

**Expert Review Mission on Latvian National Human Rights Office and
Ombudsman Functions in Latvia
3-11 April 2001**

CONSIDERATIONS AND RECOMMENDATIONS

Final Report - 22 May 2001

Introduction

On 20 November 2000, the Head of the Chancery of the President of Latvia convened a working group to consider the role of the ombudsman institution in Latvia. In January 2001 the offices of the OSCE Mission to Latvia and the United Nations Development Programme received a Concept Paper produced by the Presidential Working Group along with a request to provide “opinions, proposals and suggestions” (Concept Paper attached as Annex A). In response, UNDP Latvia and the OSCE Mission to Latvia joined resources to form an Expert Review Mission to study the Latvian National Human Rights Office (hereinafter “the LNHRO” or “the Office”) and ombudsman functions in the country.

The Mission convened in Riga on 2 April 2001. It was composed of Mr. John Hucker, Secretary General of the Canadian Human Rights Commission, Mr. Lauri Lehtimaja, Parliamentary Ombudsman of Finland, Mr. Nils Muipnieks, Director of the Latvian Centre for Human Rights and Ethnic Studies, and Mr. Jānis Mapeiks, Head, Human Rights Policy Division of the Latvian Ministry of Foreign Affairs, representing the Government of Latvia. Mr. Neil Brennan, Deputy Head of the OSCE Mission to Latvia, was Secretary to the Mission. Due to illness, Mr. Brian Burdekin, Special Advisor on National Institutions, UN/OHCHR, was unable to join the Mission as expected.

The Mission was provided with Terms of Reference which indicated that the main task was to prepare a study of the mechanisms for human rights protection and good governance in Latvia. The study should also consider the proposal outlined in the Presidential Working Group’s Concept Paper for the establishment of an ombudsman office in the country.

The Terms of Reference outlined the following objectives for the Experts:

- To review the current functions, capacity and mandate of the LNHRO;
- To provide recommendations on possible adjustments in the functions of the LNHRO in relation to the establishment of an ombudsman institution in Latvia;
- To provide recommendations based on best international practices regarding ombudsman or other national institutions for rights protection and handling of appeals applicable in the Latvian context;
- To review the legislative and judicial processes to determine the most effective and rational means for rights protection and promotion in Latvia.

With these objectives in mind, the Expert Mission was requested to prepare a Report divided in two separate sections. Stage One was to study the functions and mandate of the LNHRO, its role and status within Latvian society, and its potential functions. The Mission was asked to identify ways and means by which this office could be strengthened and developed with a view to immediate or short-term implementation (i.e. achievable within 6-8 months).

These Recommendations of the Mission were therefore not to encompass primary legislative amendments.

For Stage Two, the Mission was asked to study the full range of legislative and judicial processes for rights protection and promotion and good governance in Latvia. On this basis, the Mission was asked to make Recommendations as to how the LNHRO or a new institution might undertake a broader ombudsman role. In this respect, the Mission was invited to suggest possible institutional and/or legislative changes. The Concept Paper is considered in this part of the Report as it envisions legislative change.

Methodology

The Mission members were provided with a broad range of documents and briefing materials including those outlining the development of the LNHRO and relevant legislation. The Terms of Reference indicated that the Mission members should take note of the following:

- The roles of the UNDP, the Office of the UN High Commissioner for Human Rights, and the OSCE in developing the LNHRO;
- Previous independent assessments of the LNHRO;
- The resources expended by donor countries (notably Finland, Sweden and the Netherlands) in developing the LNHRO;
- The need perceived by the Concept Paper to broaden the scope of the functions of the LNHRO;
- The end of the term of office of the current Director of the LNHRO this summer;
- The content of the Council of Europe's Recommendation 61 (1999), on the role of local and regional mediators/ombudsmen in defending citizens' rights;
- The adoption of the Maastricht Treaty that created the office of the European Ombudsman, and the expectation that upon accession to the EU, the national ombudsman offices of new Member States are to become directly linked to the European Ombudsman through a liaison network; and
- The requirement set out in Article 13 of EC Directive 2000/43/EC of 29 June 2000, on "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" by which Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.

In the course of ten consecutive days, the Mission met with a wide range of interlocutors in Riga. In total, the Mission conducted over 25 interviews and meetings with individuals and groups (Agenda attached as Annex B). These consultations concerned state institutions, NGOs, individuals, and other

institutions whose work directly or indirectly concern rights protection, good governance and public accountability in Latvia.

