

GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (GANHRI)

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

Geneva, 11-15 March 2019

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Report, Recommendations, and Decision of the Session of the SCA, 11-15 March 2019

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 and Regional Mechanisms Section (NIRMS) 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 2019 session, the Bureau adopted amendments to the SCA Rules of Procedure.

At its March 2019 session, the GANHRI General Assembly adopted 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: France for Europe (Chair), Morocco for Africa, Philippines for Asia-Pacific and Canada for the Americas. As the NHRI of France was reviewed at this session, the NHRI of the Netherlands served as the alternate member for Europe. The NHRI of Canada chaired the session.

1.3 The SCA convened from 11 to 15 March 2019. 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), the European Network of National Human Rights Institutions (ENNHRI), the Network of African National Human Rights Institutions (NANHRI) and the Network of National Human Rights Institutions of the Americas (RINDHCA). The SCA also welcomed the participation of a representative from the GANHRI Head Office.

1.4 Pursuant to article 10 of the Statute, the SCA considered applications for accreditation from the NHRIs of Paraguay and Madagascar.

1.5 Pursuant to article 15 of the Statute, the SCA considered applications for re-accreditation from the NHRIs of Armenia, Bulgaria, Croatia, France, Ghana, Haiti, and Nepal.

1.6 Pursuant to article 18.1 of the Statute, the SCA reviewed the NHRI of Nicaragua

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 In the interests of clarity and as a good practice, where the SCA has recommended that an NHRI be accredited with other than A status, it has divided its recommendations between those that it “notes with concern” and those that it “notes”. The issues that have been noted

“with concern” constitute the primary reasons for which the NHRI has not been accredited with A status.

1.9 The General Observations, 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 is 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.

1.10 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.

1.11 The SCA wishes to highlight its expectations that all NHRIs will take the necessary steps to pursue continuous efforts at improvement and to enhance to effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA. A failure to do so may result in a finding that a NHRI is no longer operating in compliance with the Paris Principles.

1.12 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.
- 1.13** At each session the SCA conducts a teleconference with every NHRI. It may also consult with and seek further information from NHRIs where necessary.
- 1.14** 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.
- 1.15** 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.
- 1.16** Pursuant to Article 16.3 of the Statute, any review of the accreditation classification of a NHRI must be finalized within 18 months.
- 1.17** The SCA acknowledges the high degree of support and professionalism of the GANHRI Secretariat (OHCHR-NIRMS).
- 1.18** 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/>).
- 1.19** The SCA considered information received from civil society. The SCA shared that information with the concerned NHRIs and considered their responses.

1.20 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/ICCAccreditation/Pages/default.aspx>
3. The Practice Notes:
<http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%20202/Forms/Default%20View.aspx>

2. SPECIFIC RECOMMENDATIONS - Accreditation (Art. 10 of the GANHRI Statute)

2.1 Madagascar: Commission Nationale Indépendante des Droits de l'Homme (CNIDH)

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

The SCA welcomes the establishment of the CNIDH and its recent appointment as NPM under OPCAT. It commends the CNIDH's efforts to promote and protect human rights.

The SCA wishes to highlight its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts to improve and to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during the review.

The SCA notes:

1. Selection and appointment

In accordance with article 6 of the Law, CNIDH members are nominated by their respective organisations and appointed by Presidential decree.

The CNIDH reports that, in practice, the selection process is broad and transparent. In particular, an ad hoc committee composed of members elected by civil society is set up to elect members representing them.

However, the SCA is of the view that the process currently enshrined in the Law (with the exception of the civil society representatives) 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
- promote broad consultation and/or participation in the application, screening, selection, and appointment process for all members.

Further, the SCA is of the view that providing for the different entities to select members according to their rules of procedure may result in them using different processes for selection, and that a consistent, transparent, merit-based and broadly consultative selection process should be used across all of the entities.

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 CNIDH to advocate for the formalization and application of a uniform 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. Political representatives on NHRIs

In accordance with Article 6 of the Law, membership of the CNIDH includes one (1) representative of the National Assembly and one (1) representative of the Senate who are elected by the respective permanent Bureau and who have voting rights, as well as a representative of the Executive who participates without voting rights.

The CNIDH reports that the representatives of the Senate and the National Assembly are not elected officials and that article 7(d) of the Law provides that CNIDH members cannot hold full-time elected office. It further reports that the representative of the Executive participates without voting rights.

The SCA emphasises that the Paris Principles require an NHRI to be independent from government in its structure, composition, decision-making and method of operation. 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, free from political interference.

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

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

Where individuals designated by government or parliament 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 participation of individuals designated by the government or parliament should be restricted to those whose roles and functions are of direct relevance to the mandate and functions of the NHRI, and whose advice and cooperation may assist the NHRI in fulfilling its mandate. In addition, the number of such individuals should be limited and should not exceed the number of other members of the NHRI's governing body.

