asked respondents across Canada: “In what types of situations have you experienced discrimination (in the past 5 years) [when] attending school or classes?” Administrative data on the rate of complaints filed with human rights commissions and tribunals could also be used to document the incidence of complaints received concerning education.
- Employment: **Discrimination, including harassment, in employment** is expressed through data from the General Social Survey and other employment-related surveys, which measure the self-reported rate of discrimination experienced in employment; and through the rate of employment-related human rights complaints filed with Canadian human rights commissions and tribunals (employment is the single largest source of human rights complaints in Canada, accounting for upwards of 70% of complaints).
- Health services: **Discrimination in health services** is expressed through data on the rate of discrimination experienced in the provision of health care in Canada from the General Social Survey – Victimization, and the second is the rate of complaints filed with human rights commissions and tribunals relating to the health care system.
- Housing: The indicator for **discrimination in housing** is expressed through: the rate of discrimination experienced in housing from the General Social Surveys, and the rate of complaints filed with human rights commissions and tribunals.
- Justice and safety: The indicator on **discrimination in the justice system** is based on the experience of discrimination in dealing with police, the courts and in the corrections system. It contains two measures: the rate of discrimination experienced in policing and the courts reported by members of protected groups, as collected by the General Social Survey – Victimization. The second measure is the rate of complaints filed with human rights commissions and tribunals relating to the justice system.
- Political engagement and social inclusion: The indicator of **discrimination in accessing selected services and in leisure** is measured by the rate of discrimination experienced in situations such as seeking services from stores, banks or restaurants, using various modes of transportation and participating in sports or within a sports organization. Data on this can be drawn from the General Social Survey – Victimization. In addition, data on the degree to which persons with disabilities report being restricted in engaging in these pursuits due to disability can be drawn from other Statistics Canada surveys. As with other dimensions, data on the rate of complaints filed with human rights commissions and tribunals could be used to document the incidence of complaints received concerning access to select service areas.

CASE STUDY: CANADA

Because all of these indicators can be disaggregated by sex and other variables, the *Framework* is a very useful tool which can potentially be used for systematic documenting and monitoring of discrimination based on sex and other identified grounds. It is not yet clear to what extent this instrument will be put to use; the CHRC's stated intention is to produce periodic reports based on data developed through this instrument. The first such report, using the *Framework* to document the equality rights of Aboriginal people in Canada, was published earlier in 2013. Although the report is careful to point out that the gaps it identifies between Aboriginal and non-Aboriginal people "do not necessarily indicate discrimination as defined in human rights laws" the clear implication is that discrimination must be considered as one of the contributing factors. In addition, the report mainstreams gender through its use of sex-disaggregated data where it is available, and makes explicit comparisons between Aboriginal and non-Aboriginal women as well as between Aboriginal women and Aboriginal men (CHRC 2013, p. 7).

Role of non-governmental actors

The fragmentation of responsibility for monitoring discrimination and reporting to treaty bodies in a sense creates both the need and the space for a large number of Canadian NGOs working on a broad range of human rights issues at the federal, provincial/territorial and local levels as well as provincial/territorial human rights commissions to participate in these processes. There are a range of groups that provide information on human rights, services to individuals who are victims of discrimination, mediation services, assistance to employers in complying with human rights legislation, engage in test case litigation, etc. etc. There are also advocacy groups which are active in monitoring the compliance of governments, public institutions and businesses with human rights legislation on behalf of groups such as women, the disabled, Aboriginal people, visible minorities etc.¹²

It is beyond the scope of this study to document the anti-discrimination activities of these numerous and very active organizations, however one indicator is the level of interventions by Canadian NGOs in treaty bodies: at the 42nd Session of the CEDAW Committee alone, apart from the submission by the CHRC, submissions were made by at least a dozen other Canadian non-governmental organizations.

3.3.3 Particularly successful or significant programs, practices and achievements

As noted above, the CHRC does not have a division or department specifically focusing on sex discrimination or gender equality. However, the CHRC has adopted a policy of integrating gender as a cross-cutting issue in its work in order to ensure that the gender dimension is considered in all its activities. To this end, it has promulgated the *CHRC's Gender Integration Framework (GIF)*, the intent of which is to "[ensure] that we systematically assess the differential impacts on women and men of our policies, programs and decisions. It also ensures that we consider any adverse impacts produced by other intersecting grounds. We are thereby moving gender analysis into the mainstream of our daily work" (Canadian Human Rights Commission n.d. p. 5). The framework is built around a straightforward tool called the *Gender Relevance Assessment (GRA)* which consists of answering four simple questions:

1. What is the project/issue you are working on?
2. Do there appear to be differences in the life experiences of women and men, and/or differences in potential impacts?
3. Do multiple/intersecting grounds appear to be present? If so, what are they?
4. How could you address this reality in your work?

¹²For a very small sample, see for example the British Columbia Human Rights Coalition www.bchrcoalition.org; Ontarians with Disabilities Act Committee <http://www.odacommittee.net/index.htm>; Disabled Women's Network Canada (DAWN) www.dawncanada.net; African Canadian Legal Clinic www.aclc.net;

The GIF also includes a more detailed guide to gender analysis for more complex studies as well as a plan for implementation and monitoring of the policy. The value of this document is that it is simple to use for all CHRC staff, written in accessible language, clearly lays out the roles and responsibilities of staff and managers for its implementation, and includes concrete examples of how the framework can be applied.

3.3.4 Strengths and weaknesses, lessons learned

On the whole, Canada is well respected for its monitoring of human rights and discrimination, including gender discrimination. The CHRC and provincial human rights commissions have been instrumental in documenting critical areas of discrimination and bringing them to the attention of the public and governments as well as international bodies. This is particularly true for Aboriginal issues in recent years. However, there are significant gaps in data which the CHRC has identified and tried to address through its *Framework for Documenting Equality Rights*.

More critically, the division of responsibility between the federal and provincial/territorial levels means that the CHRC is somewhat curtailed in its ability to address discrimination outside of its jurisdiction. Basically there is no single organization in Canada responsible for doing so. The agency that actually reports to CEDAW, the Department of Canadian Heritage, has no mandate for directly monitoring discrimination; it is essentially a clearing-house for information derived from the federal government, CHRC, provincial/territorial governments and human rights commissions, and civil society. The CEDAW Committee's 2007 Concluding Observations underlined the fragmentation of responsibility for monitoring discrimination, and more broadly for implementation of CEDAW between the federal and provincial/territorial governments: "While the Committee is cognizant of the complex federal and constitutional structures in the State party, it underlines, as it did in its previous concluding observations of 2003, that the federal Government is responsible for ensuring the implementation of the Convention and providing leadership to the provincial and territorial governments in that context." This "implementation gap" was also raised in many of the shadow reports submitted to the CEDAW committee, and it was also noted that this was also an issue of concern raised by the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee.

The CHRC, as Canada's NHRI, has on the whole been relatively effective in monitoring and addressing discrimination in Canada, but has faced numerous challenges especially given the constraints of its mandate and the federal-provincial jurisdiction issues. Its own literature reflects a number of important lessons which have led to changes in its work over the years, specifically as noted in its submission to the CEDAW Committee in 2007, the shift from an emphasis on complaints processing towards prevention, early resolution of human rights issues through mediation, issuing interpretive policies, and providing education and training (CHRC 2008, p. 5). In terms discrimination monitoring, the unrolling of the *Framework for Documenting Equality Rights* will provide a platform for systematically documenting discrimination based on available data.

POLAND

3.4.1 Constitutional and legal guarantees of non-discrimination

The Constitution of the Republic of Poland contains general anti-discrimination clauses which guarantee that all people shall be equal before the law and have the right to equal treatment by public authorities; it stipulates that no one shall be discriminated against in political, social or economic life for any reason whatsoever. However, this principle does not specify the prohibited grounds for discrimination, unlike in the case of Australia and Canada.

The Ombudsman Act of 1987 created the office of the Human Rights Defender and was amended in 2010 to designate it as the equality body. However it did not allocate additional funding or resources to the Defender to cover its new responsibilities.

Poland, as a member of the EU, has translated the Equal Treatment directives into its domestic legislation through its 2010 *Act on the Implementation of some Regulations of the European Union Regarding Equal Treatment*. The Act contains an exhaustive list of grounds: gender, race, ethnic origin, nationality, religion, belief, political opinion, disability, age and sexual orientation. It offers wide protection from discrimination in employment (including civil contracts, self-employment and independent professions) and provides protection from discrimination in all fields outside employment, but only in relation to race, ethnic origin and nationality. It also provides protection from gender discrimination, but only in access to social protection, goods and services, including housing and not in the health care and education. The Act designates as an equality body the existing Ombudsperson's office.¹³

However the legislation has been criticized by the Human Rights Defender and civil society organizations for only partially implementing the Directives:

"The Act grants legal protection only in enumerated areas. It also introduces various levels of protection for victims of discrimination. Persons with disabilities, LGBT persons and persons complaining about discrimination on grounds of religion, denomination, belief or age are not protected against discrimination in areas such as education, access to goods and services or social security. The Act does not protect persons subject to discrimination on grounds of sex in the area of health care and education. It would be advisable to cover more areas with protection against discrimination. NGOs have emphasised the divergent definitions of discrimination provided in the Act" (Human Rights Defender Poland, 2012 p. 30).

¹³See European Network of Legal Experts in the Discrimination Field website: <http://www.non-discrimination.net/content/main-legislation-21>.

The Act is in the process of being amended, but the changes scheduled for the first quarter of 2013 have yet to appear. According to the 2012 Human Rights Defender's report: "The main purpose of the changes is to create an open list of anti-discrimination prerequisites and to introduce solutions covering all social groups with the same level of protection in case of discrimination" (Human Rights Defender 2012).

3.4.2 National Discrimination Monitoring System

Institutional framework, organizational structure, main actors

► The Office of the Human Rights Defender was founded in 1987 and granted "A" status by the ICC in 1993. Thus it has a very broad anti-discrimination mandate, in addition to its role as a complaints body. The 2010 Act on Equal Treatment imposed new monitoring responsibilities on the Defender's office, stipulating that it should: analyse, monitor and support equal treatment of all persons; conduct independent surveys of discrimination; prepare and publish independent reports and issue recommendations regarding discrimination-related issues (Bojarski 2011, p. 117). The Human Rights Defender is appointed by the parliament for a five-year term. It conducts investigations and provides assistance to individuals in discrimination cases relating to public agencies, and more limited assistance in cases between private parties. Apart from examining individual cases, the Defender may also commission expertise and opinions as well as publish information about types of cases it deals with, including recommendations. It is required to report annually on its activities, and this report is made public. It includes information on activities (and their results) in its capacity of the equality body, information on the implementation of the laws on equal treatment, and conclusions and recommendations regarding future activities to further implement the law.

The Defender may also establish thematic expert teams and ask them to monitor and report on particular issues; so far it has established the Antidiscrimination Law Division as well as three expert committees: Expert Committee on Elderly People, Expert Committee on People with Disabilities and Expert Committee on Migrants. There is also a Social Council which helps to coordinate activities with government and with NGOs.¹⁴ The committees support the Defender by providing analysis and monitoring of equal treatment of persons and discrimination on grounds of age, disability, nationality, ethnic origin and religion or belief.