Mission members made three visits to the LNHRO and held several discussions with the Director and his staff. The purpose of these visits was to gain an appreciation of the present mandate of the Office. This Mission was not tasked to evaluate the management or administration of the LNHRO. Although management and administrative considerations arise in this study, it is not to be construed as a management evaluation of the LNHRO.

Stage I

Latvian National Human Rights Office

Development and Context

The Mission recognised the pioneering advance made in rights protection by Latvia in 1994 as one of the first countries to develop a “National Programme for the Protection and Promotion of Human Rights”, as called for by the UN World Conference on Human Rights held in Vienna in 1993. This project led to the establishment of the LNHRO, an office considered by many organisations and international bodies as a model for other democracies emerging from the collapse of the former Soviet bloc.

The Mission took particular note of the fact that the LNHRO was established as a human rights office and a human rights ombudsman in accordance with the Paris Principles (Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights, United Nations General Assembly Resolution A/Res/48/134 of 20 December 1993 – Annex C). According to these Principles, national human rights institutions are to be given a broad mandate, including such functions as: examining legislation and administrative practices to ensure that they conform to the fundamental principles of human rights; preparing reports on any matter related to the protection of human rights; and promoting and publicising human rights. They may also be authorised to hear and consider complaints. Such institutions are to enjoy full independence and receive adequate funding. The mandates of national human rights institutions commonly extend beyond government into the private sector, in which respect they differ from the traditional ombudsman model, which is generally restricted to considering abuses of governmental or administrative authority. The LNHRO considers a large number of complaints each year and acts in the capacity of an ombudsman by contending with rights issues and violations, and mediating issues between parties. It has also become a member of the international network of national human rights institutions created under the auspices of the United Nations, although its participations in this grouping appears to have diminished in recent years.

The Mission recognised that in creating an Office in accordance with the Paris Principles, Latvian authorities consciously gave the LNHRO an institutional orientation somewhat different from what is often attributed to the classical ombudsman. The *classical ombudsman*, normally associated with the Nordic states, is oriented toward guaranteeing a broad notion of good governance and public accountability for society. This type of institution acts as a forum for complaints against public officials including abuses of power and cases of maladministration. As it has evolved, this type of institution today may consider human rights issues in its work, but only in the context of governmental or administrative abuses, not with regard to the activities of employers or businesses as national human rights institutions are often empowered to do.

In short, the model of a *national human rights institution* focuses on the protection and promotion of human rights, regarding them as the wider notional umbrella governing its work. The supervisory functions of good governance and public accountability through observance of maladministration issues, for example, need not be excluded from the mandate of this type of office. However, to facilitate the development of a culture of rights within society, a state human rights office generally has greater proactive duties than does the classical ombudsman. In addition, it often has a supervisory capacity that extends to private entities.

The Mission members were mindful of these different institutional approaches and the fact that there is no universal model of an institution, which can satisfy the needs of all states at all times. National authorities can draw upon the advantages and strengths of the two models when they devise their own institutions to respond to the specific needs of their state. Indeed, examples abound of variations upon and the mixing of both themes in institutions around the world.

Equally broad is the range of titles used to designate the different national institutions. The word "ombudsman" is of Swedish origin and has become an international loan word in order to identify the general nature of such institutions. The Expert Mission noted some reticence among Latvian speakers to engage in the use of the term, as it is regarded as alien or otherwise awkward. They therefore advise that the title used for the institution should be of secondary importance. It is the criteria used in understanding the institution that are important.

Irrespective of what structures for an overall system of good governance are eventually instituted, it is a pattern common to all democracies that the public forward complaints to high-ranking public officials such as the President or Prime Minister. Indeed, the Expert Mission does not regard this pattern of public behaviour simply as an expression of public discontent. Rather, it is evidence of a willingness among the public to voice concerns over their welfare and to address those concerns to persons whom they trust. The Expert Mission would find it troublesome were this pattern to cease, as it is indicative of a strong civil society willing to assert individual rights, an important underpinning of democratic functioning.

Consequently, the Mission members approached their task with respect for the decision made by Latvian authorities in 1995. It was understood that the LNHRO was established to respond to the particular needs of a society in transition from a totalitarian regime. The LNHRO was intended to play a significant role in the cultivation of a functioning democracy with a culture of respect for human rights.

Irrespective of the institutional orientation chosen for the LNHRO, the Expert Mission noted that it is a full-voting member of the International Ombudsman Institute. To achieve this status, the LNHRO was required to undergo a screening process with a number of criteria considered by this body, paramount among which is the independence of the institution. To be

accepted as a full voting member, the complete independence of the institution must be demonstrated in both law and fact. In passing the scrutiny of this peer organisation, the LNHRO has achieved a distinct measure of recognition as an ombudsman institution.

