

NOTE

"As of 3 November 2017 the SCA recommendations contained in this report are considered final"

As per the Record of Decisions of the Bureau of the Global Alliance of National Human Rights Institutions on the Human Rights Commissioner of the Republic of Azerbaijan , "the Bureau decided to adopt the recommendation of the SCA relating to the NHRI of Azerbaijan of March 2017, both with regard to the accreditation status and to the recommendations."

GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (GANHRI)

**Report and Recommendations of the Session of the Sub-Committee on Accreditation
(SCA)**

Geneva, 13-17 March 2017

SUMMARY OF RECOMMENDATIONS

<u>2. Accreditation (Art. 10 of the GANHRI Statute)</u>
<u>2.1 Liberia: Independent National Commission on Human Rights (INCHR)</u> Recommendation: The SCA recommends that the INCHR be accredited with A status.
<u>2.2 Lithuania: Seimas Ombudsmen Office (SOO)</u> Recommendation: The SCA recommends that the SOO be accredited with A status.
<u>2.3 Niger : Commission Nationale des Droits Humains (CNDH)</u> Recommendation: The SCA recommends that the CNDH be accredited with A status.
<u>2.4 Norway: Norwegian National Human Rights Institution (NNHRI)</u> Recommendation: The SCA recommends that the NNHRI be accredited with A status.
<u>3. Re-Accreditation (Art. 15 of the GANHRI Statute)</u>
<u>3.1 Azerbaijan: Human Rights Commissioner of the Republic of Azerbaijan (HRCA)</u> Recommendation: The SCA recommends that the HRCA be downgraded to B status.
<u>3.2 Bolivia: Defensoría del Pueblo (DPB)</u> Recommendation: The SCA recommends that the DPB be re-accredited with A status.
<u>3.3 Colombia: Defensoría del Pueblo (DPC)</u> Recommendation: The SCA recommends that the DPC be re-accredited with A status.
<u>3.4 Greece: Greek National Commission for Human Rights (GNCHR)</u> Recommendation: The SCA recommends that the GNCHR be re-accredited with A status.
<u>3.5 Indonesia: National Commission on Human Rights (Komnas HAM)</u> Recommendation: The SCA recommends that the Komnas HAM be re-accredited with A status.
<u>3.6 Peru: Defensoría del Pueblo (DPP)</u> Recommendation: The SCA recommends that the DPP be re-accredited with A status.
<u>3.7 Philippines: Commission on Human Rights of the Philippines (CHRP)</u> Recommendation: The SCA recommends that the CHRP be re-accredited with A status.
<u>4. Decision (Art. 14.1 of the GANHRI Statute)</u>
<u>4.1 Egypt: National Council of Human Rights (NCHR)</u> Decision: The SCA decides that further consideration of the re-accreditation application of the NCHR will be deferred to its first session of 2018.

Report, Recommendations, and Decision of the Session of the SCA, 13-17 March 2017

1. BACKGROUND

1.1 In accordance with the Statute (Annex I) of the Global Alliance of National Human Rights Institutions (GANHRI), the SCA has the mandate to consider and review applications for accreditation, reaccreditation and special or other reviews received by the National Institutions, Regional Mechanisms and Civil Society Section (NRCS) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its capacity as the GANHRI Secretariat, and to make recommendations to the GANHRI Bureau members with regard to the compliance of applicant institutions with the Paris Principles (Annex II). The SCA assesses compliance with the Paris Principles in law and in practice.

At its March 2017 session, the Bureau approved amendments to the SCA Rules of Procedure and the General observations, and took note of the Practice Notes related to: 1) Deferrals ; 2) Special Reviews ; 3) Assessing the Performance of National Human Rights Institutions ; and 4) National Human Rights Institutions in Transition.

At its March 2017 session, the GANHRI General Assembly adopted the amendments to the GANHRI Statute.

1.2 In accordance with the SCA Rules of Procedure, the SCA is composed of NHRI representatives from each region: Canada for the Americas (Chair), Mauritania for Africa, Jordan for Asia-Pacific and France for Europe.

1.3 The SCA convened from 13 to 17 March 2017. OHCHR participated as a permanent observer and in its capacity as GANHRI Secretariat. In accordance with established procedures, regional networks of NHRIs were invited to attend as observers. The SCA welcomed the participation of representatives from the Secretariats of the Asia-Pacific Forum (APF), European Network of National Human Rights Institutions (ENNHRI) and Network of African National Human Rights Institutions (NANHRI), as well as the participation of the staff member of GANHRI Head Office.

1.4 Pursuant to article 10 of the Statute, the SCA considered the applications for accreditation from the NHRIs of Liberia, Lithuania, Niger and Norway.

1.5 Pursuant to article 15 of the Statute, the SCA also considered applications for re-accreditation from the NHRIs of Azerbaijan, Bolivia, Colombia, Greece, Indonesia, Peru and Philippines.

1.6 Pursuant to article 14.1 of the Statute, the SCA took a decision regarding the reaccreditation of the NHRI of Egypt.

The SCA considered certain matters relating to its ability to review a B-status NHRI. The SCA recommends that the Bureau considers amending articles 16 and 18 of the GANHRI Statute to provide that those articles apply to both A and B-status NHRIs.

The SCA considered certain matters relating to public statements made by NHRIs concerning human rights issues in other States. The SCA recommends that the Bureau considers developing guidelines related to actions undertaken by NHRIs in respect of matters arising in other States.

1.7 In accordance with the Paris Principles and the GANHRI SCA Rules of Procedure, the classifications for accreditation used by the SCA are:

- A:** Compliance with the Paris Principles;
- B:** Not fully in compliance with the Paris Principles or insufficient information provided to make a determination;

1.8 The General Observations (Annex III), as interpretative tools of the Paris Principles, may be used to:

- a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
- b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;
- c) Guide the SCA in its determination of new accreditation applications, re-accreditation applications or other review:
 - i) If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.
 - ii) If the SCA has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, or offered no reasonable explanation why no efforts had been made, it would be open to the SCA to interpret such lack of progress as non-compliance with the Paris Principles.

1.9 The SCA notes that when specific issues are raised in its report in relation to accreditation, re-accreditation, or special reviews, NHRIs are required to address these issues in any subsequent application or other review.

1.10 Pursuant to Article 12.1 of the Statute, where the SCA comes to an accreditation recommendation, it shall be deemed accepted by the GANHRI Bureau unless it is successfully challenged by the applicant NHRI in accordance with the following process:

- i) The recommendation of the SCA shall, as soon as practicable, be forwarded to the applicant NHRI;
- ii) The applicant NHRI can challenge a recommendation of the SCA by submitting a letter addressed to the GANHRI Chairperson and copied to the GANHRI Secretariat within twenty-eight (28) days of the date of communication of the recommendation;
- iii) At the end of this twenty-eight (28) day period, the GANHRI Secretariat will forward to Bureau members, as soon as practicable, the recommendations of the SCA. If the applicant NHRI has not challenged the recommendation, it shall be deemed accepted by the Bureau;
- iv) If an applicant NHRI submits a challenge within these twenty-eight (28) days, the GANHRI Secretariat will forward to the Bureau, as soon as practicable, all relevant material related to the challenge. GANHRI Bureau members will be provided with twenty (20) days in which to determine whether or not to support this challenge;
- v) Any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the Chair of the SCA and the GANHRI

Secretariat of this support. If the challenge does not receive the support of at least one (1) Bureau member within twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;

- vi) If at least one (1) member of the GANHRI Bureau supports the challenge of the applicant NHRI within these twenty (20) days, the GANHRI Secretariat will notify members of the Bureau as soon as practicable of this support and will provide any additional relevant information;
- vii) Once provided with this notification and any additional relevant material, any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the GANHRI Chairperson and GANHRI Secretariat of this support. If the challenge does not receive the support of at least four (4) Bureau members in total coming from not less than two (2) regions within the twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;
- viii) If the challenge receives the support of at least four (4) Bureau members in total coming from not less than two (2) regions, the recommendation of the SCA shall be referred to the following GANHRI Bureau meeting for a decision.