There is to date no specialized committee or division to monitor sex discrimination, nor apparently is there a gender mainstreaming policy in place or planned. Earlier drafts of the equal treatment law included the establishment of a central institution for monitoring gender equality that would be politically independent, however, this did not appear in the final draft (European Parliament 2011, p. 5).

The Office of the Human Rights Defender employs more than 260 full time employees and is reported to be gearing up to take on new responsibilities and play the role of the equality body in the future (Bojarski 2011). The budget of the office comes from the central state budget and is approved by Parliament, however it has been noted in several sources, including the annual report of the Defender itself, that there was no new funding allocated to support its expanding functions.

► The Government Plenipotentiary for Equal Treatment, a second institution with an anti-discrimination mandate, has been created in 2008 as a member of the cabinet at the rank of secretary of state. The function of the Plenipotentiary is to implement government policy in regard to equal treatment and monitor and counteract discrimination in particular because of gender, race, ethnic origin, nationality, religion or beliefs, political convictions, age, disability, sexual orientation, civil (marital) and family status. The new equal treatment law legally strengthens the office of the Plenipotentiary for Equal Treatment; for example, disability, originally not explicitly mentioned, was added to its mandate in 2010.

The responsibility of the Plenipotentiary include preparing draft laws related to equal treatment and preparing opinions about such drafts; promotion of equal treatment; international cooperation; implementing projects that support equal treatment and

¹⁴This committee "consists of the well-known representatives of the civil society, including highly recognized, distinguished public figures" (Gliszczyńska-Grabias 2012, p. 17).

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counteracting discrimination. In terms of monitoring, it may establish special research teams and commission research and may provide reports based on this research (Bojarski 2011, p. 119). In March 2013 the Office of the Plenipotentiary for Equal Treatment released the long-awaited draft of the National Programme of Action for Equal Treatment for the years 2013-2015. According to an NGO report: "The document includes analysis of the situation of groups susceptible to discrimination, identifies problematic areas, defines goals and objectives of the national policy, as well as formulates concrete steps to be taken by the government. In terms of women's rights, there is a strong language on women's participation in politics. However, the most burning area of rights violations which is sexual and reproductive health has been not adequately recognized in the document."¹⁵ As well, no funding was allocated for its implementation. As the current national gender machinery, the Plenipotentiary for Equal Treatment takes over the functions of the former Office of the Government Plenipotentiary for Women, Family and Counteracting Discrimination, which was shut down in 2010 after having been repeatedly reorganized in different forms and under different names (and its gender equality role downgraded) since the founding of Plenipotentiary for the Equal Status of Women and Men in 2001.¹⁶ In the process the gender equality function appears to have taken a back seat to other priorities such as the defense of the family.

The Plenipotentiary and the Human Rights Defender appear to play complementary roles in monitoring and other anti-discrimination activities. Their respective mandates are outlined in the Equal Treatment Act, which on paper gives them both a monitoring role. From the available reports (in English), it appears that the Plenipotentiary assumes a higher-level policy and legislative role while the Human Rights Defender monitors on the basis of specific cases and systemic issues of discrimination. As an independent NHRI, the Human Rights Defender has positioned herself forthrightly on some controversial human rights issues, compared with the Plenipotentiary.

Instruments and indicators used to monitor and report (nationally and to international bodies) on sex discrimination and/or other types of discrimination

The 2012 Report of the Human Rights Defender outlined its activities in preventing and monitoring discrimination on various grounds including race, nationality and ethnic origin, disability, age, sex, and religion. On the ground of sex, issues which were addressed included the image of women in advertising and commercials; the right to excuse male police officers raising children from service; discrimination on grounds of sex during recruitment for the state Fire Service; and the need for a comprehensive legal act on transgender persons.

The Defender in its first two years of operation also commissioned a number of research reports on selected aspects of discrimination, including studies of the voting rights of the elderly and disabled persons, access to education for persons with disabilities, violence against elderly women and women with disabilities, etc. In a report titled "Preventing violence motivated by race, ethnic origin and nationality", the Defender presented recommendations aimed at combating all forms of racial discrimination, intolerance and xenophobia; it proposed setting up a unified database registering violent hate crimes, and carrying out studies aimed at determining the real scale of violence on grounds of race, to continue training for the Police, and to undertake activities disseminating knowledge about hate crimes.

Apart from commissioned or internal research, a major source of data on discrimination comes from the content of individual complaints received by the Defender. The 2012 annual report included statistics showing that the number of complaints submitted to the Defender concerning the principle of equal treatment had almost doubled over the first year of operation as the Equality Body. The Defender received 1960 complaints concerning broadly defined problems of equal treatment, including discrimination on grounds of disability (1097 cases), religion or denomination (158 cases), age (57 cases), nationality (54 cases), sex (52 cases), sexual orientation (21 cases), race or ethnic origin (16 cases), political views (6 cases) and gender identity (4 cases) (Human Rights Defender Poland 2012, p. 9). There was no reporting on intersecting grounds of discrimination.

In terms of CEDAW reporting, in September 2012 the Council of Ministers adopted the report on the implementation of CEDAW in Poland in the years 2002-2010, for submission to the CEDAW Committee.

¹⁵See "KARAT consults the draft of National Programme of Action for Equal Treatment", <http://www.karat.org/programmes/womens-human-rights/cedaw-in-poland-2010-2012/what-is-new>.

¹⁶See European Parliament 2011, p. 6 for a detailed history.

Role of non-governmental actors

There appears to be very active involvement by non-governmental actors at many levels in Poland's anti-discrimination and discrimination monitoring efforts. The Human Rights Defender has made a positive commitment to working with NGOs and civil society organizations, and indeed has a long history of doing so. The Social Council and Expert Committees created by the Defender include representatives from relevant NGOs. In addition, invited experts contributed to the various research and monitoring reports. Non-governmental organizations working on counteracting hatred on grounds of race, religion, ethnic origin and sexual orientation participated in the preparation of the handbook for police officers, "Anti-Discrimination Activities in Police Units." The Defender's Office also has outreach and training programs with university students and the media.

One NGO which has been particularly active is the international KARAT coalition which unites over 63 organizations from 25 countries focused on women's human rights and gender justice in Central & Eastern Europe and Central Asia. One of their current projects is "CEDAW in Poland 2010-2013," an advocacy campaign for the implementation of CEDAW in Poland. KARAT coordinates the project which is implemented through cooperation with other NGOs. Its activities include:

- Monitoring the state's implementation of the CEDAW Committee's Concluding Observations (introduction of anti-discrimination law, enhancement of representation of women in political life, recognition of high prevalence of illegal abortion);
- Contributing to the elaboration of the independent alternative/shadow report on the status of implementation to the CEDAW Committee;
- Special focus on reproductive and sexual health and rights of women in Poland including research on the gap between the de facto situation and international human rights standards, as well as identification of barriers limiting women's access to justice in the area of sexual and reproductive health and rights.

NGOs have legal standing in discrimination complaints, allowing organizations whose statutory objectives include equality protection and counteracting discrimination to institute actions on behalf of citizens in discrimination cases, and join the proceedings at any stage thereof. It is not known to what extent this standing is exercised in legal cases.

3.4.3 Particularly successful or significant programs, practices and achievements

In terms of discrimination monitoring, the Human Rights Defender has commissioned a number of research reports on various aspects of discrimination over the last two years, prepared by staff and NGO representatives and supported by broad public dissemination. These include:

- *Perception of elderly persons by young people, perception of young people by elderly persons.* This study, carried out in cooperation with an NGO, provided recommendations on counteracting negative stereotypes related to age and thus on preventing discrimination on grounds of age.
- *Violence against elderly women and women with disabilities.* This study focused on knowledge of the law by members of interdisciplinary teams of service providers, and specifically on preventing violence in situations of multiple discrimination on grounds of sex, age and disability.
- "The principle of equal treatment – law and practice: Counteracting hate crimes motivated by racial, ethnic and national origin. Analysis and recommendations." This report, devoted to one of the most problematic discrimination issues in Poland, was presented at a national conference organized by the Human Rights Defender, featuring experts, researchers and NGOs.
- "Anti-discrimination measures in Police units". Project implemented by the Defender in cooperation with numerous NGOs to create a manual for police officers focusing on preventing discrimination on grounds of race, religious denomination, ethnic origin and sexual orientation, in cooperation with the Plenipotentiary of the Police Commander-in-Chief for Human Rights Protection.

The Defender's office has also been recognized for its high level of cooperation with NGOs and civil society organizations, and its high-profile advocacy role in some controversial human rights issues.

3.4.4 Strengths and weaknesses of monitoring systems, lessons learned

It should be noted that despite its relatively long history the Human Rights Defender has only recently taken on the EU Equal Treatment mandate, and thus its expanded responsibilities (and funding) for monitoring discrimination only date back two years. This being the case, the Defender is clearly still growing into the role, however seems to have made considerable progress in a short period of time.

A strength of the monitoring system as it currently stands is that through its membership in multilateral groups such as ICC and Equinet (the European network of equality bodies), it is exposed to international standards and scrutiny. Its broad mandate also allows it to target critical discrimination issues which are priorities for Poland.

A weakness of the monitoring system is the apparent absence of a systematic framework for the collection of data on discrimination experienced by the various designated groups, beyond the Human Rights Defender's own internal complaints data (which are openly available through their annual reporting requirement). The lack of a division or committee focusing on sex discrimination and gender equality, and the lack of a gender mainstreaming policy, may hamper its performance in this area, given its very broad anti-discrimination mandate and competing priorities. Overall, in Poland the status of sex discrimination in relation to other areas of equality appears to have diminished over the last number of years.

A further very significant weakness is insufficient funding and human resources, especially given the extra duties the Defender has taken on. Every source consulted, including documents from the Human Rights Defender itself, notes that the budget was not increased along with the expansion of its responsibilities as the Polish Equality Body, or to support its role in the National Preventive Mechanism.¹⁷ In addition, as one expert report noted: "In 2011 the office was not equipped with sufficient [human] resources to play the role described in the Act on Equal Treatment" (Bojarski 2012, p. 121).

Overall, Poland is an example of a country which has had an Ombudsman's office for many years, but the functions of which have had to adapt to changing circumstances, particularly the requirements of the Paris Principles and membership in the EU and the anti-discrimination regimes that come with it. As an NHRI it was established very early in Poland's transition to a democratic system and has taken on a very ambitious mandate. On the whole, evaluations of its anti-discrimination performance are quite positive.¹⁸ Nevertheless, it is clear that the discrimination monitoring system per se is in need of strengthening, most pressingly the budget issue, a priority which is recognized by the Human Rights Defender herself. The main lesson to be taken from Poland's experience is the importance of the reputation of the Ombudsman him or herself as a high-profile, independent and tough defender of human rights, regardless of the limitations they must work within. It also demonstrates the value of building on a solid reputation, working closely with civil society, and taking on controversial issues in a proactive manner.

¹⁷This issue was pointed out in 2012 during the Human Rights Council's Universal Periodic Review where it was recommended that Poland ensure that the Office of the Ombudsman is sufficiently resourced to carry out its anti-discrimination functions (Gliszczyńska-Grabias et al. 2012, p. 7).

¹⁸See, for example, Gliszczyńska-Grabias et al. 2012.