LNHRO – Legislative Mandate

The Expert Mission reflected that the *Law on the Latvian National Human Rights Office* (Law attached as Annex D) gives the LNHRO a very wide mandate which includes both proactive and reactive elements. The proactive tasks are often the specific domain of national human rights offices. They are tasks not traditionally undertaken by the more strictly mandated classical ombudsman office. Nevertheless, Article 2 of the *Law* provides that the LNHRO inquire into any complaint related to the violation of human rights in Latvia. It is this aspect of its work that most clearly distinguishes it as a human rights ombudsman.

Article 2 also includes proactive duties by mandating the LNHRO to provide information to the public on human rights generally and on the rights guarantees and obligations in Latvian legal norms. The Office is obliged to elaborate and co-ordinate the implementation of programmes to promote human rights. It is also required to conduct analyses of Latvian legal norms to ensure compliance with international norms. It is to initiate studies to determine what conditions may lead to violations of human rights. It is compelled to investigate the observance of human rights generally in the country, especially as regards vulnerable groups of society. In addition, Article 8 of the *Law* sets out a conciliation role for the LNHRO.

Observations

A large number of the interlocutors with whom the Expert Mission met acknowledged and supported the fact that the LNHRO has a wide mandate. Many regarded the proactive roles in rights promotion as still being necessary in Latvian society. However, with this wider scope of tasks, most interlocutors doubted that the LNHRO had the resources to undertake all of the tasks adequately. In fact, limited financial and human resource allocations in the LNHRO were themes common to nearly all discussions. They are discussed further below.

Another fact noted by the Mission was that, since its establishment, the LNHRO has been confronted by an increasing number of complaints covering an extremely wide range of issues.¹ In its discussions with the LNHRO concerning the Office's casework practise, the Expert Mission was not able to ascertain whether the Office has clear and consistent criteria to identify human rights considerations on a case to case basis. In any event, some of the issues presented by clients to the Office are marginally or not at all

¹ The LNHRO staff and management total 14 persons (8 lawyers). The Office is divided into four areas of activity: complaints; analysis; information and documentation; and project co-ordination. The complaints division has the largest amount of activity with 5,136 communications received in the year 2000.

covered by its mandate. The Director of the LNHRO indicated that two thirds of the communications received are outside the Office's mandate.

In discussing the contents of these communications with the Director and the staff, the Expert Mission concluded that many would not fall within the mandate of an independent state authority undertaking an ombudsman role. For example, as the Director of the LNHRO noted, some communications are requests to investigate cases where a Latvian Court has already delivered a ruling. The Experts agreed that, no matter the orientation of an office's focus, whether it is human rights on the one hand, or good governance, public accountability and maladministration on the other hand, the ombudsman function is not one of an appeals mechanism. Rather, it is a supplementary, independent oversight mechanism. Consequently, the Experts conclude that no matter what action is taken by Latvian authorities in this sphere, there will always be a number of communications from the public that will be outside the mandate of independent oversight mechanisms.

Although the Director of the LNHRO indicated he is aware of the mandate limitations his Office faces, he stated that there are a number of communications received that - although outside his Office's mandate - warrant consideration by some state institution. As no institution is legislatively empowered to engage in these cases, the LNHRO staff take pains to provide at least minimal guidance to clients. Communications involving housing issues, for example, are often sent to the LNHRO. This is an area that would not normally fall within either the mandate of a national human rights institution unless there is a human rights element involved, or that of an ombudsman unless there is some misconduct in office or maladministration issue underlying the case.

Almost all interlocutors the Experts met with acknowledged that no other state authority is mandated to take on the housing issue even though it is an important concern for residents. Meanwhile, the LNHRO's statistics indicate that 20-25% of its communications are related to housing. In responding even in a minimal manner to these communications, the LNHRO is compelled to divert resources from other areas which more clearly fall within its mandate and which also deserve attention. This issue arises from the post-Soviet transition to private property, the restitution of property and resultant conflicts between landlords and tenants. It is an issue aggravated by the low purchasing power of a significant portion of the Latvian population and the resource constraints of municipal and regional authorities.

The Expert Mission understood that in some cases the LNHRO might refer cases to specialised NGOs. This might indicate NGO expertise, but it may also be indicative of human resource constraints in the LNHRO.

A factor noted by the Expert Mission that may compound the resource constraints the LNHRO faces is the expected impact of the changes adopted to the *Law on the Constitutional Court* in November 2000. As a result of the changes, after 1 July 2000, individuals will have the right to apply to the Constitutional Court in cases of contested violations of human rights. Many

persons contended that when this change takes effect, the LNHRO would likely be called upon by an increased number of individuals for consultations as to their legal rights in preparation for these cases. This will draw further upon the resources of the LNHRO.