1.11 At each session the SCA conducts a teleconference with every NHRI. It may also consult with and seek further information from NHRIs where necessary. In addition, OHCHR desk officers and, as appropriate, OHCHR field officers were available to provide further information, as needed.

1.12 Pursuant to Article 18.1 of the Statute, any decision that would serve to remove accredited "A" status from an applicant can only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the written evidence deemed necessary to establish its continued conformity to the Paris Principles.

1.13 At any time, the SCA may receive information that raises concern that the circumstances of a NHRI have changed in a way that affects its compliance with the Paris Principles, and the SCA may then initiate a Special Review of that NHRI's accreditation status. When considering whether or not to initiate a Special Review, the SCA has adopted a procedure whereby, in addition to written submissions made by the NHRI, civil society and any other stakeholder, the NHRI is afforded the opportunity to make an oral statement to the SCA during the session.

1.14 Pursuant to Article 16(3), any review of the accreditation classification of a NHRI must be finalized within 18 months.

1.15 The SCA acknowledges the high degree of support and professionalism of the GANHRI Secretariat (OHCHR-NRCS).

1.16 The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and gave one (1) week to provide any comments on them. The summaries are only prepared in English, due to financial constraints. Once the recommendations of the SCA are adopted by the GANHRI Bureau, the report of the SCA is placed on the GANHRI website (<http://nhri.ohchr.org/>).

1.17 The SCA considered information received from civil society. The SCA shared that information with the concerned NHRIs and considered their responses.

1.18 Notes: The GANHRI Statute, the Paris Principles, the General Observations and the Practice Notes referred to above can be downloaded in Arabic, English, French and Spanish from the following links:

1. The GANHRI Statute:
<http://nhri.ohchr.org/EN/AboutUs/Governance/Pages/Statute.aspx>
2. The Paris Principles and General Observations:
<http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/SCAGeneralObservations.aspx>
3. The Practice Notes:
<http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%202/Forms/Default%20View.aspx>

2. SPECIFIC RECOMMENDATIONS – ACCREDITATION APPLICATIONS (Art. 10 of the GANHRI Statute)

2.1 Liberia: Independent National Commission on Human Rights (INCHR)

Recommendation: The SCA recommends that the INCHR be accredited with **A** status.

The SCA welcomes the establishment of the INCHR. The SCA commends it for its efforts to promote and protect human rights despite the challenging context in which it operates. The SCA notes that elections will be held in October 2017 in Liberia, and that INCHR plans to monitor human rights during the electoral process.

The SCA notes:

1. Interaction with the international human rights system

The enabling law vests the INCHR with the mandate to cooperate with regional and international human rights system. The SCA notes the INCHR's reported intention to more actively engage with the international human rights system in coming years.

The Paris Principles recognise that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and UPR) and the United Nations Human Rights Treaty Bodies, can be an effective tool for NHRIs in the promotion and protection of human rights domestically.

Depending on existing domestic priorities and resources, effective engagement with the international human rights system may include:

- a) submitting parallel or shadow reports to the UPR, Special Procedure mechanisms and Treaty Bodies Committees;
- b) making statements during debates before review bodies and the Human Rights Council;
- c) assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and
- d) monitoring and promoting the implementation of relevant recommendations originating from the human rights system.

The SCA encourages the INCHR to engage wherever possible and in accordance with their own strategic priorities. In so doing, the SCA highlights that the INCHR should:

- avail themselves of the assistance offered by the UN Office of the High Commissioner for Human Rights (OHCHR), which provides technical assistance and facilitates regional and international cooperation and exchanges among NHRIs; and
- engage with GANHRI, NANHRI and other NHRIs, as appropriate.

The SCA refers to Paris Principles A.3(d) and A.3(e) and to its General Observation 1.4 'Interaction with the international human rights system'.

2. Pluralism and representation of women

The SCA recognises the efforts undertaken by the INCHR to increase gender balance within the Commission and the report by the INCHR that it will aim to hire 60% women in its future recruitment efforts. The SCA emphasizes that a diverse decision-making and staff body facilitates the NHRI's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRI for all citizens.

Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity and minority status. This includes ensuring the equitable participation of women in the NHRI.

The SCA notes that there are diverse models for ensuring the requirement of pluralism in the composition of the NHRI as set out in the Paris Principles. For example:

- a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow and restrict the diversity and plurality of the composition of the NHRI's membership should be avoided;
- b) Pluralism through the appointment procedures of the governing body of the NHRIs, for example, where diverse societal groups suggest or recommend candidates;
- c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
- d) Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member Institutions, such as an Ombudsperson.

The SCA encourages the INCHR to continue its efforts to increase pluralism in its composition, including appropriate gender balance.

The SCA refers to Paris Principles B.1 and to its General Observation 1.7 on 'Ensuring pluralism of the NHRI'.

3. Selection and appointment

In accordance with article 9(2) of the Act, the Chairperson and Commissioners are appointed by the President with the consent of the Senate. In accordance with article 9(3) of the Act, only those who have been shortlisted by an independent committee of experts formed by the Chief Justice of the Republic of Liberia in consultation with civil society organizations may be appointed.

Further, in accordance with article 9(4) of the Act, the Chairperson shall be a senior lawyer who has demonstrated excellence and a commitment to human rights and the rule of law. The Act is silent on the merit criteria for Commissioners.

The SCA acknowledges that the INCHR reports that, in practice, vacancies are widely advertised and broad consultation is held throughout the selection process. It further acknowledges that the INCHR reports that the independent committee is composed mainly of representatives from civil society, professional bodies and academia.

However, the SCA is of the view that the selection process currently enshrined in the existing legislation is not sufficiently broad and transparent. In particular, it does not:

- require the advertisement of vacancies;
- establish clear and uniform criteria upon which all parties assess the merit of eligible applicants; and
- specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.

The SCA encourages the INCHR to advocate for the formalization and application of a process that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;

- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on ‘Selection and appointment of the decision-making body of NHRIs’.

2.2 Lithuania: Seimas Ombudsmen Office (SOO)

Recommendation: The SCA recommends that the SOO be accredited with **A** status.

The SCA welcomes the establishment of the SOO as an NHRI.

The SCA notes:

1. Human rights mandate

The Law does not provide an explicit promotion mandate. The SCA notes, however, that in practice the SOO undertakes promotional activities.

The SCA is of the view that an NHRI should be legislatively mandated with specific functions to both promote and protect human rights. It understands ‘promotion’ to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy.

Further, the SOO’s enabling Law does not explicitly mandate it to either interact with the international human rights system or to encourage ratification or accession to international human rights instruments. The SCA acknowledges, however, that in practice the SOO undertakes functions in these areas.

The SCA encourages the SOO to continue to interpret its mandate in a broad manner. It further encourages the SOO to advocate for legislative amendments to explicitly include a promotional mandate, and to provide it with an explicit mandate both to interact with the international human rights system and to encourage ratification or accession to international human rights instruments.

The SCA refers to Paris Principles A.1, A.2 and A.3 and to its General Observations 1.2 on ‘Human rights mandate’, 1.3 on ‘Encouraging ratification or accession to international human rights instruments’ and 1.4 on ‘Interaction with the international human rights system.’

2. Cooperation with other human rights bodies

The SCA highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to fulfil their mandates effectively. In this regard it acknowledges the SOO’s engagement and cooperation with the other Ombuds institutions and civil society organizations in Lithuania.