The SCA encourages the CNIDH to take such additional steps as are necessary to ensure that the presence of the individuals designated by government or parliament does not impact the independent functioning of the NHRI.

The SCA refers to Paris Principles B.3 and to its General Observation 1.9 on 'Political representatives on NHRIs'.

3. Adequate funding

The SCA notes that the CNIDH's budget for 2017 was not released. While the CNIDH reports that this situation has since been resolved, 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. 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 further notes that the CNIDH was designated as NPM under OPCAT in late 2018. The SCA emphasizes that, where an NHRI has been mandated with additional responsibilities, including as the NPM, it must be provided with the adequate funding to effectively fulfil these duties.

The SCA encourages the CNIDH to continue to advocate for adequate funding to effectively carry out its expanded mandate, including as the NPM.

The SCA refers to Paris Principles A.3 and B.2, and to its General Observations 1.10 on 'Adequate funding' and 2.8 on 'Assessing the performance of NHRIs as National Preventive and National Monitoring Mechanisms.'

4. Recommendations by NHRIs

Annual, special, and thematic reports of NHRIs serve to highlight key national human rights concerns and provide the means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities.

The SCA acknowledges that the CNIDH has produced such reports and press releases, which include recommendations to relevant authorities. It encourages the CNIDH to continue to do so.

In fulfilling its protection mandate, an NHRI must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow-up activities to promote and advocate for the implementation of its recommendations and findings, and the protection of those whose rights were found to be violated.

Public authorities are encouraged to respond to recommendations from NHRIs in a timely manner, and to provide detailed information on practical and systematic follow up action, as appropriate, to the NHRI's recommendations.

The SCA encourages the CNIDH to conduct follow up activities to monitor the extent to which their recommendations have been implemented.

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

5. Interaction with the international human rights system

The CNIDH reports that it has engaged with various UN organisations including OHCHR, IOM and UNICEF, as well as with Special Procedures mandate holders.

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

The SCA highlights that effective cooperation with regional and international human rights systems may include:

- submitting alternative reports to the Universal Periodic Review and Treaty Bodies;
- making statements during debates before review bodies and the Human Rights Council;
- supporting, facilitating and contributing to country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and
- monitoring and promoting the implementation of recommendations originating from regional and international human rights systems.

In considering its cooperation with regional and international human rights systems, the CNIDH is encouraged to actively engage with the OHCHR, GANHRI and NANHRI.

The SCA refers to Paris Principle A.3 and to its General Observation 1.4 on 'Interaction with the international human rights system'.

2.2 Paraguay: Defensoría del Pueblo de Paraguay (DPP)

Recommendation: The SCA recommends that DPP be accredited with **B** status.

The SCA recalls that the DPP was previously accredited by GANHRI before its status lapsed in November 2015. During the SCA's last review of the DPP in March 2014, it noted various concerns with respect to the effectiveness of the institution, including in relation to: providing recommendations to the state to ensure a clear and effective mandate to provide assistance to victims of human rights violations; and interpreting its mandate in a broad and purposive manner.

The SCA welcomes the appointment of the new Defensor. It commends the DPP for its efforts to strengthen its institutional capacity following a period during which the DPP was without a Defensor.

The SCA encourages the DPP to continue these efforts, and to seek assistance from OHCHR, GANHRI and the RINDHCA in order to strengthen its compliance with the Paris Principles.

The SCA notes with concern:

1. Selection and appointment

In accordance with article 278 of the Constitution and Article 4 of the Law, the Defensor is appointed by a two-thirds (2/3) majority of the House of Representatives from a list of three (3) candidates proposed by the Senate.

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
- promote broad consultation and/or participation in the application, screening, selection, and appointment process for all members.

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 DPP 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. Dismissal process

In accordance with Article 277 of the Constitution and Article 5 of the Law, the Defensor and the Deputy Defensor can be impeached for (i) poor performance of their duties, (ii) offences committed in the exercise of their duties, or (iii) common crimes.

The SCA notes that the DPP confirms that there is no right of appeal for such an impeachment.

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.

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'.

The SCA notes:

3. Adequate funding

While the SCA acknowledges that the DPP has been able to undertake activities within its existing budget, it notes that DPP has reported that it does not have sufficient funding.

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 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.

The SCA encourages the DPP 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 Observation 1.10 on 'Adequate funding'.

4. Mandate

The DPP is not explicitly mandated to encourage ratification of and accession to regional and international human rights instruments.

Encouraging ratification of, or accession to regional and international human rights instruments, and the effective implementation of international instruments to which the state is a party, is a key function of an NHRI. The Paris Principles further prescribe that NHRIs should promote and encourage the harmonization of national legislation, regulations and practices with these instruments. The SCA considers it important that these duties form an integral part of the enabling legislation of an NHRI.