SOUTH AFRICA

3.5.1 Constitutional and legal guarantees of non-discrimination

The *Promotion of Equality and Prevention of Unfair Discrimination Act* of 2000 (PEPUDA), also known as the Equality Act, prohibits unfair discrimination by the government and by private organizations and individuals and forbids hate speech and harassment. The act lists race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth as prohibited grounds for discrimination.

The Act details the specific types of gender discrimination which are prohibited: gender-based violence, female genital mutilation, the system preventing women from inheriting family property, any traditional customary religious practice which impairs the dignity of women and undermines equality between women and men, policies that unfairly limit women's access to land rights, finance and other resources, discrimination on the ground of pregnancy, limiting women's access to social services, the denial of access to opportunities, and systemic barriers due to the sexual division of labour (employment discrimination is excluded because it is addressed by the *Employment Equity Act*, 1998).

The Act specifically responds to international obligations contained in CEDAW and CERD. It empowers the South African Human Rights Commission and the Commission for Gender Equality to institute proceedings, and it requires the South African Human Rights Commission (and other Constitutional bodies) in its reporting to provide assessments of the extent and effects of unfair discrimination based on race, gender and disability, and to recommend how to best address these problems. It also requires the SAHRC to consult with the Gender Equality Commission in developing equality plans.

3.5.2 National Discrimination Monitoring System

Institutional framework, organizational structure, main actors

In South Africa there are two bodies responsible for monitoring discrimination: the South African Human Rights Commission and the Commission on Gender Equality.

► The Commission for Gender Equality (CGE) is an independent body appointed by the President, and deriving its powers from the Constitution. Section 187(2) grants the Commission for Gender Equality "the power, as regulated by national legis-

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lation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.” Its statutory functions are to:

- Monitor all organs of society to ensure that gender equality is safeguarded and promoted;
- Assess all legislation from a gender perspective;
- Commission research and make recommendations to Parliament and other authorities;
- Educate and inform the public;
- Investigate complaints on gender-related issues;
- Monitor South Africa’s progress towards gender equality in relation to international norms.

The *Commission for Gender Equality Act* 1996 further defines the monitoring function, stipulating that the Commission “shall monitor and evaluate policies and practices of organs of state at any level, statutory bodies or functionaries, public bodies and authorities, and private businesses, enterprises and institutions, in order to promote gender equality and may make recommendations that the Commission deems necessary.” It is required to liaise closely with “institutions, bodies or authorities with similar objectives to the Commission, in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction or other appropriate instances.” In addition, the Commission for Gender Equality Act gives the Commission the power to “investigate any gender-related issues of its own accord or on receipt of a complaint”. The Commission for Gender Equality has the power to investigate any issue, regardless of whether it arises out of its monitoring activities or whether it is the product of a specific gender-related complaint by a member of the public (Commission for Gender Equality 2012, p. 33).

The CGE is also required to monitor compliance with relevant international instruments including CEDAW and the Beijing Declaration and Platform of Action (1995), which have been ratified by the South African Government. The Commission has produced monitoring reports in relation to CEDAW, BPFA and the MDGS. It also assisted The Department of Women, Children and People with Disabilities in its reporting on South Africa’s progress to the CEDAW Committee by giving guidance to the ministerial delegation on the reporting process to unfold (Commission for Gender Equality 2012, p. 27).

► The South African Human Rights Commission also derives its mandate from the Constitution of the Republic of South Africa, which stipulates:

The South African Human Rights Commission must:

- a) promote respect for human rights and a culture of human rights;
- b) promote the protection, development and attainment of human rights;
- c) monitor and assess the observance of human rights in the Republic.

The South African Human Rights Commission is made up of eleven full- and part-time Commissioners and a Secretariat. Commissioners provide strategic leadership and direct policy. Each Commissioner brings distinct experience to the table, and is responsible for distinct strategic focus areas (none of which includes gender discrimination), provinces, and treaty bodies, thus one Commissioner is designated as responsible for CEDAW.

The revised *Human Rights Commission Act* 2013 outlines its powers, which include the promotion and protection of human rights, developing awareness, making recommendations to government, and undertaking studies for reporting on or relating to human rights as it considers advisable in the performance of its functions. In terms of monitoring, it is required to “monitor the implementation of, and compliance with, international and regional conventions and treaties, international and regional covenants and international and regional charters relating to the objects of the Commission.” The SAHRC’s Research Unit plays the leading role in fulfilling the monitoring requirement by conducting research to assess and report on the state of human rights observance. It also monitors and reports on the implementation of economic and social rights by relevant state organs. The SAHRC is required to submit quarterly reports to the President and Parliament including an assessment of “the extent to which unfair discrimination on the grounds of race, gender and disability persist in South Africa and the effects of such practices” (Parliament of the Republic of South Africa 2007, p. 170-171). The Commission reports that it assists in compiling the relevant United Nations reports, “while at the same time reserving the right to submit shadow reports in instances where it does not agree with the government on specific matters dealt with in a particular report as part of its monitoring mandate” (South African Human Rights Commission 2012, p. 5).

Statutorily, the two bodies play complementary roles, and are required to liaise with one another in order to foster common policies and practices and to promote co-operation in the handling of complaints in cases of overlapping jurisdiction. However in reality the Commission on Gender Equality appears to play a subordinate role to the SAHRC; while it is charged specifically with monitoring gender discrimination, the overlapping mandate with SAHRC (which is also mandated to monitor discrimination on multiple grounds, including gender/sex) and the comparative institutional strength of SAHRC in relation to the CGE mean that in practice the CGE is overshadowed. South Africa also has a Commission for Employment Equity, which, among other responsibilities, advises the government on codes of good practice and the setting of sectoral numerical employment targets. Thus, responsibility for monitoring discrimination is spread across a number of agencies, with SARHRC evidently taking the lead role.

Cooperation between SARHRC and CGE appears to be advancing; it was reported in the SAHRC 2013 Annual Report that both organizations took part in the ICC National Human Rights Institutions’ (NHRI) Conference in Amman, which resulted in the development of a Memorandum of Understanding between the SAHRC and the Commission on Gender Equality, which is in the process of finalisation for implementation by both Commissions (SAHRC 2013, p. 20).

The CGE takes the more active role in terms of monitoring and reporting on CEDAW implementation. The 2009 State Party Report (actually the combined second, third and fourth periodic reports) was submitted by the Government with apparently little if any input from the CGE or SAHRC. CGE submitted a separate report which was highly critical of the country report on a number of grounds, including its failure to follow the prescribed format for CEDAW reporting, and more importantly its failure to address the concerns raised by the CEDAW committee upon the tabling of the first country report in 1998. In turn, the NGO Shadow Report was very critical of the performance both of the government and the CGE in monitoring and combating gender discrimination. CGE has assisted in the capacity strengthening of the national women’s machinery (the Department of Women, Children and People with Disabilities) to report on CEDAW implementation, by giving guidance to the ministerial delegation on the reporting process, and by holding a mock reporting session in preparation for their appearance at the CEDAW committee.

► In addition, South Africa has a National Gender Machinery, which is a set of formal institutions designed to institutionalize support for and to monitor and evaluate the promotion of gender equality at national and provincial levels, both inside and outside government and the state. They include the Ministry of Women, Children and People with Disabilities; departmental gender units or Gender Focal Points at national, provincial and local levels; relevant parliamentary and legislative portfolio committees and women’s caucuses. Other independent state and constitutional bodies intended to promote gender equality and secure the rights of women include the CGE; Public Service Commission; South African Human Rights Commission and the South African Law Commission. Numerous gender-based civil society organizations are also considered to be part of the National Gender Machinery (SAHRC 2012, p. 25-26).

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Instruments and indicators used to monitor and report (nationally and to international bodies) on sex discrimination and/or other types of discrimination

Like many other countries, South Africa faces challenges in developing a comprehensive approach to monitoring. According to the CEDAW NGO Shadow Report, “There is no monitoring by national gender machinery, or by government at a national scale, of the rate of enjoyment of and/or access to the rights protected under CEDAW. Likewise, no gendered data collection is undertaken by national statistical agencies ... through the national, community and household-level surveys. The only data disaggregated specifically by gender concerns access to education and disability” (South African Shadow Report, p. 19).

One of its key recommendations concerned strengthening the monitoring function of the CGE: “Monitoring and oversight bodies like the Commission for Gender Equality must be strengthened and must work with government and civil society to develop a common monitoring and evaluation framework with agreed targets, indicators and timelines to facilitate collective and shared responsibility for monitoring progress towards national goals and undertakings” (South African Shadow Report, p. 8).

However it appears that both SAHRC and the Commission for Gender Equality are moving forward in terms of development more comprehensive monitoring instruments. The Commission for Gender Equality has developed a “Gender Barometer” which is a web-based tool to assist in annual monitoring and evaluations of progress towards gender equality and gender mainstreaming by government departments and other bodies including public authorities in South Africa, although some challenges have been noted in promoting its uptake by government departments” (Commission for Gender Equality 2012).

SAHRC is also independently developing tools for monitoring discrimination, including sex discrimination. Specifically, it has adopted a document called the Human Rights Matrix which maps the various human rights obligations of South Africa at the international, regional and domestic levels. In addition, SAHRC is reportedly developing an Economic and Social Rights Matrix, “to serve as a monitoring tool for advancing the realisation of human rights” under its Research, Monitoring and Reporting programme.

SAHRC’s 2012 Annual Report notes that “The Commission ... will start producing a thematic equality report on an annual basis. ... [PEPUDA] requires the SAHRC to assess and report on the extent to which unfair discrimination on the grounds of race, gender and disability persists in the Republic, the effects thereof and recommendations on how best to address the problems” (SAHRC 2013, p. 4). SAHRC’s 2012 Equality Report is the first attempt to produce such a report in fulfillment of this requirement.¹⁹ Its Preface notes that “As part of its constitutional mandate to promote respect for human rights, to promote protection for human rights and to monitor the observance of human rights in the country, the Commission is obligated ... to provide a report to Parliament, providing an assessment on the state of equality in the country. In compiling this report, the Commission is enjoined to consult with the Commission for Gender Equality (CGE), particularly given that one of the major aspects the Commission has to report on is the state of gender equality in the country” (SAHRC 2012, p. 6).

The report consists of “commentaries” on four dimensions of discrimination: racial discrimination, gender equality, discrimination on the grounds of disability, and LGBT rights, some of which were compiled by outside experts. The chapter on gender equality focuses on gender equity in the workplace; it was prepared jointly by the research departments of SAHRC and CGE (SAHRC 2012, p. 22). While most of the chapters contain status reports, the chapter on workplace gender equity is based on the CGE’s assessment in 2010-11 of private and public-sector employer compliance with the requirements of the *Employment Equity Act* (1998), based on responses to questionnaires as well as testimony at public hearings convened by the CGE.

¹⁹The Preface notes that the current report is actually a “proactive” effort on the part of SAHRC since the statutory requirement for producing an annual Equality Report only comes into play when the “the necessary regulations have been put into place.” As such, it is noted that “the Commission wishes to emphasize that the content does not represent positions of the South African Human Rights Commission, but views which the Commission believes should inform public discourse on human rights” (SAHRC 2012, p. 7).