The SCA encourages the NHRI to continue to develop, formalise and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including in particular the other Ombuds institutions in Lithuania as well as civil society organizations.

The SCA refers to Paris Principles C (g) and to its General Observation 1.5 on ‘Cooperation with other human rights bodies’.

3. Functional immunity

The Law is silent on whether and how members enjoy functional immunity for actions taken in their official capacity in good faith.

External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a member. For this reason, NHRI legislation should include provisions to protect members from legal liability for acts undertaken in good faith in their official capacity. Such a provision promotes:

- security of tenure;
- the NHRI’s ability to engage in critical analysis and commentary on human rights issues free from interference;
- the independence of senior leadership; and
- public confidence in the NHRI.

It is acknowledged that no office holder should be beyond the reach of the law and, thus, in certain exceptional circumstances, it may be necessary to lift immunity. However, the decision to do so should not be exercised by an individual, but rather by an appropriately-constituted body such as the superior court or by a special majority of parliament. It is recommended that national law provides for well-defined circumstances in which the functional immunity of the decision-making body may be lifted in accordance with fair and transparent procedures.

The SCA refers to Paris Principle B.3 and to its General Observation 2.3 on ‘Guarantee of functional immunity.’

2.3 Niger: Commission Nationale des Droits Humains (CNDH)

Recommendation: The SCA recommends that the CNDH be accredited with **A** status.

The SCA welcomes the establishment of the CNDH. It commends the CNDH for its work in promoting and protecting human rights despite the challenging context in which it operates.

The SCA notes:

1. Encouraging ratification or accession to international human rights instruments

The SCA notes that the Law does not provide the CNDH with an explicit mandate to encourage ratification or accession to international human rights instruments.

The SCA is of the view that encouraging ratification of, or accession to, international human rights instruments is a key function of an NHRI.

The SCA acknowledges the activities the CNDH has undertaken in this regard. However, the SCA encourages the CNDH to advocate for amendments to the enabling legislation to mandate it with explicit responsibility to encourage ratification or accession to international human rights instruments.

The SCA refers to Paris Principles A.3(b) and (c) and to its General Observation 1.3 on ‘Encouraging ratification or accession to international human rights instruments’.

2. Pluralism and representation of women

The CNDH reports that representation of women in its governing body is guaranteed in that one (1) of the members is to be a representative of a women's rights organization. The SCA is of the view that this requirement is not sufficient to ensure appropriate gender balance in the CNDH. Further, the SCA notes that, of the forty-four (44) staff of the CNDH, only twelve (12) (or 27%) are women.

The SCA emphasizes that a diverse decision-making body facilitates the NHRI's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes accessibility of the NHRI for all its citizens.

The SCA encourages the CNDH to take further steps to ensure pluralism, including appropriate gender balance, in its composition.

The SCA refers to Paris Principles B.1 and to its General Observation 1.7 on 'Ensuring pluralism of the NHRI'.

3. Selection and appointment

In accordance with article 3 of the Law, the CNDH is composed of nine (9) members selected from association of judges, lawyers, human rights organisations, women's rights associations, trade unions, academics, peasants' organisations and National Assembly. In accordance with article 4 of the Law, members are appointed by decree of the Council of Ministers.

The SCA is of the view that the process currently enshrined in the Law is not sufficiently broad and transparent. In particular, it does not:

- require the advertisement of vacancies;
- establish clear and uniform criteria upon which all parties assess the merit of eligible applicants; and
- specify the process for achieving broad consultation and/or participation in the application, careening, selection and appointment process.

The SCA further notes that providing for different nominating entities to select members may result in different entities using different processes for selection. The SCA is of the view that these processes should be standardized across all nominating entities.

The SCA encourages the CNDH to advocate for the formalization and application of a standardized process that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on 'Selection and appointment of the decision-making body of NHRIs'.

4. Political representatives on NHRIs

In accordance with article 3 of the Law, membership of the CNDH includes two (2) members appointed by the National Assembly with voting rights.

The SCA acknowledges that the CNDH reports that these members are not Members of Parliament or political representatives, but rather are experts appointed by Parliament. The SCA further acknowledges that the CNDH reports that it has proposed that these members participate without voting rights.

However, the SCA is of the view that the current provision in the Law is not sufficient clear.

The SCA emphasises that the Paris Principles require that an NHRI be independent of government in its composition, operation and decision-making. It must be constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights priorities in the country, and free from political interference.

For these reasons, government representatives and members of parliament should not be members of, nor participate in, the decision-making organs of an NHRI. Their membership of, and participation in, the decision-making body of the NHRI has the potential to impact on the real and perceived independence of the NHRI.

The SCA recognizes that it is important to maintain effective working relationships, and where relevant, consult with government. However, this should not be achieved through the participation of government representatives in the decision-making body of the NHRI.

Where government representatives or members of parliament, or representatives of government agencies, are included in the decision-making body, the NHRI's legislation should clearly indicate that such persons participate only in an advisory capacity. In order to further promote independence in decision-making, and avoid conflicts of interest, an NHRI's rules of procedure should establish practices to ensure that such persons are unable to inappropriately influence decision-making by, for example, excluding them from attending parts of meetings where final deliberations and strategic decisions are made.

The SCA refers to Paris Principles B.1, B.(2), B.3 and C(a) and to its General Observation 1.9 on 'Political representatives on NHRIs'.

5. Adequate funding and financial autonomy

The CNDH reports that its budgetary allocation has not been sufficient to ensure its effective operation. The CNDH further reports that its budget has, in the past, been decreased repeatedly. Further, the CNDH reports that disbursement of its budget has been slow, limiting its ability to effectively respond to issues as they arise.

The SCA acknowledges that the CNDH reports that this situation has improved recently.

It emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities.

In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of improvement in the NHRI's operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, at a minimum, include the following:

- a) The allocation of funds for premises which are accessible to the wide community, including for persons, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) Salaries and benefits awarded to staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- c) Remuneration of members of the decision-making body (where appropriate);
- d) The establishment of a well-functioning communications system including telephone and internet; and
- e) The allocation of a sufficient amount of resources for mandated activities. Where the NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

Government funding should be allocated to a separate budget line applicable only to the NHRI. Such funding should be regularly released and in a manner that does not impact adversely on its functions, day-to-day management and retention of staff.

The SCA encourages CNDH to continue to advocate for an appropriate level of funding to carry out its mandate.

The SCA refers to Paris Principle B.2 and to its General Observations 1.10 on 'Adequate funding'.

2.4 Norway: Norwegian National Human Rights Institution (NNHRI)

Recommendation: The SCA recommends that the NNHRI be accredited with **A** status.

The SCA welcomes the establishment of the NNHRI.

The SCA notes:

1. Encouraging ratification or accession to international human rights instruments

The Act does not explicitly provide the NNHRI with a mandate to encourage ratification or accession to international human rights instruments.

The SCA is of the view that encouraging ratification of, or accession to, international human rights instruments is a key function of an NHRI.

While the SCA acknowledges that the NNHRI is interpreting its mandate broadly and that it undertakes this role in practice, it encourages the NNHRI to advocate for amendments to the enabling legislation to provide the NNHRI with an explicit mandate to encourage ratification or accession to international human rights instruments.

The SCA refers to Paris Principles A.3 (b) and (c) and to its General Observation 1.3 on 'Encouraging ratification or accession to international human rights instruments'.

2. Cooperation with other national human rights institutions

The SCA highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to fulfil their mandates effectively. In this regard it acknowledges the NNHRI's engagement and cooperation with national Ombuds institutions.

The SCA encourages the NNHRI to continue to develop, formalise and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including in particular Ombuds institutions in Norway as well as civil society organizations.

The SCA refers to Paris Principle C (g) and to its General Observation 1.5 on ‘Cooperation with other human rights bodies.