Some interlocutors expressed concern that the LNHRO was not involved in litigation on a proactive basis. The Expert Mission concluded that such activities, while not specifically precluded by the LNHRO's mandate, might be beneficial in some cases where precedent is concerned. However, they cautioned that experience suggests this type of work is highly resource consumptive. Decisions on engaging as an intervenor must remain a management decision subject to resource constraints, institutional priorities, and the importance of the case for Latvian society. In this light, the Experts expressed doubts as to whether the LNHRO was well situated to undertake this task at the present time.

Many interlocutors also expressed concerns relating to the LNHRO's overall institutional capacity. For instance, many contended that the Office has a high staff turnover. Although this is common for state structures in transition, it can lead to a lack of institutional memory and an inability to develop institutional expertise. It was stated by most persons that turnover was motivated by the low salaries for staff in the LNHRO. They may also work in the Office to gain broad-based experience before moving to private sphere opportunities.

Some interlocutors also expressed the belief that the LNHRO has, in recent years, not taken full advantage of contact and cooperation opportunities with peer organisations and international organisations. It was said that this led to a lack of professional development opportunities for staff and limited the Office's capacity to seek funds from international sources.

The Expert Mission inquired as to the roles and legislation of other institutions (State institutions, independent State bodies and NGOs) working in the same spheres as the LNHRO. The Mission concluded that, in some areas, there is clear fragmentation and overlap in the institutional framework for rights protection among Latvian institutions.

One example of the lack of a clear division of labour between institutions is in the sphere of children's rights. There are at least four different State bodies responsible for the safeguarding of children's rights. Most municipal and regional jurisdictions also have an institution working in this area. At the State level, duplication is most evident in the overlapping mandates of the State Children's Rights Protection Centre and the LNHRO. Both institutions are obliged to ensure rights protection, rights promotion and the conduct of inquiries with respect to the rights of children. Moreover, the legislation allows the SCRPC to be more active in a wider range of work than one would expect of an ombudsman for children's rights. For example, if a situation arises where a child is part of a family involved in a dispute over housing, the SCRPC might assume full responsibility for the case (i.e. concerns for the children involved and the housing question) on the basis provided for in legislation of the need to protect the child.

The problem of institutional overlap is compounded by the fact that the directors of the two offices enjoy at best, minimal co-operation with one another and have very little communication – an impression confirmed by the directors of both institutions.

A second possible overlap arises between the LNHRO and the State Civil Service Administration Office. While the mandate of the LNHRO is to review complaints involving allegations of human rights violations, one of the functions of the State Civil Service Administration is “to review complaints by physical and legal persons about the actions of civil servants.” Theoretically, if a case involving rights issues and the actions of civil servants arises, both the LNHRO and the SCSA could be empowered to act. Interestingly, almost none of the persons whom the Mission met were aware of the SCSA Office as a complaint mechanism. Not surprisingly, it is a mechanism seldom employed. In the same way as with the SCRPC and the LNHRO, the Expert Mission observed that the relationship between the LNHRO and the SCSA is underdeveloped.

A third example of overlap involves labour rights. While the LNHRO receives a significant number of complaints about labour rights, the State Labour Inspection in the Ministry of Welfare also reviews complaints about labour rights, workers’ health and safety, and related issues.

The Experts noted the following concerns:

- Overlap often gives rise to inefficiency and competition for scarce state resources. When comparing the LNHRO and the State Children’s Rights Centre, the Experts noted with surprise that the office with the broader mandate – the LNHRO – has a smaller budget than the specialised body, the SCRPC. The LNHRO also has fewer staff and promotional materials (no website, limited printed material, etc.).
- When institutionalised consultative procedures between various rights protection bodies are not in place, these bodies tend to send conflicting messages to the public on the appropriate interpretation and application of relevant international human rights standards. Several interlocutors gave examples of conflicts of opinion between different institutions in Latvia.
- Overlapping authority may generate public confusion about which institution should be addressed in the event of a complaint. In Latvia, some cases are transferred back and forth between several offices due to a lack of clarity.
- In the cases of overlap noted above, the situation is further confused by the fact that the State Children’s Rights Protection Centre, the State Civil Service Administration, and the State Labour Inspection are not independent complaints bodies. As a result, one

independent institution and at least three State authorities are working in the same fields.