Role of non-governmental actors

Civil society in South Africa is very active in monitoring discrimination despite being constrained by limited tools and resources to do so comprehensively. This is exemplified by the shadow report to CEDAW, which was compiled by three lead NGOs with participation and contributions from over thirty other women's rights and human rights organizations. Overall, South African NGOs appear to be very open in their critical evaluation of the government and NHRIs' roles in monitoring and combating discrimination, particularly towards the CGE.

There is little information readily available about the formal working relationship between South African NGOs and SAHRC or CGE; according to one NGO source "The relationship between the SAHRC and civil society is unstructured."²⁰ Nevertheless the same source notes that the SAHRC has worked closely with NGO and academic institutions on several projects, and "openness to NGO input has undoubtedly strengthened its capacity to conduct research and advocacy on issues such as xenophobia." Both NGO sources and SAHRC annual reports indicate a number of areas of cooperation; for example the 2012 SAHRC annual report makes note of significant civil society involvement in public hearings held by SAHRC on access to water and sanitation (in the context of monitoring economic, social and cultural rights), collaboration with NGOs in investigating human rights abuses against foreign nationals being held in detention, and SAHRC training of numerous NGOs on access to information.

3.5.3 Particularly successful or significant programs, practices and achievements

The Commission on Gender Equality has strong research capacity and has been particularly effective in monitoring and assessment on the implementation of and compliance with the provisions of the Employment Equity Act (EEA) by employers in the public and private sectors in South Africa. Their report, which was featured in the SAHRC Equality Report 2012, made a very strong case regarding the lack of progress in implementing equity legislation, noting that "despite the general appearance of compliance and a façade of relevant internal policies, programmes, processes and practices to promote gender equity in the workplace, practical outcomes largely reveal a reality of continued neglect of gender equity as a constitutional, policy and legislative obligation." The report advocated stronger leadership from the CGE and government and stronger sanctions for noncompliance (South African Human Rights Commission 2012, p. 22).

The role of the SAHRC in organizing and hosting public consultations ("indaba") through its provincial branch offices on priority human rights and discrimination issues is very significant in terms of mobilizing public and grassroots NGO awareness and participation, and in channelling concerns and recommendations to government through the attendance of representatives from the national and local levels. For example, a series of consultations in 2012-13 in all nine provinces on violations of the right to water and sanitation was part of a year-long campaign which culminated in a national conference in order to engage relevant government departments and hold them to account. The SAHRC monthly online newsletter publicizes and documents these events in vivid detail.²¹

3.5.4 Strengths and weaknesses of monitoring systems, lessons learned

A Parliamentary review conducted in 2007 assessed and compared the functionality of the CGE and SAHRC. The conclusions on the Commission for Gender Equality were quite negative, noting that the CGE had failed to adequately fulfil its mandate to monitor gender discrimination, had not coordinated its work with the SAHRC where their mandates overlap, had not collaborated sufficiently with civil society, and had not adequately fulfilled its reporting mandate with respect to CEDAW. In its defense, the CGE seems to have been relegated from the beginning to a subordinate role, which might reflect the relative prominence of other types of discrimination in South Africa in comparison with sex discrimination, or might be a product of the fragmentation of responsibility for gender between the two agencies and the relatively stronger capacity of the SAHRC.

²⁰Electoral Institute for Sustainable Democracy in Africa. <http://www.eisa.org.za/WEP/souagency2.htm>.

²¹See "Right to Water and Sanitation: Reflecting on Provincial Hearings" and "Time to Hold Government Accountable." <http://www.sahrc.org.za/home/21/files/Pfanelo%20March.pdf>.

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The Human Rights Commission, on the contrary, was found to have “a firm grasp of the social, economic and political context within which they were required to operate and displayed an intimate knowledge of the legal mandate under which they were required to achieve their goals ... the Commission has built up a reputation amongst human rights activists and members of the public as an active and passionate defender of human rights.” The SAHRC was found to be a fully-functioning NHRI, including playing the key role in monitoring South Africa’s international human rights and anti-discrimination commitments. One of five outcome-oriented goals adopted by the SAHRC for the period 2010-2013 was to “Improve the quality of monitoring, evaluation of and reporting on the realisation of human rights.” Its monitoring function is expected to strengthen with the uptake of the new instruments which have been recently introduced. The close working links with NGOs should also continue to reinforce its monitoring capabilities.

In conclusion, the Parliamentary Review concluded that the multi-agency model is not a workable model for NHRI functionality, and recommended the revision of the relevant legislation and formation of a single NHRI responsible for all aspects of discrimination. This proposal appears to have strong support among the NGO community in South Africa.

SWEDEN

3.6.1 Constitutional and legal guarantees of non-discrimination

On 1 January 2009, following two years of consultation, a new Discrimination Act 2008 entered into force in Sweden.²² The new Act combats discrimination on grounds of: sex, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation, and age. Age and transgender identity or expression are two new grounds not covered in previous legislation. It applies to virtually every area of society: working life; education; labour market policy activities and employment services; starting or running a business; professional recognition; membership in certain organizations; goods, services and housing; meetings and public events; health and medical care; social services; social insurance; unemployment insurance; student financial support; national military service and civilian service; and public employment.

This is a much broader scope than contained in previous legislation. For example, the new Act also extends the protection in working life to cover all aspects of the employer-employee relationship and all aspects of the recruiting process including inquiries from a potential job seeker about a job. The prohibition of discrimination on the ground of disability is extended to in the area of health, medical care and social services. There are also anti-discrimination provisions in criminal law, including unlawful discrimination by businesses on the grounds of ethnicity, religion and sexual orientation with regard to the provision of goods and services.

The *Discrimination Act* 2008 created a new agency, the Equality Ombudsman, to monitor compliance with the Act. This merged into one agency the existing four anti-discrimination ombudsmen: the Equal Opportunities Ombudsman (which dealt with sex-based discrimination), the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination because of Sexual Orientation.

²²The new act displaced seven separate anti-discrimination laws: the Equal Opportunities Act; Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or Other Religious Faith; Prohibition of Discrimination in Working Life on Grounds of Disability Act; Prohibition of Discrimination in Working Life on Grounds of Sexual Orientation Act; the Equal Treatment of Students at Universities Act; Prohibition of Discrimination Act; Act Prohibiting Discriminatory and Other Degrading Treatment of Children and School Students.

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3.6.2 National Discrimination Monitoring System

Institutional framework, organizational structure, main actors

► The Equality Ombudsman, in contrast to most other such agencies, is considered a Government institution and falls under the jurisdiction of the Ministry of Labour. Its remit is restricted to issues of discrimination and equality rights. It is able to accept complaints regarding the private sector, its orders are enforceable and it has standing before the courts. The Equality Ombudsman has the power to investigate complaints of discrimination and to represent persons who have been subjected to discrimination by settlement or, ultimately, in court free of charge. In addition, it monitors how employers, higher education institutions and schools live up to the provisions of the *Discrimination Act* requiring active measures against discrimination. The Ombudsman is required to give advice, independent assistance and support to individuals and institutions, engage in education, information and opinion-shaping efforts to combat discrimination, and propose to the Government legal and other measures that may be of use to combat discrimination and monitor international developments. Independent surveys and reports are important parts of this work (European Network of Legal Experts 2012).

The Equality Ombudsman does not have a separate division or office responsible for sex discrimination. Nor does there appear to be an institutionalized strategy for gender mainstreaming or treating gender as a cross-cutting issue.

At this time, it has a “B” accreditation with the ICC, meaning that it does not meet all the requirements of the Paris Principles for NHRIs. This is because its mandate is restricted to equality matters, accountable to Government rather than Parliament, and because of transparency issues around appointment and dismissal procedures among senior leadership.²³ The pressure for Sweden to institute a fully-fledged and accredited NHRI is coming from many internal and external sources apart from the ICC; two government-appointed inquiries have concluded that a new NHRI should be established with a broader mandate, and the CERD response to Sweden’s recent country report reiterated the same point.

► The Minister for Gender Equality is responsible for gender equality issues in the Government.²⁴ The Swedish government website page on gender equality makes it clear that the responsibility for gender equality is divided between the Minister, who is “ultimately responsible for gender equality issues,” including overseeing the policy of gender mainstreaming, and the Equality Ombudsman which “is a government agency that fights discrimination and protects equal rights and opportunities for everyone. ... The Equality Ombudsman primarily oversees compliance within the jurisdiction of the Discrimination Act.” This distinction seems to imply that there is little overlap between the work of the two organizations.

The Equality Ombudsman recently received additional funding in order to be able to further intensify its monitoring and promotional activities relating to the positive obligations placed upon employers and education providers to promote equal rights and opportunities – commonly referred to as “active measures”. The additional budget allocation of 9 000 000 SEK (approx. 1 000 000 EUR) over two years is specifically directed at measures and activities relating to the obligation of employers to carry out pay surveys aimed at identifying pay differences between men and women, as well as the obligation of universities and other academic institutions to conduct goal oriented work to actively promote equal rights and opportunities inter alia through the adoption of equal treatment plans. As part of its ongoing activities the Ombudsman has selected 470 large employers (with an estimated total of 600 000 employees) for a review of their compliance with the obligation to adopt action plans for equal pay. This review is a follow-up to a similar project carried out by the previously existing Swedish Equal Opportunities Ombudsman which focused on gender equality and sex discrimination.

Source: Equinet European Network of Equality Bodies. E-Newsletter No. 28. http://www.equine-teurope.org/IMG/pdf/_word_newsletter_april-may_no_28_.pdf

²³See ICC Sub-Committee on Accreditation Report – May 2011 ([http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20(with%20annexes).pdf)).

²⁴Previously, the responsible minister headed a separate Ministry of Integration and Gender Equality, but this ministry was dissolved in 2010 and the responsibility for gender equality is now handled by the Ministry of Education and Research. See “Gender equality: The Swedish approach to fairness.” <http://www.sweden.se/eng/home/society/equality/facts/gender-equality-in-sweden/>.

Instruments and indicators used to monitor and report (nationally and to international bodies) on sex discrimination and/or other types of discrimination

Sweden does not currently have a comprehensive framework for monitoring discrimination on all prohibited grounds, which is largely due to privacy issues with their data system. Although the government statistical body collects large amounts of information, there is no system for analyzing it in terms of the various discrimination grounds, and there are restrictions on collection of certain types of personal data, such as race, that might reflect the situation of protected groups. This has been recognized as a serious shortcoming and efforts are being made to address the issue.

Notably, in 2011 as part of its implementation of the new Discrimination Act, the Government assigned the Equality Ombudsman to conduct a feasibility study on “methods that could be used in Sweden to identify the living conditions of the population, ... in order to enable separate reporting with regard to the grounds of discrimination in the Discrimination Act that are not currently reported in official statistics” (ECRI 2012, p. 46). The resulting study found that equality statistics are available only in relation to equality between women and men, and that there is a lack of equality statistics in relation to the other discrimination grounds.