3. Selection and appointment

In accordance with section 5 of the Act, the Norwegian Parliament elects the board. Further, section 2 of the Regulation stipulates that the Parliament will actively inform of the possibilities to propose candidates to the board.

The SCA acknowledges that the NNHRI reports that, in practice, the selection and appointment process is conducted in an open and transparent manner. However, the SCA is of the view that the selection process currently enshrined in the legislation is not sufficiently broad and transparent. In particular, it does not specify the process for achieving broad consultation and/ or participation in application, screening, selection and appointments process.

It is critically important to ensure the formalization of a clear, transparent and participatory selection and appointment process for an NHRI’s decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA encourages the NNHRI to advocate for the formalization and application of a process that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on ‘Selection and appointment of the decision-making body of NHRIs’.

4. Dismissal

Article 6 of the Act provides for the dismissal of the Director of the institution by the Parliament and lists the specific circumstances of dismissal. However, the Act does not provide further details on the dismissal process.

Further, the Act is silent on whether other Board members can be dismissed, by whom and following what process.

The SCA acknowledges that the NNHRI reports that it intends to propose amendments to its enabling law to specify the grounds and process for dismissal.

The SCA is of the view that, in order to address the Paris Principles requirement for a stable mandate, which is important in reinforcing independence, the enabling legislation of an NHRI must contain an independent and objective dismissal process.

The dismissal must be made in conformity with all the substantive and procedural requirements prescribed by law. The grounds for dismissal must be clearly defined and appropriately confined to those actions that impact adversely on the capacity of the member to fulfil his or her mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. The dismissal should not be allowed solely on the discretion of the appointing authorities.

Such requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA refers to Paris Principle B.3 and to its General Observation 2.1 on ‘Guarantee of tenure for members of the NHRI decision-making body’.

5. Functional immunity

The Act is silent on whether and how members enjoy functional immunity for actions taken in their official capacity in good faith in their official capacity.

External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a member. For this reason, NHRI legislation should include provisions to protect members from legal liability for acts undertaken in good faith in their official capacity. Such a provision promotes:

- security of tenure;
- the NHRI’s ability to engage in critical analysis and commentary on human rights issues free from interference;
- the independence of senior leadership; and
- public confidence in the NHRI.

It is acknowledged that no office holder should be beyond the reach of the law and, thus, in certain exceptional circumstances, it may be necessary to lift immunity. However, the decision to do so should not be exercised by an individual, but rather by an appropriately-constituted body such as the superior court or by a special majority of parliament. It is recommended that national law provides for well-defined circumstances in which the functional immunity of the decision-making body may be lifted in accordance with fair and transparent procedures.

The SCA refers to Paris Principle B.3 and to its General Observation 2.3 on ‘Guarantee of functional immunity.’

3. SPECIFIC RECOMMENDATIONS – RE- ACCREDITATION APPLICATIONS (Art. 15 of the GANHRI Statute)

3.1 Azerbaijan: Human Rights Commissioner of the Republic of Azerbaijan (HRCA)

Recommendation: The SCA recommends that the HRCA be downgraded to **B** status.

In accordance with article 18.1 of the GANHRI Statute, a recommendation to downgrade does not take effect for one year. The SCA notes that the HRCA maintains A status until the SCA first session of 2018. This allows an opportunity for the HRCA to provide the documentary evidence necessary to establish its continued compliance with the Paris Principles.

The SCA notes with concern:

1. Addressing human rights violations

The SCA has received information which raised concerns that the HRCA may no longer be operating in full compliance with the Paris Principles. The information related to actions taken and not taken, and statements made and not made, by the HRCA indicating unwillingness to effectively engage on serious human rights violations, including those relating to torture and conditions of detention, arbitrary detention, freedom of expression, and the protection of human rights defenders.

In particular, the SCA considered the following information:

- The 2015 Concluding Observations of the Committee against Torture in which it expressed concern that the HRCA, in its role as NPM, “has not been effective in addressing the main problematic issues related to the prevention of torture and human rights violations in places of deprivation of liberty”, as well as the Human Rights Committee in its 2016 Concluding Observations noted that it “is concerned about the mechanism’s effectiveness in preventing torture and ill-treatment and other violations in places of deprivation of liberty.”

At the session, the SCA provided the HRCA with the opportunity to respond to these observations. The SCA acknowledges that it is the position of the HRCA that the concerns expressed represent the views of various NGOs rather than the Committee members themselves. However, the SCA was not satisfied with this response.

- Various statements of the UN High Commissioner for Human Rights expressing concern about the reported crackdown in Azerbaijan on journalists and human rights defenders, including a September 2015 statement, available at:
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16393&LangID=E>.

At the session, the SCA provided the HRCA with an opportunity to outline the actions taken by the institution in response to these concerns, with reference to the specific cases of Khadija Ismayilova, Lyal and Arif Yunus, Intigam Aliyev, Anar Mammadli and Rasul Jafarov.

The SCA acknowledges that the HRCA did provide some evidence about actions taken in relation to these concerns, including undertaking visits to the detained individuals and, in the case of Intigam Aliyev, making a request for the return of two books that had been seized. However, the SCA is of the view that the evidence provided does not establish that the HRCA has effectively responded to the concerns raised.

- A report from civil society organizations presenting concerns relating to the independence and effectiveness of the HRCA, and asserting that it is not viewed as an effective institution by civil society organizations as a result of its failure to respond to gross human rights violations, including by remaining silent in relation to government crackdowns on civil society, the jailing of leading human rights defenders, the closure of human rights NGOs, and the adoption of repressive NGO laws limiting the ability of these organizations to operate effectively. The submission references the specific cases of Bayram Mammadov and Giyas Ibrahimov and alleges that the HRCA failed to promptly visit the youth activists in detention and, when they did, falsely reported that they had no complaints and had not been subject to torture.

The SCA received and considered a written response from the HRCA. It acknowledges that the HRCA disputes the veracity of the NGO submission and that it has provided some evidence of activities it has taken in response to these issues and specific cases, including visiting the two individuals in detention. However, the SCA is of the view that the evidence provided does not establish that the HRCA has effectively responded to the concerns raised.

In view of all of the material before it, the SCA is of the view that the HRCA has not spoken out in a manner that promotes protection for human rights in response to credible allegations of serious human rights violation having been committed by government authorities. The failure to do so demonstrates a lack of its independence. Therefore, the SCA is of the view that the HRCA is acting in a way that has seriously compromised its compliance with the Paris Principles.

An NHRIs' mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments. NHRIs are expected to promote and ensure respect for all human rights, democratic principles and the strengthening of the rule of law in all circumstances and without exception. Where serious human rights violations are occurring or imminent, NHRIs are expected to conduct themselves with a heightened level of vigilance and independence.

The SCA refers to Paris Principles A.1, A.2 and A.3.

2. Selection and appointment

In accordance with article 2(1) of the Law, the Ombudsperson is elected by an 83 votes majority of the Parliament from among three (3) candidates proposed by the President.

The SCA is of the view that the process currently enshrined in the Law is not sufficiently broad and transparent. In particular, it does not:

- require the advertisement of vacancies; and
- specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.

The SCA encourages the HRCA to advocate for the formalization and application of a process that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and

- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA notes that the term of the current Ombudsperson expired in early March 2017 and that no new selection and appointment process has been initiated. The SCA urges the HRCA to ensure that a transparent and participatory process is utilized in the selection and appointment of a new Ombudsperson.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on ‘Selection and appointment of the decision-making body of NHRIs’.

3.2 Bolivia: Defensoría del Pueblo (DPB)

Recommendation: The SCA recommends that the DPB be re-accredited with **A** status.