Another common theme in many of the discussions was the present management of the LNHRO. As stated earlier, the Mission was not tasked to evaluate the internal management of this Office, but rather the current state of the institution and its role in Latvian society. Nonetheless, the Experts were repeatedly reminded of the prior disputes surrounding the management of this Office. These efforts climaxed in 1998 with the effort to remove the current Director through a vote of non-confidence by the Saeima. Many interlocutors made reference to these facts in detail with many expressing the belief that the current management is inadequate. Whether these contentions arise only as a result of the public discussion surrounding this dispute or as a result of first-hand substantive interaction with the LNHRO was, in some cases, difficult to ascertain.

Because of the frequency of this concern the Mission members came to the conclusion that these disputes have, irrespective of their reason, weakened the independence and public standing of the LNHRO and its Director.

Recommendations

1. As concerns the position of the Director of the LNHRO, the Experts regard the expiry of this mandate in May as an opportunity to reconfirm the authority in the post of Director and the office's independence. As an initial step toward this goal, when the Cabinet of Ministers puts forward its candidate for the post to the Saeima in accordance with the procedure outlined in the existing legislation, Article 3(1), the candidate might be requested to present his or her strategic plan for the operation and future development of this Office. The plan might outline priorities for the forthcoming 1-3 year period, including some indication of intentions as regards allocation of resources. The plan might also indicate intentions in the proactive responsibilities for the Office, that is, its duties beyond investigating individual cases. For example, the analysis and education roles may be developed. Such plans should be a regular feature in the Office's management, as is the case with similar institutions in other countries.
2. To further re-institute authority in this Office, there should be a larger, more public vetting procedure with a search for more candidates for the post of Director irrespective of whether the present Director seeks to retain the position. In the same (re)appointment process, in making its recommendation to the Saeima, the Cabinet of Ministers may wish to consider the criteria of legal education or extensive human rights experience. Due to the complexities of this Office and its importance for Latvian society, special attention ought to be paid to the candidate's management experience.
3. The lack of a clear delineation of responsibilities between institutions should be addressed, perhaps through a transfer of competencies

between institutions. In particular, a clearer separation between executive and monitoring in thematic areas, specifically children's rights, should be considered. In the short term this could be accomplished without legislative change, but through, for example, a transfer of some of the staff of the SCRPC to the LNHRO. In the longer term, however, this would require amendment to Article 65(2) of the *Law on the Children Rights Protection Centre* and amendments to the budget.

4. To further institutionalise this division of labour, and to provide focus to the broad mandate of the LNHRO, efforts might be undertaken to establish specialised sub-divisions or departments in the Office. For the short term this might be accomplished through something as simple as internal administrative guidelines. In the long term, though, a more clear definition of these departments might be pursued through legislative change. This is considered below in Stage II.
5. The establishment of a co-ordinating council or consultative mechanism with representation by all of the institutions involved in rights protection and promotion could resolve some overlap issues pending the enactment of legislation to rationalise the issue. In this council, the institutions could identify areas of overlap and seek means for minimising duplication of efforts. This could be accomplished on an ad hoc basis in the short term.
6. Some communications concerning maladministration could in the short term be referred to the State Civil Service Administration. This would relieve the LNHRO of some of its workload. However, as the State Civil Service office is not an independent authority, an independent oversight mechanism ensuring accountability in public administration would have to be entrusted with this task in the long term by means of legislative change. This is discussed below in Stage II.
7. Latvian authorities might examine whether another institution could be set up on a temporary basis to contend with housing issues since they are not addressed by any institution's current mandate and thus fall to the LNHRO. Although this is a transition issue, it is a compelling one from the perspective of the public interest.
8. Systemic or broad-based societal issues such as housing would be more efficiently addressed by the use of the Office's proactive capacities. At present, the LNHRO has a tendency to dedicate resources to individual cases on an as-needed basis. By committing its resources to the study of issues and the compilation of statistics, systemic issues and possible resolutions can be more efficiently brought to the attention of authorities, and some types of individual cases could be avoided.
9. The need to extend more effective means of oversight to cover complaints arising in municipal affairs might be addressed, in part, through the development of further co-operation with regional and national NGO's such as the Regional Human Rights Support Network. Provided sufficient

resources are available, the LNHRO could further develop its activities in the regions to ensure that the concerns of rural residents are addressed.

10. The LNHRO should develop project proposals for outside sources of funds to further develop its limited promotional materials. The assistance of international rights organisations could also be pursued more actively. A website would be an obvious short-term objective for the Office, as would simple promotional booklets.
11. The LNHRO should also seek out partnerships in the educational sphere. The existence of several large law programmes in Riga suggests that a number of very able students could be called upon to assist in legal clinics or the proactive duties of the Office, such as topical research. This resource should be brought into play not only to relieve the workload of the Office, but also as a means of encouraging future potential staff to join the Office.