This lack of a comprehensive knowledge-base was identified as a major barrier to good policy-making. The Ombudsman’s study concluded that “There is a need to develop a comprehensive national strategy on equality data and equality statistics for the sake of formulating and following-up the equality policy” (Equality Ombudsman Sweden, p. 3(9)). This opinion has been echoed by other international bodies such as the Advisory Committee established under the Council of Europe’s Framework Convention for the Protection of National Minorities and the UN Committee which monitors the Convention on the Elimination of Race Discrimination (CERD).²⁵

This being said, the Equality Ombudsman does compile complaints data and conducts targeted monitoring studies on how private actors live up to the provisions of the Discrimination Act. It publishes studies and surveys based on this data in order to fulfill its obligation to engage in education, information and opinion-shaping efforts to combat discrimination.

In addition, the Equality Ombudsman has been particularly active in monitoring sex discrimination in employment through its mandatory reporting system. All employers with more than 25 employees are required to collect information and develop a gender action plan to address working conditions, sexual harassment, recruitment, and pay gaps. This program recently received a boost in the form of additional funding to further intensify its monitoring and promotional activities (see Box) – which will also have the effect of generating a new and more robust pool of monitoring data.

Role of non-governmental actors

There is a very active and well-developed NGO network focused on discrimination in Sweden. Some examples include the Swedish Network of Anti-Discrimination Bureaus and the Swedish Disability Federation. The CEDAW Shadow Report of 2007 was prepared by the Swedish CEDAW-Network and the Swedish Women’s Lobby, which made possible wide representation and involvement possible by a broad spectrum of NGOs. Likewise, the recent shadow report to CERD involved at least fifty non-governmental organizations, however, as one of the committee members noted: “civil society organizations had raised a number of serious issues, which would not have been the case had the relationship between the Government and civil society been truly harmonious and one of cooperation.”²⁶

²⁵ See *Rights, Equality and Diversity (RED) European Network* <http://www.red-network.eu/?i=red-network.en.countries&id=17&view=racismAtlas&s=STATISTI CS#stands-nav>.

²⁶ See *Committee On Elimination Of Racial Discrimination Considers Report Of Sweden* [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/F8741C2591989184C1257BD000471AE8?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/F8741C2591989184C1257BD000471AE8?OpenDocument).

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The Equality Ombudsman has been very successful at channelling its awareness raising and outreach activities into a greater number of successful complaints by working closely with NGOs and vulnerable groups. "This has included training and dialogue activities, and the distribution of information to representatives of target groups such as Roma in order for them to function as bearers of knowledge and focal points within their groups. These representatives provide necessary information to individuals and channel cases to the Ombudsman's office. These efforts have produced positive results which can be seen in terms of an increase in the number of complaints from targeted groups and an improvement in the quality of those complaints. This has resulted in the Equality Ombudsman being able to successfully take cases to court" (Equinet 2011, p. 11).

The literature indicates that Swedish NGOs themselves do not play a large role in litigation with regards to discrimination. Although non-profit organizations have the legal standing to litigate discrimination cases, they often lack the necessary resources to actually do so. Social partners such as trade unions take an active role in combating workplace-based discrimination and raising awareness of discrimination at a societal level. Anti-discrimination plays a large role in union training and information programs.²⁷ Many complaints are dealt with in the workplace itself, and in these cases the union supports the worker making the complaint. When they do go to court, the usual practice appears to be for the complainant to turn directly to the Equality Ombudsman for support (Simonson n.d., p. 5).

3.6.3 Particularly successful or significant programs, practices and achievements

Sweden's reporting system for sex discrimination in employment has been highlighted as a particularly successful program. According to an analysis by OSCE, "These plans have proven more effective than complaints structures in raising awareness and tackling pay gaps. Companies are not obliged to submit their gender action plans to the NHRI, but the NHRI monitors some hundred plans per year. A helpline has been established to assist companies with preparing the gender action plans" (OSCE 2011, p. 16). The additional resources recently earmarked to expand this system (see Box above) will strengthen the Ombudsman's monitoring of this crucial aspect of discrimination.

3.6.4 Strengths and weaknesses, lessons learned

Overall, Sweden is widely considered to be one of the most gender-equal countries in the world with a very strong culture of equality.²⁸ While many factors are at play, the very comprehensive anti-discrimination regime and very high level of awareness of must be considered an important factor in promoting women's equality in that country. Nevertheless, Sweden appears still to be negotiating the transition from separate anti-discrimination legislation and ombudsman to a more comprehensive system that tackles multiple forms of discrimination simultaneously. As well, the government-appointed rights ombudsman model adopted by Sweden has some limitations for which it has been criticized both internally and internationally.

Although the lack of a comprehensive data framework is a serious impediment to the effectiveness of the monitoring system, gender equality is the one area where data is collected consistently, greatly facilitating the monitoring of sex discrimination. This is reinforced by the mandatory reporting system for workplace described above.

²⁷Trade union coverage is very high in Sweden (over 70 percent of workers) and there is a very high level of awareness among trade unions regarding the anti-discrimination laws and EU equality directives. See "Why Swedes are aware of integration issues: What is it that the trade unions and employers in Sweden do to make them top a ranking of awareness of integration issues made by the European Union Agency for Fundamental Rights (FRA)? <http://www.nordiclabourjournal.org/i-fokus/in-focus-2010/theme-a-more-social-working-life/article.2010-12-04.0860066236>.

²⁸For example, the official government website notes that, in addition to its strong anti-discrimination legislation, "Swedish culture can often be as effective as the law in preventing discrimination. Sexist or racist jokes, for example, are not tolerated. As a nation, Sweden prides itself on equality, so even the slightest suggestion that a person is less valuable, or that a woman might not be able to perform a certain kind of work, is considered very offensive to many people." <http://www.sweden.se/eng/Home/Work/Labor-market/Employee-rights/>.

3.7 Summary of conclusions from case studies

The following is a section-by-section summary of the key observations emanating from the case studies. What is obvious is that, despite the multiplicity of organizational forms, legislative contexts, mandates, working relationships, programming priorities, etc. there is a core set of issues that must be addressed to ensure the proper functioning of the discrimination monitoring and prevention system.

3.7.1 Constitutional and legal guarantees of non-discrimination

- A number of countries have merged previously separate authorities for sex discrimination with those for other grounds, and have developed comprehensive legislation. On the whole, women's rights advocates support this, but worry about sex discrimination getting lost or receiving inadequate attention. This concern was echoed in the CEDAW Concluding Observations re Sweden: "While welcoming the recent initiative of the Government to merge the current anti-discrimination legislation into one single Anti-Discrimination Act that will cover seven grounds of discrimination, including discrimination on the grounds of sex,... the Committee is concerned that the issue of discrimination against women, including its cross-cutting nature, might lose some of its visibility and therefore receive less attention."
- The general trend appears to be towards one equal rights law covering all grounds of discrimination rather than separate laws, and a single NHRI or Ombudsman as opposed to specialized institutions covered separate grounds. In either case, the more detail in the legislation on the specific types of discrimination that fall under each ground (as in the South African legislation), the easier it is to identify, monitor and remedy discrimination in practice.
- Legislation and systems for addressing discrimination are to a great extent determined by the national context. Countries with federal systems cannot depend solely on the National HRI when so many potential sites of discrimination fall at the provincial/state/local level. This study did not address these other levels but clearly the relationship between the different levels is crucial to ensuring full coverage for all citizens.
- Anti-discrimination legislation should conform with international norms and not be restricted by national political or cultural concerns.
- In addressing discrimination, NHRIs have to strike a balance between collaborating with government and maintaining a critical distance. It is especially important to be able to resist changing political agendas when government leadership changes.

3.7.2 National Discrimination Monitoring System

Institutional framework, organizational structure, main actors

The case studies reveal three general structural models for addressing gender discrimination:

1. Full mainstreaming with no dedicated department or unit focused on gender (e.g. Sweden, Poland, Canada);
2. Internal structural entity such as a gender unit, gender focal point, or sex discrimination commissioner (e.g. Australia);
3. Separate ombudsperson or commission for gender equality (e.g. South Africa, and formerly Sweden and Australia).

As noted in the case study findings, and reflecting a more general debate amongst gender equality/women's rights defenders, there is ongoing search for the ideal balance of the need for both gender mainstreaming in organizations and the

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existence of bodies or programmes that focus specifically on sex discrimination and/or women's rights. The consensus in the literature on NHRIs is that a dual or two-track approach is desirable, but that in practice more work needs to be done to strengthen the effectiveness of both approaches: "Gender mainstreaming ... on the one hand, ensures gender perspectives across all aspects of the work of an NHRI – from complaints handling to monitoring and promotional activities. However, experience at both the international and national levels indicates that without a dedicated focus on women's issues, in addition to mainstreaming, gender issues are at risk of being minimized or ignored" (Equitas 2008, p. 89).

The full mainstreaming approach exhibits the danger of sex discrimination being downplayed as other, perhaps more immediately pressing, types of discrimination take precedence. The cross-cutting nature of gender and sex discrimination can get lost in this model, unless the agency explicitly adopts a gender mainstreaming strategy (or unless the Ombudsman is a particular champion of gender equality). As noted in the OSCE Pilot Comparative Review: "For the many institutions that are struggling to manage pressing civil, political and economic issues, and with a large number of priorities, it is important to ensure that women's equality be sustained as an overarching and integrated objective for national human rights institutions" (OSCE 2011, p. 25). This can be achieved, at minimum, by implementing a gender mainstreaming strategy that highlights the cross-cutting nature of gender, and developing easy-to-use tools for gender analysis of all issues (such as Canada's Gender Integration Framework). Thus, many NHRIs (such as the Canadian Human Rights Commission) have developed gender mainstreaming policies and operational guidelines and tools to support their implementation.

The OSCE's *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality* recommends: "NHRIs should integrate a gender perspective in their programmes and policies, even if there is a specialized anti-discrimination or gender equality body in their country. International gender equality policies – such as the UN Fourth World Conference on Women: Platform for Action (Beijing, 1995) – recommend that governments and national mechanisms should promote mainstreaming of gender perspectives in all policies and programmes, so that an analysis is made of the effects on both women and men, before decisions are taken" (OSCE 2012, p. 26).

The second model (internal structural entity focused on gender equality or sex discrimination) seems to be the most effective at ensuring that gender discrimination is fully integrated into the overall monitoring system while receiving specialized attention as required. This is the model adopted by Australia.

The third model of dual agencies responsible for discrimination in general, and sex discrimination in particular, appears to be the least successful due to overlapping and unclear mandates and the likelihood of much stronger capacity in the agency with broader responsibility, especially if it also happens to be the "official" NHRI.

A study conducted by the Office of Democratic Institutions and Human Rights of the OSCE found that "the ODIHR survey did not reveal any particular organizational structure as being more effective than others in protecting women's rights and promoting gender equality." What was more important were the following features that positively impacted on their ability to address women's rights and gender equality (OSCE 2012a, p. 7):

- A broad mandate with specific reference to women's rights and gender equality (present in all the case studies, but weakest in Sweden);
- Ability to address the private sector (applies in most if not all of the case studies, although limited in the case of Canada);
- Institutionalised relationship with specialized national bodies (true to varying degrees in all the case studies, with Poland being the weakest);
- Adequate resource allocation, in particular when NHRIs were faced with additional responsibilities (again, Poland faces the most serious challenges in this respect).