The SCA notes:

1. Selection and appointment

In accordance with article 15 of the enabling law, the Deputy Ombudspersons of the DPB are selected by the Ombudsperson and ratified by the Senate. The Law is otherwise silent on the selection and appointment of the Deputy Ombudspersons, including whether vacancies are advertised, and in what ways the process promotes broad consultation and / or participation of diverse social forces.

It is critically important to ensure the formalization of a clear, transparent and participatory selection and appointment process for an NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA encourages the DPB to advocate for the formalization and application of a selection and appointment process for Deputy Ombudspersons that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on ‘Selection and appointment of the decision-making body of a NHRI’.

2. Adequate funding

The DPB reports that during the period from 2013 to 2016, 90% of its budget was directed to personnel costs, with 10% available for other services and activities. The DPB further reports that donor funding accounted for 44%.

The SCA welcomes the report by the DPB on the agreement signed with the Ministry of Economy and Public Finance to ensure its financial sustainability until 2020. The SCA notes with concern,

however, that these funds will be made available gradually. It further notes with concern a prospective decrease in donor funding which could impact on the effective implementation of the DPB's mandate.

The SCA reiterates that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its ability to freely determine its priorities and activities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of improvement in the NHRI's operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, at a minimum, include the following:

- a) The allocation of funds for premises which are accessible to the wide community, including for persons, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) Salaries and benefits awarded to staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- c) Remuneration of members of the decision-making body (where appropriate);
- d) The establishment of a well-functioning communications system including telephone and internet; and
- e) The allocation of a sufficient amount of resources for mandated activities. Where the NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

Funding from external sources, such as from international development partners, should not compose the core funding of the NHRI, as this is the responsibility of the State. However, the SCA recognizes the need for the international community, in specific and rare circumstances, to continue to engage with and support an NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases, an NHRI should not be required to obtain approval from the State for external sources of funding, as this requirement may detract from its independence. Such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the NHRI.

The SCA encourages the DPB to continue to advocate for an adequate level of funding to effectively carry out its mandate.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding'.

3. Staff

The SCA notes that the DPB reports in its Statement of Compliance that a high percentage of its staff are seconded.

It does appear, however, that the DPB is legislatively empowered to determine the staffing structure, the skills required to fulfil the NHRI's mandate, set other criteria (such as diversity), and select their staff in accordance with their enabling law.

The SCA emphasizes that staff should be recruited according to an open, transparent, and merit-based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfil the NHRI's mandate. Such a process promotes the independence and effectiveness of, and public confidence in, the NHRI.

NHRI staff should not, in general, be seconded or re-deployed from branches of the public service.

The SCA refers to Paris Principle B.2 and to its General Observation 2.4 on ‘Recruitment and retention of NHRI staff.’

3.3 Colombia: Defensoría del Pueblo (DPC)

Recommendation: The SCA recommends that the DPC be re-accredited with **A** status.

The SCA notes:

1. Selection and appointment

In accordance with article 281 of the Constitution and article 2 of the Law, the Ombudsperson is elected by the Chamber of Representatives based on a list of three (3) candidates presented by the President. Once the list is received, the Chamber of Representatives holds a public audience before the plenary of the Congress introducing presented candidates.

While recognizing that efforts have been made to improve the selection and appointment process, the SCA is of the view that the process as enshrined in the law is not sufficiently broad and transparent. In particular, it does not:

- require the advertisement of vacancies;
- establish clear and uniform criteria upon which all parties assess the merit of eligible applicants; and
- specify the process for achieving broad consultation and / or participation in the application, screening, selection and appointment process.

It is critically important to ensure the formalization of a clear, transparent and participatory selection and appointment process for an NHRI’s decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA encourages DPC to advocate for the formalization and application of a process that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on ‘Selection and appointment of the decision-making body of NHRIs’.

2. Adequate funding

The DPC notes that its funding is not sufficient to effectively carry out its mandate, in particular taking into consideration the recent signature of the Peace Agreements and the additional responsibilities mandated to the DPC as a result. Consequently, it faces a situation of understaffing and difficulties in retaining staff with the requisite skills.

The SCA acknowledges that the DPC reports having advocated for an increase of its budget as well as having sought donor funding.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities.

In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the Institution's operations and the fulfilment of its mandate. Provision of adequate funding by the State should, as a minimum, include the following:

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent Institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);
- d) the establishment of well-functioning communications systems including telephone and internet; and
- e) the allocation of a sufficient amount of resources for mandated activities. Where the National Institution has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

Funding from external sources, such as from international development partners, should not compose the core funding of the NHRI, as this is the responsibility of the State. However, the SCA recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support an NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases NHRIs should not be required to obtain approval from the state for external sources of funding, which may otherwise detract from its independence. Such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the NHRI.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding of NHRIs'.

3. Dismissal process

The Law is silent on the process for a transparent and fair dismissal of the Ombudsperson.

The SCA is of the view that, in order to address the requirement for a stable mandate, which is important in reinforcing independence, the enabling law of an NHRI must contain an independent and objective dismissal process similar to that accorded to members of other independent State agencies. This process should apply uniformly to all nominating entities.

The grounds for dismissal must be clearly defined and appropriately confined to those actions that impact adversely on the capacity of the member to fulfil his or her mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by the decision of an appropriate body with independent jurisdiction. The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law. It should not be allowed based solely on the discretion of the appointing authorities.

These requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA encourages the DPC to advocate for an independent and objective dismissal process for the Ombudsperson.

The SCA refers to Paris Principle B.3 and to its General Observation 2.1 on ‘Guarantee of tenure for members of the NHRI decision-making body’.

3.4 Greece: Greek National Commission for Human Rights (GNCHR)

Recommendation: The SCA recommends that the GNCHR be re-accredited with **A** status.

The SCA applauds the continuing efforts of the GNCHR to implement the recommendations made in May 2016.

The SCA acknowledges that the draft amendments to the GNCHR Law were adopted by the Parliament during the first reading on 16 March 2017, and that the second reading is scheduled in the coming days. It notes that the proposed amendments and other actions taken fully address the SCA’s concerns with respect to political representatives on NHRIs, full-time members, and annual reports.

The SCA commends the GNCHR for its continuing efforts to promote and protect human rights in Greece despite operating in challenging circumstances, including under a program of austerity that has resulted in drastic financial difficulties.

The SCA notes:

1. Selection and appointment

Article 2(2) of the amended Law provides that the stakeholders designating the Commission’s members shall select the appropriate persons with transparency and in accordance with their rules of operation. It further provides that members of the Commission shall be persons with proven knowledge and experience in the field of protection and promotion of human rights.

The SCA continues to be of the view that the process enshrined in the enabling law is not sufficiently broad and transparent. In particular, it does not specify the process for achieving broad consultation and/ or participation in the application, screening, selection and appointment process.

The SCA further notes that providing for different stakeholders to select members according to their rules of operation may result in different entities using different processes for selection. The SCA continues to be of the view that these processes should be standardized across all nominating entities.

A clear, transparent and participatory selection and appointment process for the selection of members must be included in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA reiterates its May 2016 recommendations and encourages the GNCHR to continue its efforts to advocate for the formalization of a detailed process in its enabling law that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening and selection process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on ‘Selection and appointment of the decision-making body of NHRIs’.

2. Adequate funding

The SCA notes that it received detailed information regarding the financial situation in which the GNCHR is operating, and in particular the social and other consequences of the program of austerity currently in effect in Greece. The SCA acknowledges that this situation limits the GNCHR’s ability to advocate for increased funding.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities.

Provision of adequate funding by the State should, as a minimum, include the following:

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent Institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);
- d) the establishment of well-functioning communications systems including telephone and internet;
- e) the allocation of a sufficient amount of resources for mandated activities.

The SCA encourages the GNCHR to continue to advocate for an appropriate level of funding to carry out its mandate including, where appropriate, the establishment of regional offices.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on ‘Adequate funding of NHRIs’.