Stage II

The objectives of Stage II were to make recommendations on how a long-term rationalisation of the human rights machinery could be achieved in Latvia and how a broader ombudsman role could be developed, possibly on the basis of the LNHRO.

Rationalisation of the Human Rights Machinery

In Stage I measures were suggested that could be taken in the short term for the rationalisation of the human rights mechanisms and the investigation of complaints. However, a long-term rationalisation can only be achieved through legislation. The relationships between the institutions responsible for the protection of human rights should be clarified not only in fact, but also in law. Consequently, the Expert Mission maintains that a review and amendment process of the statutory mandates of these institutions be undertaken with the aim of firmly delineating the spheres of responsibility for each office.

Furthermore, the Experts believe that measures should be taken to clarify the structure of the LNHRO and its functions. Such measures are best secured when they are embodied in legislation. As suggested in Recommendation No. 4 of Stage I, the method pursued could be the establishment of sub-divisions or departments in the LNHRO with each responsible for a different subject matter. This would give the LNHRO a clear internal structure that would focus its work and allow its staff to further develop areas of expertise. With specialised units with a clear focus on specific topics, it would be more difficult in the future for other institutions to encroach upon the Office's mandate in these areas. The creation of specialised sub-departments or units in the LNHRO would be consistent with the Paris Principles that specifically recognise the possibility of sub-divisions or equal directors within one institution. The Expert Mission identified at least two areas where such sub-divisions would be warranted: children's rights and equality issues.

From Incomplete Oversight Capacity to a Broader Ombudsman Role

Regarding a broader ombudsman role, the Expert Mission sought to respond to the proposal in the Presidential Working Group's Concept Paper. This document concentrates on the perceived need in Latvia for an independent oversight body for public accountability and good governance issues (otherwise known as maladministration) in addition to the human rights oversight provided by the LNHRO. The Experts regarded the former concern as the primary motivation behind the Paper's proposal for a broader-based complaints institution for Latvia. The Expert Mission began by examining this concern as it relates to the mandate of the LNHRO.

The Concept Paper, the Experts note, proposes the creation of an ombudsman institution on the basis of the LNHRO. As mentioned earlier, the Mission noted that LNHRO – as a human rights ombudsman - already fulfils

the institutional criteria to warrant the title of ombudsman according to the International Ombudsman Institute.

In evaluating the need for a broader ombudsman role, it was necessary to also inquire into the accountability mechanisms for civil servants at both the State and municipal levels.

The Experts recognised that the State Civil Service Administration (SCSA) is an oversight body for public actions. It is, however, charged only with implementing the *State Civil Service Law* and it is not an independent institution. In so far as capacity is concerned, the complaints department of the SCSA only has 2 staff and has a small and declining number of cases (50 with decisions last year).

It was pointed out to the Expert Mission that, at present, only 6,000 persons working in the civil service are accredited civil servants. With the implementation of the *State Civil Service Law* mentioned above, it is expected that the ongoing accreditation process will see the civil service category expand to encompass approximately 30,000 officials by the end of 2001. This could have a considerable impact upon many of the notions of institutional oversight already discussed. The Expert Mission is of the opinion that this *Law* and its impact require further study.

Regarding public sphere employees other than those employed by municipalities, the attention of the Expert Mission was repeatedly drawn to the work underway for some years on the *Draft Law on Administrative Procedure*. This legislation passed first and second reading some years ago, but has yet to be adopted. Much of what an oversight authority for public accountability does is based on administrative procedure. This *Law*, it was noted, encompasses a new range of judicial decision-making bodies. Consequently, once it comes into force, the *Law's* impact upon public accountability could be significant.

As noted in the Concept Paper, and confirmed by the Experts' work, means for ensuring accountability for actions of officials employed by municipal and regional authorities is also uncertain. Many officials hired by municipal and regional authorities are not regarded as public officials *de jure* and are, thus, not subject to the *State Civil Service Law*. Consequently, they may not be subject to supervision as regards their public accountability. Courts of law would be empowered to consider cases arising in this sphere, but this is time-consuming and expensive.

It was explained to the Expert Mission by several different interlocutors that, in cases involving decisions and actions by officials at the level of municipalities and regions, the body responsible for oversight is the municipality or region from which the complaint arises. The Director of the LNHRO stated that when complaints arise in this sphere, they are regarded as the domain of the municipality in question. As a result, many are forwarded to the senior authority in the office about which the complaint has arisen. In effect, this makes the office conducting the functions in question the oversight body for

its own accountability. Although the Board of Municipalities and Regions does have supervisory authority over some of the decisions made at this level, the Experts concluded that it was not clear whether any institution could ensure a statutorily based oversight with regard to municipalities and regions. Certainly there is no independent authority that has this responsibility. This contention was re-affirmed by several interlocutors including the Presidential Working Group itself.