Instruments and indicators used to monitor and report (nationally and to international bodies) on sex discrimination and/or other types of discrimination

- The monitoring function of NHRIs needs to be spelled out very clearly in the enabling legislation or in operational guidelines. It seems easy for this function to be subordinated to the case-handling function of these organizations.
- The monitoring function needs to be built around a comprehensive monitoring framework (such as that developed by Canada) and a rigorous and verifiable set of indicators and benchmarks using easily-accessible data sources.
- As noted in the case of Sweden, “Systemic strategies to prevent discrimination of women, such as legally prescribed Gender Action Plans for employers, have proven more effective than complaints structures in raising awareness and tackling gender-based discrimination” (OSCE 2011, p. 25) Such programmes are particularly effective when combined with strictly enforced reporting requirements (as seen when comparing the experience of Sweden with that of South Africa), which also provides situation-based data for discrimination monitoring.

Role of non-governmental actors

- Collaboration with non-governmental actors is one of the requirements of the Paris Principles. Most NHRIs seem to see it as part of their mandate as a matter of course.
- It cannot be expected that NHRIs and non-governmental actors will always be collaborators. Non-governmental actors can also serve as “watchdogs” both to government and to the NHRIs, providing critical evaluations of their performance. This is particularly evident in the Poland and South Africa cases although the relationship is more constructive in the former than in the latter.
- While in all the cases studied, non-governmental actors played some role in monitoring discrimination, it was hard to assess how strong those voices were, or how meaningful the collaboration was. The Polish Human Rights Defender was particularly credited for its collaboration with NGOs, including having NGO representatives serve as members of its advisory committees. This type of structure should be considered by all NHRIs.
- Public consultations are a very effective way of gathering information and at the same time building the visibility of NHRIs with civil society and the general public. The Australian example of the “listening tour” – focusing on reaching out to marginalized groups – was very effective in this regard.
- An appropriate area for civil society/NHRI collaboration is in monitoring the implementation of CEDAW and other conventions, particularly nations’ follow-up to the Concluding Observations.

4. INTERNATIONAL GOOD PRACTICES AND LESSONS LEARNED

4.1 MANDATE AND JURISDICTION

4.2 ORGANIZATIONAL STRUCTURE

4.3 MONITORING

4.3.1 ASSESSING CAPACITY FOR MONITORING

4.3.2 SPECIALIZED MONITORING REPORTS

4.3.3 MONITORING INDICATORS

4.3.4 UNDERREPORTING OF DISCRIMINATION

4.4 INTERSECTIONAL DISCRIMINATION

4.5 ACCESSIBILITY OF NHRI SERVICES AND COMPLAINTS PROCEDURES

4.6 PARTNERSHIPS WITH NGOS, CIVIL SOCIETY AND MEDIA

4.7 INFORMATION AND PUBLICATIONS

The foregoing case studies as well as a review of the broader primary and secondary literature on the role of NHRIs in monitoring, preventing and responding to discrimination based on sex and other grounds have yielded a vast array of documented good practices. It is clear that much learning has taken place and that there have been numerous efforts to compile and disseminate these lessons. This section attempts to bring together and categorize the key lessons and documented good practices directly relevant for this study; however given the complexity and wide range of the literature, it must be recognized that this effort is far from complete. [A living database of good practices would be a most welcome and useful addition to the literature on NHRIs and gender discrimination.](#)

4.1 Mandate and jurisdiction

One of the key lessons reiterated in international studies is the importance of a broad, comprehensive mandate for NHRIs in order to play the fullest possible role in monitoring and combating discrimination. The point is made repeatedly that the mandate of NHRIs should cover all grounds of discrimination, and they should have a broad range of instruments at their disposal.

According to a noted Canadian expert, “A human rights ombudsman should be given wide jurisdiction over a spectrum of human rights and government actors. Such jurisdiction should include own-motion investigatory powers, inspection powers, and possibly deputy ombudsmen to focus on special human rights concerns such as children’s rights, women’s rights, and the protection of ethnic minorities.” In this view, investigation and monitoring are seen as part of the core mandate” (Rief 2011, p. 910).

However, as the case studies illustrate, the expanded mandates need to be supported with adequate financial and human resources in order for NHRIs to maintain their effectiveness.

Summary of strengths and weaknesses of discrimination monitoring systems

While strengths tend to be specific to the country and NHRI in question, some recurring factors were:

- Strong and proactive leadership;
- Clear and comprehensive mandate;
- Coherent legislation;
- Good data systems including national statistics and internally-generated data;
- Supportive national context for anti-discrimination.

Most common weaknesses:

- Lack of comprehensive data frameworks;
- Weak monitoring function in comparison to other aspects of the mandate;
- Lack of mechanism or structure to focus on sex discrimination;
- Underfunding and too few staff to fulfill all the functions included in the mandate, particularly discrimination monitoring.

4.2 Organizational structure

On the issue of whether there should be one NHRI covering all grounds of discrimination, or separate structures dealing with, for example, sex discrimination, ethnic minorities, or people with disabilities, the trend appears to be towards a single agency, for economic reasons as well as coherence. This has resulted in the elimination of a number of institutions focused explicitly on gender equality, as in the Australian and Swedish cases. While such moves have been opposed by many gender equality activists and NGOs, this appears to be an irresistible trend which is supported in the literature (for example, see Carver, 2011).

INTERNATIONAL GOOD PRACTICES AND LESSONS LEARNED

An OSCE survey found that 46% of the NHRIs surveyed reported another specialized body dealing with antidiscrimination, equality rights, children's rights and/or women's rights and that where this was the case, most of these NHRIs refer gender-related matters to the specialized institution(s). As a result, "NHRIs are less engaged with women's rights and gender equality if other institutions have been given these responsibilities" (OSCE 2012a, p. 25). Or, somewhat more pointedly: "It is important that if this approach is taken, the separate structures do not become ghettos or that other units are discharged of the general responsibility for women's rights issues" (Equitas 2008, p. 92).

At the same time, many comprehensive NHRIs also have specialized departments, units, commissioners or centres focused on gender equality or women's rights. The specific functions and powers of these units vary considerably. An example of NHRI with a powerful and effective mandate is found in Philippines:

The Philippines Human Rights Commission's Women's Rights Program Centre "is a special unit that investigates human rights violations against women and initiates legal action or provides assistance in cases involving discrimination, nonrecognition, women's rights as human rights, multiple burdens, unequal access to land, violence against women, politics and governance, justice and peace and order, employment, health and education" (Equitas 2008, p. 92).

Where all discrimination grounds are covered by a single agency, the key success factors are the retention of an explicit (as opposed to implicit or assumed) mandate for gender equality and a dedicated and well-resourced gender unit, department, committee, or focal point which is specifically responsible for the sex discrimination aspect of the mandate. In the case of Australia, for example, the Sex Discrimination Commissioner is a high-profile individual with a clear mandate; this structural arrangement has been very effective in keeping sex discrimination issues at the forefront of anti-discrimination work of the Australian Human Rights Commission.

4.3 Monitoring

Because monitoring of human rights issues, including discrimination, is considered to be part of the core protection mandate of NHRIs, there is a large amount of documentation of good practices in this area, covered basic principles of monitoring, successful methodologies and innovative practices.

One point that is made repeatedly, and confirmed by the case studies, is that the ability of NHRIs to carry out the full scope of their monitoring mandate depends greatly on the human and financial resources available to it, as well as their capacity to utilize these resources effectively and efficiently.

4.3.1 Assessing capacity for monitoring

The *UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions* (UNDP/OHCHR 2010, p. 223) gives the following Checklist for assessing the capacity of NHRIs to monitor and report on human rights situations, and recommends that if the answer to these questions is in the negative, the NHRI should review its training needs and the adequacy of staffing:

- Has the NHRI submitted annual and special reports on Commission's activities and human rights situations, including on thematic issues and national priority issues? Are there reports on the situation of places of detention?

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- Does the leadership have the capacity to advocate for a common, acceptable (to the government) monitoring evaluation and reporting framework for the NHRI on human rights monitoring?
- Do staff have the capacity to monitor, evaluate and report, based on universal human rights standards?
- Does the NHRI staff have the capacity to engage other stakeholders in identifying appropriate human right indicators for monitoring and reporting?
- Does the NHRI staff have the capacity to understand and utilize highest human rights standards into monitoring and reporting?

4.3.2 Specialized monitoring reports

The literature cites numerous examples of specialized research by NHRIs on topics related to gender discrimination. Many examples were seen in the case studies. Often these are initiated in response to the frequency of complaints on a particular topic. For example:

- The Human Rights Ombudsperson Institution of Bosnia and Herzegovina decided to highlight employment discrimination against women, especially pregnant women, leading to publication of a Special Report on Violation of Human Right to Remuneration at the Time of Maternity Leave in Joint Institutions of Bosnia and Herzegovina in 2009 (OSCE 2012a, p. 74).

- The South African Human Rights Commission nationwide consultations on water and sanitation were prompted by several complaints received from different parts of the country concerning violations of ESC rights.

4.3.3 Monitoring indicators

A number of NHRIs have developed systematic indicators for tracking equality, including women's equality, and identifying evidence of discrimination. For example:

- Great Britain's Equality and Human Rights Commission (EHRC) has adopted a Measurement Framework which tracks indicators for Equality, Human Rights, and Good Relations. The data are disaggregated by age, disability, ethnicity, gender, religion, sexual orientation, transgender, social class, etc. A number of briefing reports and data sheets have already been published based on these data.²⁹ This framework formed the basis for the 2010 summary report "How Fair is Britain?" which was presented to Parliament. They also monitor seven human rights, using a Human Rights Measurement Framework based on EU human rights indicators, and on this basis published a Human Rights Review in 2012 (however, they acknowledge that data availability is a major challenge).

- The Canadian Human Rights Commission has developed a *Framework for Documenting Equality Rights*, which is a compendium of indicators using two main components: human rights grounds (sex, race, age, etc.), and social and economic dimensions (economic well-being, education, employment, health, housing, justice and safety, political engagement and

²⁹See <http://www.equalityhumanrights.com/key-projects/our-measurement-framework/-briefing-papers-and-data/>; for the full 500-page *How Fair is Britain?* report, see <http://www.equalityhumanrights.com/key-projects/how-fair-is-britain/full-report-and-evidence-downloads/>.

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social inclusion). In addition, where possible data on all grounds are to be disaggregated by sex in order to track any gender differentiation within groups. Across all the dimensions, one of the indicators is “Discrimination” – see Section 3.3.2 above for more details on how this indicator is defined and documented.

- The OHCHR has developed a comprehensive guidance document on human rights indicators – *Human Rights Indicators: A Guide to Measurement and Implementation (2012)* – which includes extensive discussion and very detailed guidance on identifying, compiling and analyzing indicators for discrimination. Even where the state statistical system is not adequate to provide all the needed data, the OHCHR guide notes that, as a first step, “To capture the norm of non-discrimination and equality in the selection of structural, process and outcome indicators, a starting point is to seek disaggregated data by prohibited grounds of discrimination, such as sex, disability, ethnicity, religion, language, social or regional affiliation” (OHCHR 2012, p. 39).

4.3.4 Underreporting of discrimination

One common source of monitoring data on discrimination comes from documentation of complaints received by NHRIs. However, the literature indicates that underreporting of discrimination is a common issue faced by NHRIs, resulting from a number of factors, including the fact that official data systems often do not have adequate capacity to capture systemic discrimination through the compilation of individual cases. More fundamentally, many victims do not report experiences of discrimination.