3. Dismissal

Article 2(3)(a) of the amended Law provides that membership in the GNCHR can be withdrawn solely on the grounds of incapacity to perform their duties and proven inefficiency in the performance of their duties. It further provides that members of the GNCHR shall be automatically relieved of their duties if an irrevocable court decision is issued against them for an offence impeding one’s appointment as a civil servant or relieving a civil servant of his/her duties in accordance with the provisions of the Civil Servants Code.

Further, Article 11 of the by-laws of the GNCHR provides that members are removed by a secret ballot vote of the plenary.

The SCA continues to be of the view that, in order to address the requirement for a stable mandate, which is important in reinforcing independence, the enabling law of an NHRI must contain an independent and objective dismissal process similar to that accorded to members of other independent State agencies. This process should apply uniformly to all nominating entities.

The grounds for dismissal must be clearly defined and appropriately confined to those actions that impact adversely on the capacity of the member to fulfil his or her mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by the decision of an appropriate body with independent jurisdiction. The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law. It should not be allowed based solely on the discretion of the appointing authorities.

The SCA is of the view that such requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA refers to Paris Principle B.3 and to its General Observation 2.1 on ‘Guarantee of tenure for members of the NHRI decision-making body’.

3.5 Indonesia: National Commission on Human Rights (Komnas HAM)

Recommendation: The SCA recommends that the Komnas HAM be re-accredited with **A** status.

The SCA notes:

1. Pluralism

During the 2014 review of the Komnas HAM, the SCA expressed concern about lack of pluralism in the governing body and, in particular, the low representation of women.

The SCA recognizes and applauds the efforts undertaken by Komnas HAM to address pluralism, and notes that, of the thirteen (13) current members, four (4) women, and that eight ethnic groups are represented.

The SCA emphasizes that a diverse decision-making body facilitates the NHRI’s appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes accessibility of the NHRI for all its citizens.

Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity or minority status. This includes ensuring the equitable participation of women in the NHRI.

The SCA refers to Paris Principle B.1 and to its General Observation 1.7 on ‘Ensuring pluralism in the NHRI.’

2. Selection and appointment

In accordance with article 83(1) of the Law, the members of Komnas HAM are selected by the House of Representatives based on the recommendation of Komnas HAM and validated by the President. The SCA notes that, in accordance with article 86 of the Law, Komnas HAM has issued Regulation 3/2016 on the Establishment of a Selection Committee for Komnas HAM Members. However, the SCA notes that this process is applicable only to the 2017-2022 selection process and is not a permanent addition to Komnas HAM’s regulatory framework.

The SCA emphasizes that a clear, transparent and participatory selection and appointment process for the selection of members must be included in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA encourages Komnas HAM to advocate for the formalization and application of a permanent process that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on ‘Selection and appointment of the decision-making body of NHRIs’.

3. Functional immunity

The SCA notes that, during the Komnas HAM’s 2007, 2012 and 2014 reviews, it emphasized the importance of protecting members of the governing body from legal liability for actions undertaken in their official capacity. The SCA acknowledges that Komnas HAM has proposed legislative amendments to its Law to include a provision for functional immunity, and it encourages Komnas HAM to continue to advocate for passage of these amendments.

It is again strongly recommended that provisions be included in national law to protect legal liability of members of the NHRI’s decision-making body for the actions and decisions that are undertaken in good faith in their official capacity.

External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a member. For this reason, NHRI legislation should include provisions to protect members from legal liability for acts undertaken in good faith in their official capacity. Such a provision promotes:

- security of tenure;
- the NHRI’s ability to engage in critical analysis and commentary on human rights issues free from interference;
- the independence of senior leadership; and
- public confidence in the NHRI.

It is acknowledged that no office holder should be beyond the reach of the law and, thus, in certain exceptional circumstances it may be necessary to lift immunity. However, the decision to do so shall not be exercised by an individual, but rather by an appropriately-constituted body such as the superior court or by a special majority of parliament. It is recommended that national law provides for well-defined circumstances in which the functional immunity of the decision-making body may be lifted in accordance with fair and transparent procedures.

The SCA refers to Paris Principle B.3 and to its General Observation 2.3 on ‘Guarantee of functional immunity.’

4. Administrative regulation

Article 81(5) of the Law provides that the position, duties, responsibilities and organizational structure of the Secretariat General of the Komnas HAM shall be set forth in a Presidential Decree. This was noted as an issue of concern by the SCA during its 2007, 2012 and 2014 reviews of Komnas HAM.

The SCA notes that Komnas HAM has issued Regulation Number 2/Perses/III/2015 for the organization and administration of the Secretariat General. However, Komnas HAM acknowledges that the Regulation does not supersede the Law and the Presidential Decree issued thereunder concerning the Secretariat General.

The SCA therefore encourages Komnas HAM to advocate for amendment of its enabling Law to allow it to independently determine the position duties responsibilities and organizational structure of the Secretariat General.

The SCA refers to Paris Principle B.2 and to its General Observation 2.8 on ‘Administrative regulation of NHRIs.’

3.6 Peru: Defensoría del Pueblo (DPP)

Recommendation: The SCA recommends that the DPP be re-accredited with A status.

The SCA notes:

1. Mandate to promote human rights

The Constitution and the Law do not explicitly mandate the DPP with responsibility to promote human rights. The SCA notes, however, that in practice the DPP undertakes promotional activities.

The SCA is of the view that an NHRI should be legislatively mandated with specific functions to both promote and protect human rights. It understands ‘promotion’ to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advocacy, public outreach and advocacy.

The SCA encourages the DPP to advocate for legislative amendments to more clearly establish a broad mandate to both protect and promote human rights.

The SCA refers to Paris Principles A.1, A.2 and A.3 and to its General Observation 1.2 on ‘Human rights mandate.’

2. Selection and appointment

In accordance with article 161 of the Constitution, the Ombudsperson is elected by a two-thirds (2/3) majority vote of Congress. In accordance with article 3 of the Law, candidates are screened by a special commission which proposes between one (1) and five (5) candidates. The Law additionally provides for vacancies to be advertised.

The SCA is of the view that the process established in the enabling law is not sufficiently broad and transparent. In particular, it does not clearly specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.

The SCA notes with appreciation that a new Defensor has been appointed in September 2016. However, it notes with concern that the process of election of a candidate took more than five years due to the requirement for the candidate to receive the vote by two thirds (2/3) of the members of Parliament.

The SCA emphasizes the requirement for a clear, transparent and participatory selection process that promotes merit based selection and ensures pluralism. Such a process promotes the independence of, and public confidence in, the senior leadership of a national human rights institution.

The SCA encourages the DPP to advocate for an effective selection process contained in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice. This should include requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria;

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on “Selection and appointment of the decision-making body of National Human Rights Institutions”.

3. Adequate Funding

The DPP has been entrusted with the mandate of National Preventive Mechanism under OPCAT and Independent National Monitoring Mechanism under the CRPD. However, the SCA notes that the DPP has not received additional funding despite the expansion of its mandate.

Further, the DPP reports that, as it is currently operating under a program of austerity, it is unable to fill vacancies in its staff as they arise, and that 90% of its overall budget is required to cover core expenses for staff salaries, pension and office rent.

While the DPP reports that it has received a slight increase in its annual budget for 2016, the SCA is concerned that this is not sufficient to ensure the DPP’s ability to continue to carry out its expanded mandate in an effective and sustainable manner.

The SCA emphasizes the importance of the State providing adequate core funding. This promotes the independence of the NHRI by allowing it to freely determine its priorities and effectively fulfil its mandate. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the organizations operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, as a minimum, include the allocation of a sufficient amount of resources for mandated activities. Where the NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 “Adequate funding of National Human Rights Institutions”

3.7 Philippines: Commission on Human Rights of the Philippines (CHRP)

Recommendation: The SCA recommends that the CHRP be re-accredited with **A** status.