Thus, in reviewing the LNHRO's legislative basis, it was concluded that in so far as questions or complaints with a human rights element arise in the context of actions of public authorities, including municipal authorities, the LNHRO is empowered to take action. Article 5(2) of its legislation provides that the LNHRO can investigate complaints and make recommendations without distinction between state and regional authorities, or even between public officials and private individuals. However, in cases of complaints or concerns that are not based on a human rights consideration, the LNHRO is not empowered to act. After reviewing the mandates and roles played by other institutions, the Expert Mission concluded that the Concept Paper is accurate in its assertion that no independent state institution is specifically mandated to consider cases of public complaints regarding maladministration that do not encompass human rights concerns.

Considerations for an Overall Public Accountability and Good Governance Regime

It is evident that the LNHRO is only one factor in the overall regime for ensuring the protection of human rights, accountability and good governance in Latvia, albeit an important one. Given the number and diversity of the institutions that have interests and roles in this work, and given the extensive legislation at play, some of which is in the process of being amended, the Experts caution that substantial change in this area should not be made in haste. Furthermore, the Expert Mission is of the view that care should be taken to ensure that legislative changes do not adversely affect the capacity of the LNHRO to discharge its human rights mandate.

Before taking concrete action with a long-term perspective in mind, several factors should be thoroughly studied. To determine possible impacts upon the judicial system and the means for public accountability, the *Law on the Civil Service* and the *Draft Law on Administrative Procedure* should be exhaustively analysed. Another area where clarity must be found is the accountability of municipalities and regions. This is especially true for their employees. Furthermore, the identity and purpose of the State Civil Service Administration in the overall regime ensuring accountability should be further clarified before any existing or new independent institution is empowered to consider complaints in this area. As well, the impact of changes to the *Law on the Constitutional Court* should be monitored.

Recommendations

Once the above issues have been clarified, a decision will need to be taken to ensure that Latvian society has recourse to an independent oversight mechanism for cases of maladministration, whether or not they have a human rights element. To assist in this decision, the Expert Mission outlines several options open to Latvian authorities along with a range of considerations that should be borne in mind.

In each of the options set out by this Mission, due respect is given to the institutional integrity of the LNHRO and to the human and financial resources committed to its establishment. In all of the options considered, the LNHRO would continue to exist either in whole or in part, either as an expanded office with a wider range of tasks, unchanged in its present state, or as a sectoral unit of a broader-based institution.

Preferred Option - Accountability Regime Based on LNHRO

The most obvious option open to Latvian authorities would see a broadening of the legislative mandate of the LNHRO beyond human rights issues to include the full range of maladministration concerns. In this unified office approach, the LNHRO would act as an all-encompassing independent oversight mechanism for human rights and public accountability issues. This hybrid mechanism can be defended on several fronts despite some limitations.

First and foremost, this is a model that could be realised in a more immediate time frame relative to other options since the institution already exists with offices, computers, budget, etc. And as the Office is internationally recognised as an ombudsman institution, the institution's name already has a goodwill value associated to it both domestically and internationally. Although specific concerns did arise in the course of this study, the Office has developed relevant institutional knowledge and capacity for the handling of complaints on an independent basis. An expansion of duties for the LNHRO would require revision of the legislative basis for the Office, but it would ensure that the work already taken in building the Office would not have been in vain.

A further benefit to this approach is that, with a "one-stop" service, cases that are not clearly related to human rights issues need not be forwarded to another institution because they fall outside the mandate of this Office. All cases would be dealt with by one institution, albeit perhaps by different divisions. There need not be any confusion among the public as to which office to turn to in times of need. Certainly, the broader focus of the Office and the wider range of issues to be covered would require an increase in resources. But it would be more resource efficient than the establishment of an entirely new institution.

It must be noted that this option, to some degree, runs counter to the original purpose of establishing a human rights office. This Office was conceived to

play a key role in the development of a human rights culture in Latvia, which was regarded as a pressing need of Latvian society in 1994. The Expert Mission was not provided with any evidence that this need had changed substantially. By expanding the scope of activities for the LNHRO, there is a risk that the Office would be less able to focus on human rights issues. Indeed, the roles of human rights promotion, broad policy analysis and the provision of advice could suffer from the perpetual need to address immediate individual cases as a first priority. A wider mandate for the Office would require that even more attention be paid to sound management in order to ensure that the Office functions well and satisfies enhanced public expectations.