There is an excellent analysis of this phenomenon in Equinet’s 2012 Annual Report, which notes that “The reasons for this are numerous. They include fear of victimisation, lack of knowledge, and a sense that nothing will change. It is especially important for equality bodies to adequately respond to this challenge as they should be the first port of call for victims of discrimination” (Equinet 2012, p.4). Equinet has recently published a resource book on addressing under-reporting through enhanced communication strategies (Equinet 2012b).

The FRA European Union Minorities and Discrimination Survey (EU-MIDIS), the first EU-wide survey of immigrant and ethnic minority groups’ experiences of discrimination and victimisation in everyday life, sought reasons behind the underreporting of rights violations. Among the central conclusions of the 2010 report were that respondents simply did not know where to report, or how to go about it:

- Four fifths (80 %) of all respondents (23,500 across the EU) could not think of a single organisation that could offer support to victims of discrimination – be it government, non-government or an equality body;
- When asked about the specific equality body of the country in question, nearly two thirds (60 %) had never heard of it;
- More than one third (36 %) of those who were discriminated against did not submit a complaint because they did not know how or where to do so;
- Over one fifth (21 %) of victims of discrimination did not report either because they considered the process inconvenient, bureaucratic or too time-consuming (FRA 2012a, p. 17).

As well, it is important to note that many victims of discrimination are simply not aware that they been discriminated against, because they are not familiar with – or have not been made aware of – anti-discrimination laws and regulations. Similarly, many perpetrators are not aware that their behaviour is discriminatory or that these acts are against the law.

4.4 Intersectional discrimination

Experience has shown that gender-based discrimination very often does not occur in isolation, but cuts across other discrimination grounds e.g. age, sexual orientation, national origin, disability, etc. Therefore the concept of intersectionality has come to enrich the approach of many NHRIs in monitoring discrimination.

INTERNATIONAL GOOD PRACTICES AND LESSONS LEARNED

Documented good practices include:

- The Canadian Human Rights Commission's Gender Integration Framework notes: "Intersectionality is integral to the Commission's approach to gender integration. When dealing with issues based on sex, other intersecting grounds (such as disability, race, ethnic origin and family status) should be factored into the analysis." It further recognizes that intersectionality can actually compound the effects of other types of discrimination, giving them greater impact than discrimination based on a single ground (Canadian Human Rights Commission n.d., p. 5-6).
- A recent report from the Korean Human Rights Commission uses the concept of intersectionality in dealing with violence against women with disabilities and migrant women ("marriage migrants"): "In 2011, the Korean Commission received a total of 7,351 complaints. Among those complaints 900 cases were dealt with in 'Discrimination Remedy Commission' ... discrimination based solely on gender consisted only of 2%. On the other hand, discrimination against disabled person and migrants are increasing. This implies that the issue in women's rights should expand from preventing sexual harassment or guaranteeing gender equality to address women with more vulnerable position; women with disabilities and marriage migrant women, namely the hidden sisters" ("Hidden Sisters" 2012).
- The EU Agency for Fundamental Rights (FRA) has undertaken a project examining multiple discrimination (discrimination based on multiple prohibited grounds) in health care, and among other activities has published a fact sheet to increase awareness of the issue ("Inequalities and Multiple Discrimination in Healthcare"). The fact sheet highlights among other issues discrimination based on a combination of sex and disability, focusing on the experience for women with physical or intellectual disabilities in healthcare systems (FRA 2012 b).
- A specific example of how intersectionality can compound discrimination against women occurred in Canada, where arguments citing the "traditional practice" of a cultural community (in this case, First Nations) could be used to justify discrimination against women. To address this issue, the Canadian Human Rights Act was amended to give the CHRC added clout to address gender discrimination against First Nations women and women of other minority groups (CHRC n.d., p. 18). This approach can apply to any ethnic group, religious group, or cultural tradition which is invoked to justify discrimination against women.

4.5 Accessibility of NHRI services and complaints procedures

Many NHRIs have noted that their anti-discrimination mandate is hampered by a shortage of complaints, particularly from women, which they attribute not to a lack of discrimination, but to barriers to reporting. This is particularly relevant for women who have experienced discrimination, due to various possible gender-specific barriers to reporting or lodging complaints – for example, women's relative time poverty due to their multiple work and family roles. As well, it has been found that having to travel long distances to obtain information or legal help or to lodge complaints is a disincentive to further action, as is the cost of seeking help. Therefore, physical accessibility of facilities, as well as decentralization of services, low or no fees, collaboration with NGOs and other civil society organizations (such as trade unions), and local outreach or collaboration with local government are all helpful strategies to increase accessibility.

INTERNATIONAL GOOD PRACTICES AND LESSONS LEARNED

Good examples of approaches to increasing accessibility include: opening regional representative offices, enhanced internet-based procedures and information, expanding the opening hours of NHRI offices to include evenings and weekends, expanding the resources for outreach.

- Bulgaria: The Commission for Protection against Discrimination has regional offices that provide information to potential complainants about rights and procedures and reinforce awareness-raising initiatives.
- Estonia: The Commissioner and the Chancellor of Justice have made the submission of an application as easy as possible. Both accept applications in informal format, by phone, electronic mail and, in the case of the Chancellor, even through the homepage. They both also accept applications from individuals wishing to remain anonymous.
- Hungary: The Equal Treatment Authority established a network of 20 anti-discrimination advisers offering services and receiving complaints in each county and in the capital city.

The complaint procedure before the Equal Treatment Authority in Hungary is free of charge and very rapid (45 to 75 days), taking into account the particular needs of clients. For example, travelling to the nearest city or the capital city would be challenging for those who are vulnerable or economically disadvantaged. Therefore, in such cases, hearings are held at the complainant's residence (Milieu 2011, p. 60).

4.6 Partnerships with NGOs, civil society and media

Partnerships with non-governmental bodies and civil society organizations facilitate the work of NHRIs and greatly strengthen their capacity to monitor and combat discrimination. Because of their understanding of local human rights issues at the grassroots and policy levels, NGO partnerships can be invaluable in identifying key issues and establishing programming priorities, as well as in implementation and monitoring. Grassroots NGOs have access to broad networks, which means they can also encourage community level support for the work of NHRIs and information-sharing and monitoring of human rights situations on the ground (Equitas 2008, p. 99). These partnerships can also be with the private sector and with media. There are many examples in the literature of good practices in this area, including:

- The Danish Institute for Human Rights established a network of NGOs that provides additional support and advice on the legal framework. It provides, free of charge, courses on anti-discrimination law and means of redress, cooperates with NGOs in developing a comprehensive complaints guide and cooperates with municipal citizen advice centres and trade unions (FRA 2012a).
- The Equality and Human Rights Commission (UK) and the Equality Commission for Northern Ireland (ECNI) use the media to highlight successful strategic cases that the Commissions funded. Promotions and campaigns are a central part of their remit. In addition, the ECNI works with and trains NGOs and stakeholder groups representing the equality grounds as well as employers (public and private) and service providers (FRA 2012a).
- The Portuguese Commission for Equality in Labour and Employment has over the years developed a network with companies and organizations to promote gender equality in work and employment, creating a forum of companies that take on a clear commitment to promoting equality and non-discrimination in the workplace.

- The Slovenian Advocate of the Principle of Equal Treatment cooperates with a weekly law journal (Pravna Praska), which published summaries of the opinions of the Advocate along with summaries of judgments of national and international courts (Equinet 2012 b, p. 33).

In order to promote more effective partnerships between NHRIs and NGOs/civil society organizations, the German Institute for Human Rights has published a compilation of good practices: *Combating Discrimination: How a National Human Rights Institution can Strengthen Civil Society Organizations*. The document reflects the lessons learned in implementing the multi-year project “Non-Discrimination: *Competencies for Associations*” (German Institute for Human Rights 2013).

4.7 Information and publications

NHRIs all have a duty to broadly disseminate information on discrimination and other human rights issues. This can be accomplished in a variety of ways, through publications, websites, and more recently social media. Given the range of NHRIs’ discrimination remit, it also makes sense that these information sources are aimed at all sectors of the public, including children and youth, people with low literacy, indigenous language groups, etc., and that they be accessible to people with disabilities (e.g. through videos with sign language for the hearing impaired, Braille publications for the visually impaired, use of adaptive technologies). There are numerous examples of very effective communication through these various media. A few which came to light during this research:

- The Australian Human Rights Commission website offers a range of ways to obtain information on discrimination and human rights issues, all of it available through their website, including online newsletters, electronic mailing lists, online forums, research reports, media kits, human rights materials for teachers and students, etc. Individuals can sign up for public human rights seminars or make submissions to AHRC inquiries online. There are also resources for employers and employees to address workplace discrimination.
- Many NHRIs sponsor public activities such as speech contests, student art contests etc. to spread knowledge of human rights and discrimination.
- The Austrian Ombudsman for Equal Treatment publishes one real-life discrimination case per month on its website. Every case has an eye-catching title followed by a short summary of the facts, with link that can be accessed to find a longer description of the situation, the counselling process of the Ombudsman and a legal analysis of the case. In order to show the whole range of discrimination cases, the Ombudsman tries to cover 11 different grounds and fields of discrimination within one year. The main aims of this project are to encourage persons who experienced similar situations to turn to the Ombudsman; explain what discrimination means and what the Ombudsman can do by telling a real life story; create an online compilation of cases and solutions found/agreements reached by the Ombudsman in different types of discrimination. The cases of the month are also published in a newsletter (Equinet 2012b, p. 32).

5. RECOMMENDATIONS FOR THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS

5.1 GUIDING FRAMEWORK AND INTERNAL CAPACITY-BUILDING

5.2 DATA

5.3 COOPERATION WITH OTHER STAKEHOLDERS

5.4 USING THE RESULTS OF MONITORING TO MOBILIZE FOR POSITIVE CHANGE

5.5 GENDER MAINSTREAMING AND GENDER-SPECIFIC MONITORING

Based on the case studies and good practices documented in the previous sections, the following recommendations are proposed in order to build a stronger comprehensive monitoring system for discrimination in Ukraine, and to ensure that sex discrimination is addressed meaningfully and effectively within it.

The recommendations touch upon four essential elements for a well-functioning monitoring system:

1. A comprehensive guiding framework and internal capacity-building;
2. High quality data;
3. Cooperation with other stakeholders;
4. Mobilizing the results of monitoring towards positive change.

An additional important element is a strategy for addressing sex discrimination and for treating gender as a cross-cutting issue in all aspects of discrimination. The following sections will elaborate on each of these elements.

5.1 Guiding framework and internal capacity-building

A comprehensive guiding framework for monitoring discrimination would provide a coherent rationale to guide decisions on what is to be monitored, what monitoring is to be used for, how monitoring is to be done, and how the results are to be utilized.

While it is beyond the scope of this paper to suggest what such a framework might look like in practice, it is recommended that the PCHR adopt a form of results-based design i.e. identifying an overall goal, formulating a set of strategic objectives (or expected results), and then outlining the short-term, medium-term, and long-term measures that are required to achieve those objectives, as well as a framework for monitoring and evaluation of the results. The emphasis should be on outcomes rather than processes or inputs.

The exercise of setting the goal and objectives should ideally be done in a participatory manner, with input from relevant civil society, government, and international stakeholders.