The SCA commends the CHRP for its continuing efforts to promote and protect human rights despite the challenging context in which it operates. The SCA acknowledges the efforts of the CHRP in advocating for a stronger legislative framework through the proposed CHR Act, and it encourages the CHRP to continue these efforts, and advocate for further amendments, to address the concerns outlined below.

The SCA encourages the CHRP to further collaborate with OHCHR, GANHRI, APF and other NHRIs.

The SCA notes:

1. Mandate

All NHRIs should be legislatively mandated with specific functions to both promote and protect human rights. The SCA understands 'protection' functions as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling.

The SCA notes that the Constitution and EO 163 mandate the CHRP with various protection functions, including the mandate to investigate complaints and all forms of human rights violations, provide appropriate legal measures for the protection of human rights, recommend to the Congress to provide compensation to victims or their families, monitor the Government's compliance with international treaty obligations on human rights, and make recommendations to relevant bodies. The SCA acknowledges that the CHRP fulfills its protection mandate through these powers and also, for example, the establishment of a witness protection programme.

The SCA encourages the CHRP to continue its advocacy for an expanded protection mandate, which would be provided for in the proposed CHR Act.

Further, in accordance with Article XIII Section 18 (1) of the Constitution and Section 3 (i) of EO 163, the CHRP is mandated to investigate all forms of human rights violations involving civil and political rights. It does not have an explicit mandate with respect to economic, social and cultural rights.

The SCA acknowledges that the CHRP interprets its mandate in a broad manner and conducts activities in this regard. It further notes that, by virtue of ratification of the *Covenant on Economic, Social and Cultural Rights* by the Philippines and CHRP's Omnibus Rules of Procedures 2012, the CHRP has also interpreted its mandate as including violations of economic, social and cultural rights.

The SCA further notes that section 3 of the proposed CHR Act makes specific reference to the *Covenant on Economic, Social and Cultural Rights* as forming part of the definition of human rights.

Finally, the CHRP does not have an explicit mandate to encourage ratification or accession to international human rights instruments.

The SCA again acknowledges that the CHRP interprets its mandate in a broad manner and conducts activities in this regard. The SCA further notes that section 33(b) of the proposed CHR Act mandates the CHRP to recommend ratification, or accession to, international human rights instruments, and to ensure their implementation.

The SCA refers to Paris Principles A.1 and A.2 and to its General Observations 1.2 on ‘Human rights mandate’ and 1.3 on ‘Encouraging ratification or accession to international human rights instruments.’

2. Pluralism

The Constitution and EO 163 do not require that the membership and staff be representative of diverse segments of society. The SCA notes that the CHRP has indicated that, in the staff recruitment process, diversity is taken into consideration, that currently the staff is diverse in terms of religious belief, profession and other characteristics, and that it maintains appropriate gender balance.

The SCA notes that section 7(g) of proposed CHR Act provides that the composition of the CHRP must observe equal gender balance.

The SCA emphasizes that diversity in the membership and staff of an NHRI facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI for all citizens.

A diverse decision-making and staff body facilitates the National Human Rights Institution’s appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the National Institutions for all citizens.

Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity or minority status. This includes, for example, ensuring the equitable participation of women in the National Institution.

The SCA refers to Paris Principles B.1 and to its General Observation 1.7 on ‘Ensuring pluralism of the NHRI’.

3. Selection and appointment

In accordance with Section 2 (iii) of EO 163, the Chairman and members of the CHRP are appointed by the President.

Further, and also in accordance with section 2 of EO 163, the Chairman and members must be Philippine citizens at least 35 years of age who were not candidates for any elective positions immediately preceding their appointment, and a majority must be members of the Philippine Bar. The SCA is of the view that the selection process currently enshrined in the existing legislation is not sufficiently broad and transparent. In particular, it does not:

- require the advertisement of vacancies;
- establish clear and uniform criteria upon which all parties assess the merit of eligible applicants; and
- specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.

The SCA notes that section 8 of the proposed CHR Act continues to provide that the Chairman and members of the CHRP are appointed by the President. The SCA is of the view that this amendment would not address the concerns outlined above with respect to the advertisement of vacancies and ensuring a process that achieves broad consultation.

Further, the SCA notes that section 7 of the proposed CHR Act expands the merit criteria to include a requirement to have a deep and comprehensive knowledge of, and practical experience for at least ten (10) years on human rights protection, promotion and policy advocacy.

The SCA is of the view that this amendment would sufficiently address the concern outlined above with respect to merit criteria.

It is critically important to ensure the formalization of a clear, transparent and participatory selection and appointment process for an NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA urges the CHRP to advocate for the formalization and application of a selection process in the proposed CHR Act that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on 'Selection and appointment of the decision-making body of NHRIs'.

4. Adequate funding

The CHRP reports that, while it has received some increases in its budgetary allocation, these have not been sufficient to effectively fulfill its mandate, particularly in the current challenging context in which it operates.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its ability to freely determine its priorities and activities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of improvement in the NHRI's operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, at a minimum, include the following:

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);
- d) the establishment of a well-functioning communications system including telephone and internet; and
- e) the allocation of a sufficient amount of resources for mandated activities. Where the NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

The SCA encourages the CHRP to advocate for an appropriate level of funding to effectively fulfil its mandate.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding.'

5. Reporting

The Constitution and EO 163 are silent on the requirement for the CHRP to produce annual and other reports, and on the method of tabling and publicizing such reports.

The SCA acknowledges that the CHRP, in practice, prepares annual reports on the situation of human rights and distributes these reports to regional offices for public dissemination, and to government offices such as Congress, the Senate and the department of budget and management.

The SCA notes that section 38 of the proposed CHR Act provides that the CHRP shall prepare and make public an annual report on its activities.

Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of a National Human Rights Institution. The reports also provide a means by which a National Institution can make recommendations to, and monitor respect for, human rights by government.

The importance for a National Institution to prepare, publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters, is stressed. This report should include an account of the activities undertaken by the National Institution to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

The SCA considers it important that the enabling laws of a National Institution establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. It would be preferable if the National Institution has an explicit power to table reports directly in the legislature, rather than through the Executive, and in so doing to promote action on them.

The SCA refers to Paris Principle A.3 and to its General Observation 1.11 on 'Annual reports of National Human Rights Institutions'.

6. Dismissal

The SCA notes that EO 163 is silent on the dismissal process for the Chairman and members of the CHRP. The SCA further notes that the CHRP has indicated that grounds and procedures for dismissal for the Chairman and members are currently governed by Republic Act number 6713, Code of Conduct and Ethical standards for public officials.

The SCA notes that section 9 of the proposed CHR Act provides that the Chairman and members may be removed for office for a) disloyalty to the Republic of the Philippines; b) culpable violation of the Constitution; c) bribery and graft and corruption, other high crimes or betrayal of trust; d) dishonesty, misconduct in office, gross negligence, or dereliction of duty; e) commission of any offence involving moral turpitude or an offence punishable by imprisonment for more than six (6) years; and f) abuse of authority. The SCA is of the view that the grounds for dismissal outlined in the proposed CHR Act are far-reaching and may be open to misuse.

Further, the SCA notes that section 9 of the proposed CHR Act provides that the dismissal process is commenced by the filing of a verified complaint with the Office of the Ombudsman. The SCA notes that the enabling law does not appear to place limitations placed on who may initiate such a complaint.

The SCA is of the view that, in order to address the Paris Principles requirement for a stable mandate, which is important in reinforcing independence, the enabling law of an NHRI must

contain an independent and objective dismissal process. The dismissal must be made in conformity with all the substantive and procedural requirements prescribed by law.