Moreover, it was evident from the inquiries conducted by the Expert Mission, that the LNHRO has not sufficiently developed as an institution to undertake a wider mandate at this time. This is hardly surprising considering that the Office has had less than seven years of institutional development. Combined with the internal difficulties noted above, an expansion of the scope in the present circumstances could further weaken the credibility of the Office. Should this option be pursued, it would have to be preceded by many of the recommendations noted in Stage I, as well as those noted above for human rights monitoring in Stage II. To be successful, this option would also require a clear division of labour among institutions, an amended legislative framework, and proper administrative plans. It would also require adequate financial and human resources.

This option could be even more favourably instituted through implementation of the recommendation noted earlier on the establishment of sub-divisions or specialised departments for different areas of work. In this model, additional departments for equality of treatment and children's rights could be established. Human rights issues and complaints of maladministration could be in separate divisions or combined in one office, provided the proactive roles of a human rights office continue to be undertaken. Further divisions could be created for evolving areas of concern. To ensure that complaints concerning municipalities and regions are addressed, a network of regional offices could be established under this institution.

Alternative Option - Separate Human Rights and Public Accountability Ombudsmen

Another alternative would be to create a new and separate institution dedicated to the maladministration aspect of public accountability and good governance. In this formulation, the LNHRO would not undergo any change other than those associated with the normal evolution of a human rights ombudsman. It would remain the primary vehicle in Latvian society for developing the appreciation for human rights. It would do so, *inter alia*, by continuing to act as the principal forum for human rights cases and by fulfilling the broader, proactive roles of human rights education and policy development. Meanwhile, a second institution would be created along the lines of the classical or Nordic ombudsman model to contend with misconduct

in office and maladministration issues similar to other Nordic ombudsman institutions.

This approach requires that the two offices enjoy very clear and separate lines of authority in their legislative mandates to be successful in tandem. Provided clarity is secured, this model presents a number of benefits, the most important being that it would respect and protect the purpose and integrity of the LNHRO even more than would the broadening of its mandate. Meanwhile, all complaints regarding maladministration would be considered by a separate independent mechanism. As a limiting factor, it might be borne in mind that some cases of uncertain basis might be shuttled between the offices.

Militating against this model are resource and time concerns, as two separate offices would require more resources than a unified approach. Creating another institution might also weaken the existing one even if they have separate spheres of responsibility. Difficulties might also arise in hiring and retaining personnel of sufficient quality to lead and work in two separate offices. Indeed, the paucity of qualified human resources was a concern noted by numerous interlocutors. As for the time aspect, the development of the second office would require substantial planning, completely new legislation, etc. Bearing in mind these concerns, it would seem more advisable to concentrate efforts and resources on an existing institution.

Alternative Option - Sectoral Ombudsmen Under LNHRO Umbrella

Yet another option open to Latvian authorities could see the LNHRO become an overarching umbrella organisation including not only a classical ombudsman but also a number of sectoral ombudsmen. In this model, a classical ombudsman, and ombudsmen for data protection, equality issues, children's rights, and consumer protection, would retain functional independence while working under the aegis of the primary office.

Introduction of this model would necessitate fundamental changes to the LNHRO. Most notably, its conversion into a pure ombudsman institution would mean that it would lose its present human-rights-related jurisdiction over the private sector. In the result, the LNHRO's capacity to act as an alternative to courts in some human rights disputes, such as those involving employers and employees, would be restricted, although aspects of labour issues could be covered by special sectoral ombudsmen. Judicial processes, one may note, usually take longer, and are more expensive. It should be noted that none of the interlocutors met by the Experts suggested that this type of institutional change be adopted.

In instituting this model, the first step to be taken would be the nomination of an umbrella organisation under which other offices would be subsumed. This super-office could indeed be the LNHRO in name. But to provide for institutional clarity in relation to subordinate offices, it would be necessary to considerably rework the original mandate of the Office.

Some of the benefits arising in this model include the shared use of state resources, clarity for the public and for the offices themselves in

understanding the institutional structure and the combined authority, and the independence which comes with a unity of voice and structure.

It must be recalled, though, that with this broader office, human rights issues would receive less emphasis. It would also entail significantly less emphasis on education and information, which were considered critical issues in the choice to create a human rights office in the mid-1990s.

As with the second alternative noted above, the umbrella model is militated against by resource concerns and the need to have strong candidates to lead each of the different sectoral ombudsman offices. In the final analysis, this option seems hard to implement in the Latvian context.

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