Some important considerations:

- What is the purpose of discrimination monitoring? Is it strictly for internal reporting or to fulfil a statutory requirement? To feed into international treaty body reporting? To guide government policy and legislation? To raise public awareness? The answers to these questions should help to shape the goal and objectives of the guiding framework
- What are the limitations posed by budgets, human resources, capacity limitations, competing responsibilities, and how can the monitoring function be optimized within these constraints?
- Given the available resources, what criteria should be used to set priorities regarding what to monitor, how to do it, and when or how frequently to monitor? Should monitoring take the form of targeted studies, should it be more systemic, or a combination of both?
- The guiding framework should also cover reporting and communications – apart from any statutory requirements, what type and frequency of reporting are required in order to achieve the identified results? What are the most appropriate methods for disseminating the outcomes of monitoring?

Alongside the guiding framework, a plan for capacity development should also be formulated. This should lay out a scheme to assess the current capacity of the Office of the PCHR, identify needs (for financial resources, staffing resources, regional representation, advisory bodies, training and capacity development, etc.), and a plan for sourcing and financing the necessary inputs.

RECOMMENDATIONS

5.2 Data

As the case studies demonstrate, the quality of data and data collection methodologies are crucial to effective monitoring. Some key elements include:

- Apart from quantitative data generated from the agency's own complaints mechanisms, PCHR should be able to access data from the national statistical agency and other government sources, academic institutes and think-tanks, and research NGOs.
- It should also have or develop the capacity to generate qualitative data through internal or commissioned research, proactive outreach such as national and local consultations, "listening tours," national inquiries, surveys and other fact-finding exercises.
- The PCHR should begin work (in collaboration with the State Statistics Service, academic research groups etc.) on developing a framework of indicators for systematizing its data collection for the purposes of monitoring and reporting on discrimination. A first step would be to collect and analyze examples from other countries. The Canadian Human Rights Commission framework could be a possible model, as could the British Equality and Human Rights Commission's (EHRC) Measurement Framework. General guidance on indicators and data is contained in the OHCHR publication *Human Rights Indicators: A Guide to Measurement and Implementation*.
- The PCHR should also consider working with private sector partners, unions, employers, employee organizations, professional groups etc. to develop and disseminate monitoring and reporting tools for a proactive data collect on discrimination in the workplace and in educational institutions.
- At the very least, all data collected by the PCHR (for example in relation to complaints handling) should be disaggregated by sex and other variables such as age, ethnicity, etc.

5.3 Cooperation with other stakeholders

The PCHR should continue to reach out to other stakeholders in order to achieve effective and sustainable discrimination monitoring systems. Key partners would include:

- **Government:** While maintaining its independence, the PCHR should continue to collaborate with government where it is mutually beneficial, for example in supporting treating body reporting or national human rights and anti-discrimination programs. Specifically, now that the State Program on Gender Equality has been approved, the PCHR should continue to work with the National Gender Machinery to develop the system for monitoring its implementation while at the same time attempting some harmonization with the PCHR framework for monitoring sex discrimination.
- **Non-governmental organizations and civil society partners:** Continuing close collaboration with NGOs and other civil society partners (e.g. universities, professional organizations, trade unions) will enhance the monitoring function of the PCHR by affording access to input from a broader range of stakeholders, especially grassroots and marginalized groups. At the same time, the PCHR in turn will be able to support or facilitate the human rights and anti-discrimination work of non-governmental groups. Relevant NGOs and civil society organizations should be invited to contribute their expertise in advisory committees and think-tanks on specific discrimination issues (as in the Poland case study).
- **International partners:** As an accredited NHRI, the PCHR already participates in the ICC and its European network. It would also be beneficial to look into membership in other international groupings of NHRIs or Equality Bodies, in particular Equinet, the European Network of Equality Bodies. Membership in these groupings provides opportunities to access resources, attend international conferences, and engage in capacity-enhancing international exchanges and multilateral activities.

5.4 Using the results of monitoring to mobilize for positive change

Discrimination monitoring is of course not an end in itself. While it is important to track and document systemic discrimination for purposes of reporting, the results of monitoring should ultimately be used to effect positive change in society. There are two key areas where the results of monitoring can support efforts to eliminate discrimination:

- **To influence policy change:** the results of monitoring can feed into the anti-discrimination efforts of government, providing evidence to lobby for relevant policies, legislation and programming. The PCHR should continue to be the key institution holding the government to account for its human rights and anti-discrimination commitments.
- **To influence public opinion and awareness** through the broad dissemination of information on anti-discrimination. This can include many media and modalities depending on the issue and target group. This is one area where PCHR can benefit from the very ample documentation of international experiences. The goal should be to create a climate of awareness and decreased tolerance of all types of discrimination in Ukrainian society.

To this end, the PCHR should develop a communication and outreach strategy with the goal of ensuring that its efforts have a positive impact on reducing discrimination. The impact should be the subject of ongoing outcome monitoring.

5.5 Gender mainstreaming and gender-specific monitoring

Because gender is a cross-cutting concern in all types of discrimination, as well as a ground of discrimination in its own right, the PCHR should develop an explicit strategy both to mainstream gender issues throughout the work of the organization, and to target sex discrimination as a high priority for monitoring. The following are some specific recommendations:

- It is very positive that there is already a gender equality unit within the Secretariat, to ensure that the emphasis on gender equality does not get lost in other priorities. The high profile of this unit should be maintained to underline the importance of gender issues and sex discrimination in the mandate of the PCHR. It should be empowered to investigate, conduct research, and monitor high-priority sex discrimination issues – similar to the role of the Australian Sex Discrimination Commissioner.
- In order to reinforce this strength even further, the PCHR should develop a gender mainstreaming strategy which treats gender as a cross-cutting concern in all aspects of its work, and draws attention to the cross-cutting nature of gender and the intersectionality between gender discrimination and other forms of discrimination.
- In order to support gender mainstreaming, PCHR should develop easy-to-use tools for gender analysis of all discrimination issues (such as Canada's Gender Integration Framework).
- To strengthen its capacity in this area, PCHR should provide tailored training on gender equality and sex discrimination to all staff. The gender unit should take the lead in developing, disseminating and monitoring the use of these tools and training programs.

ANNEX 1. MAPPING OF KEY DOCUMENTS

This section presents a brief annotated guide to the key reference documents identified in this research which provide guidance and information to support the discrimination monitoring and prevention role of NHRIs, particularly in relation to gender equality and women's rights. These documents are highlighted in Annex 1. References (which also gives the internet links).

- "Amman Declaration and Programme of Action: Adopted at the 11th International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights." 2012. This is a list of principles and recommendations for NHRIs which came out of the most recent ICC meeting focusing on women's rights and gender equality.
- Commission on the Status of Women, 2008. Results of the fortieth session of the Committee on the Elimination of Discrimination against Women. Annex II: "Statement by the Committee on the Elimination of Discrimination against Women on its Relationship with National Human Rights Institutions." This is the statement by the CEDAW committee on the role of NHRIs in the CEDAW process.
- Equitas. 2008. Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights. A very comprehensive guide to the role NHRIs can play in protecting and promoting women's equality through ESC rights.
- European Union Agency for Fundamental Rights (FRA). 2012d. Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union. Technical guide to the accreditation process and requirements for NHRIs.
- International Council on Human Rights Policy. 2005. Assessing the Effectiveness of National Human Rights Institutions. An instrument for NHRIs to conduct self-assessment of effectiveness, including proposing appropriate benchmarks and indicators.
- The Montreal Principles on Women's Economic, Social and Cultural Rights. 2002. A document developed to guide interpretation and implementation of the rights found in the International Covenant on Economic, Social and Cultural Rights (ICESCR) so that women can enjoy these rights fully and equally.
- Office of the United Nations High Commissioner for Human Rights (OHCHR). Human Rights Committee. General Comments 18 (Non-Discrimination) and 28 (the Equality of Rights Between Men and Women). UN Human Rights Committee statements defining non-discrimination and equality of rights between men and women.
- Office of the United Nations High Commissioner for Human Rights (OHCHR). 2010. National Human Rights Institutions: History, Principles, Roles and Responsibilities. An introduction to the guiding principles behind NHRIs worldwide.
- Office of the United Nations High Commissioner for Human Rights (OHCHR). 2012. Human Rights Indicators: A Guide to Measurement and Implementation. A reference resource with operational tools, including an approach and methodology to identifying quantitative and qualitative indicators, to promote objective and comprehensive human rights assessments.
- OSCE, Office for Democratic Institutions and Human Rights, 2011. Pilot Comparative Review: National Human Rights Institutions and their Practices in Protecting and Promoting Women's Rights and Gender Equality.
- OSCE. 2012a. Handbook for National Human Rights Institutions on Women's Rights and Gender Equality. These two OSCE publications summarize OSCE member states experience and good practices in promoting women's rights and gender equality through their NHRIs.
- UNDP, OHCHR. 2010. UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions. A guide for UN staff engaged in capacity strengthening programs with NHRIs worldwide.
- UNDP. 2011. Capacity Assessment Manual For National Human Rights Institutions. Provides tools for NHRIs to identify and analyze key challenges preventing the NHRI from achieving its goals, and, based on the analysis, develop strategies for organisational improvement.
- United Nations Economic Commission for Europe (UNECE), 2010. National Mechanisms for Gender Equality in Southeast and Eastern Europe, Caucasus and Central Asia: Regional Study. Summary of achievements, gaps, challenges and lessons learned relating to national gender machineries and other bodies including NHRIs.
- United Nations General Assembly. 2013. "Report of the Working Group on the issue of discrimination against women in law and in practice." Human Rights Council Twenty-third session, 19 April 2013. Summary of achievements in women's political representation and further challenges to women's equal participation in political and public life. Identifies critical issues and presents a framework to eliminate discrimination in law.

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Canadian Human Rights Commission <http://www.chrc-ccdp.gc.ca/index.html>

Equality Ombudsman (Sweden) <http://www.do.se/en/>

Human Rights Defender (Poland) <http://www.brpo.gov.pl/en>

South Africa Human Rights Commission <http://www.sahrc.org.za/home/>

UN, Europe and other Multilateral Bodies:

Asia Pacific Forum <http://www.asiapacificforum.net/>

Equinet – European Network of Equality Bodies <http://www.equineteurope.org/>

European Union Agency for Fundamental Rights (FRA) <http://fra.europa.eu/en>

International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) <http://nhri.ohchr.org/EN/Pages/default.aspx>

OSCE Office for Democratic Institutions and Human Rights <http://www.osce.org/odihr>

United Nations Office of the High Commissioner for Human Rights NHRI page <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>

Organizations, NGOs and others:

Equitas – International Centre for Human Rights Education <http://www.equitas.org/>

European Network of Legal Experts in the Non-discrimination Field <http://www.non-discrimination.net/>

International Ombudsman Institute <http://www.theioi.org/>

KARAT Coalition <http://www.karat.org/>

National Human Rights Institutions Forum <http://www.nhri.net/>

Rights, Equality and Diversity (RED) European Network, RED Atlas of Racism and Discrimination. <http://www.red-network.eu/?i=red-network.en.countries&id=17&view=racismAtlas&s=STATISTICS#stands-nav>



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