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact on the capacity of the members to fulfil their mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. Dismissal should not be allowed solely on the discretion of the appointing authorities.

Such requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA refers to Paris Principle B.3 and to its General Observation 2.1 on ‘Guarantee of tenure for members of the NHRI decision-making body’.

7. Functional immunity

The Constitution and Executive Order 163 (EO 163), are silent on whether and how members and staff enjoy functional immunity for actions taken in their official capacity in good faith.

The SCA acknowledges that provision described in Section 27 of the proposed CHR Act adequately addresses this concern by providing for the functional immunity of the members and staff of the CHRP.

External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a member. For this reason, NHRI legislation should include provisions to protect members from legal liability for acts undertaken in good faith in their official capacity. Such a provision promotes:

- security of tenure;
- the NHRI’s ability to engage in critical analysis and commentary on human rights issues free from interference;
- the independence of senior leadership; and
- public confidence in the NHRI.

It is acknowledged that no office holder should be beyond the reach of the law and, thus, in certain exceptional circumstances, it may be necessary to lift immunity. However, the decision to do so should not be exercised by an individual, but rather by an appropriately-constituted body such as the superior court or by a special majority of parliament. It is recommended that national law provides for well-defined circumstances in which the functional immunity of the decision-making body may be lifted in accordance with fair and transparent procedures.

The SCA refers to Paris Principle B.3 and to its General Observation 2.3 on ‘Guarantee of functional immunity.’

4. DECISION (Art. 14.1 of the GANHRI Statute)

4.1 Egypt: National Council of Human Rights (NCHR)

Decision: The SCA decides to **defer** the review of the NCHR to **its first session of 2018**.

The SCA commends the continuing efforts of the NCHR to promote and protect human rights despite the challenging context in which it operates, including by advocating for amendments to its enabling law. The SCA notes, however, that the draft law has not yet been passed by Parliament.

The SCA notes:

1. Interaction with the regional and international human rights systems

The SCA notes with appreciation and acknowledges the efforts the NCHR has made to increase its engagement with regional and international human rights systems.

The SCA emphasizes that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and UPR) and the United Nations Human Rights Treaty Bodies, can be an effective tool for NHRIs in the promotion and protection of human rights domestically.

Depending on existing domestic priorities and resources, effective engagement with the international human rights system may include:

- a) submitting parallel or shadow reports to the UPR, Special Procedure mechanisms and Treaty Bodies;
- b) making statements during debates before review bodies and the Human Rights Council;
- c) assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and
- d) monitoring and promoting the implementation of relevant recommendations originating from the human rights system.

The SCA encourages the NCHR to engage wherever possible and in accordance with their own strategic priorities.

The SCA refers to Paris Principles A.3(d) and (e) and to its General Observation 1.4 on 'Interaction with the international human rights system'.

2. Cooperation with other human rights bodies

The SCA acknowledges that the NCHR engages with a broad range of civil society organizations.

The SCA emphasizes that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to fulfil their mandates. It encourages the NCHR to continue to develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including civil society and NGOs.

The SCA refers to Paris Principles C(f) and (g) and to its General Observation 1.5 on 'Cooperation with other human rights bodies'.

3. Visits to places of detention

The NCHR has acknowledged that it is required to provide prior notice to the Prosecutor General before visiting places of deprivation of liberty.

The SCA notes that, in accordance with article 3(18) of the draft law, the NCHR is mandated to visit prisons and places of detention and to meet in private with those who are held there. However, the amendments do not specify whether these visits can be undertaken unannounced.

While the SCA notes that, in some circumstances, it may be necessary to provide notice for security reasons, it encourages the NCHR to conduct 'unannounced' visits to all places of detention within its jurisdiction as this limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

The SCA encourages the NCHR to continue to access all places of deprivation of liberty to effectively monitor, investigate and report on the human rights situation in a timely manner, and to undertake systematic follow-up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those detained.

Further, the SCA encourages the NCHR to advocate for the explicit mandate to conduct unannounced visit to all places of detention.

The SCA refers to Paris Principles A.3 and D(d) and to its General Observation 1.6 on 'Recommendations by NHRIs.'

4. Selection and appointment

The SCA notes that the current NCHR members' terms have expired and that the former members have continued their duties pending the passage of the proposed amendments to the enabling law and the appointment of new members pursuant to those amendments.

In accordance with article 2 of the Law, the selection and appointment of the NCHR members is governed by the Shura Council.

The SCA is of the view that the selection process currently enshrined in the Law is not sufficiently broad and transparent. In particular, it does not:

- require the advertisement of vacancies;
- establish clear and uniform criteria upon which all parties assess the merit of eligible applicants; and
- specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.

The SCA notes that the draft Law provides that members should be selected from among public figures well-known for their experience, the independence of their opinion, and distinguished performance in the field of human rights. Further, the draft law includes requirements to advertise vacancies to allow concerned authorities relating to human rights to propose candidates and to ensure pluralism. Finally, in accordance with article 2(3) of the draft law, the Bureau of the House of Representatives examines the candidates and submits a list to Plenary of the House of Representatives for election. It appears that these amendments would address the above-noted concerns with respect to the advertisement of vacancies and the establishment of merit criteria. However, beyond the ability to propose candidates, it is unclear that a process would be in place to achieve broad consultation and/or participation in the application, screening, selection and appointment process.

The SCA encourages the NCHR to continue to advocate for the formalization and application of a process that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on 'Selection and appointment of the decision-making body of NHRIs'.

5. Dismissal

The Law is silent on the grounds and process for dismissal.

The SCA notes that article 4 of the draft law provides that membership in the NCHR is terminated in the case of resignation, death, or the issuance of a final tribunal verdict against a member for a dishonorable office or one of the crimes that constitutes a violation of human rights. Also in accordance with article 4, termination of membership is effected by a two-thirds (2/3) majority vote of the NCHR. It appears that these amendments would address the above-noted concern.

The SCA is of the view that, in order to address the Paris Principles requirement for a stable mandate, which is important in reinforcing independence, the enabling legislation of an NHRI must contain an independent and objective dismissal process. The dismissal must be made in strict conformity with all the substantive and procedural requirements prescribed by law.

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the members to fulfill their mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. Dismissal should not be allowed solely on the discretion of appointing authorities.

Such requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA refers to Paris Principle B.3 and to its General Observation 2.1 on ‘Guarantee of tenure for members of the NHRI decision-making body.’

6. Functional immunity

The Law is silent on whether and how board members and others enjoy functional immunity for actions undertaken in good faith in their official capacity.

It is strongly recommended that these provisions be included in national law to protect legal liability of members of the NHRI’s decision-making body for the actions and decisions that are undertaken in good faith in their official capacity.

The SCA notes that, in accordance with article 4 of the draft law, members and staff enjoy immunity from legal liability for actions undertaken in the course of their duties and, accordingly, the draft law addresses this concern.

External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a members. For this reason, NHRI legislation should include provisions to protect members from legal liability for acts undertaken in good faith in their official capacity. Such a provision promotes:

- security of tenure;
- the NHRI’s ability to engage in critical analysis and commentary on human rights issues free from interference;
- the independence of the senior leadership; and
- public confidence in the NHRI.

It is acknowledged that no office holder should be beyond the reach of the law and, thus, in certain exceptional circumstances it may be necessary to lift immunity. However, the decision to do so shall not be exercised by an individual, but rather by an appropriately-constituted body such as the superior court or by a special majority of parliament. It is recommended that national

law provides for well-defined circumstances in which the functional immunity of the decision-making body may be lifted in accordance with fair and transparent procedures.

The SCA refers to Paris Principles B.3 and C(a) and to its General Observation 2.3 on 'Guarantee of functional immunity.'