In fulfilling this function, the NHRI is encouraged to undertake activities which may include the following:

- monitoring developments in regional and international human rights law;
- promoting state participation in advocacy for and the drafting of regional and international human rights instruments; and

- conducting assessments of domestic compliance with and reporting on regional and international human rights obligations, for example, through annual and special reports and participation in the Universal Periodic Review process.

While acknowledging that the DPP reports to undertake these functions in practice, the SCA encourages it to advocate for an explicit mandate to encourage ratification of or accession to regional and international human rights instruments.

The SCA refers to Paris Principle A.3 and to its General Observation 1.3 on “Encouraging ratification or accession to international human rights instruments”.

5. Interaction with the international human rights system

The DPP’s engagement with regional and international human rights systems has been limited.

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

The SCA highlights that effective cooperation with regional and international human rights systems may include:

- submitting alternative reports to the Universal Periodic Review and Treaty Bodies;
- making statements during debates before review bodies and the Human Rights Council;
- supporting, facilitating and contributing to country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and
- monitoring and promoting the implementation of recommendations originating from regional and international human rights systems.

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

The SCA encourages the DPP seek assistance from OHCHR, GANHRI and RINDHCA to address the issues noted above.

3. SPECIFIC RECOMMENDATIONS - Re-Accreditation (Art. 15 of the GANHRI Statute)

3.1 Armenia: Human Rights Defender of the Republic of Armenia (HRDA)

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

The SCA commends the efforts undertaken by the HRDA to promote and protect human rights despite the challenging context in which it operates, including by taking public positions on sensitive issues.

The SCA wishes to highlight its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts to improve and to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during the review.

The SCA notes:

1. Mandate

The mandate provided to the HRDA in articles 191(1) of the Constitution, 2(1) of the law and chapter 5 of the law is primarily protective in nature, and does not contain an explicit responsibility to promote human rights.

While acknowledging that the HRDA interprets its mandate in a broad manner, the SCA encourages it to advocate for appropriate amendments to make its promotion mandate explicit.

Further, the mandate of the HRDA is limited to public entities and does not extend to acts or omissions of the private sector.

The HRDA reports that its jurisdiction extends to private sector entities operating in the field of public service where there is information about mass violations of human rights or freedoms, or if it is of public importance or is related to the protection of interests of persons who cannot benefit from legal remedies for protection of their rights and freedoms on their own. However, the SCA emphasizes that the mandate of an NHRI should extend to the acts and omissions of both the public and private sectors.

Additionally, the SCA notes that the enabling law does not provide the HRDA with an explicit mandate to encourage ratification of, or accession to regional and international human rights instruments.

The SCA is of the view that encouraging ratification of, or accession to regional and international human rights instruments, and the monitoring of the effective implementation of those instruments to which the state is a party, is a key function of an NHRI. While acknowledging that the HRDA carries out such functions in practice, the SCA encourages it to advocate for the appropriate amendments to its enabling law in order to have an explicit mandate to encourage ratification or accession to regional and international human rights instruments.

Finally, the SCA encourages the HRDA to strengthen the implementation of its anti-discrimination mandate, in particular regarding LGBTI and women's rights.

The SCA refers to Paris Principle A.1, A.2, and A.3 (b), (d) and (e) 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. Selection and appointment

In accordance with Article 192 (1) of the Constitution and Article 12 (2) of the Law, the Ombudsman is elected by the National Assembly, upon recommendation of the competent standing committee of the National Assembly by at least three-fifths (3/5) of votes of the total number of Members of Parliament.

While acknowledging that the HRDA reports that, in practice, vacancies are advertised, the process is broad and transparent, and civil society is able to participate in the screening and selection process, this practice is not explicitly enshrined in law, regulation or in another binding administrative guideline.

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 another binding administrative guideline, 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 HRDA to advocate for amendments 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 and;
- 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 NHRIs'.

3. Adequate 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. Where an 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.

While acknowledging that the budget of the HRDA has increased significantly since the previous review, the SCA encourages the HRDA to continue to advocate for the funding necessary to ensure that it can effectively carry out the full extent of its mandate, including all additional responsibilities with which it has been mandated such as the NPM under OPCAT.

The SCA refers to Paris Principles A.3 and B.2, and to its General Observations 1.10 on 'Adequate funding' and 2.8 on 'Assessing the performance of NHRIs as National Preventive and National Monitoring Mechanisms'.

4. Term of office

In accordance with Article 192 (1) of the Constitution and Article 12 (2) of the Law, the Defender is elected for a 6-year term. The Law is silent on whether or not the Defender can be re-elected, which leaves open the possibility of an unlimited term. In order to promote institutional independence, the SCA is of the view that it would be preferable for the term of office to be limited to one (1) re-election.

The SCA encourages the HRDA to advocate for amendments to its enabling law to provide for such limits on the term of office.

The SCA refers to Paris Principle B.3 and to its General Observation 2.2 on 'Full-time members of an NHRI'.

3.2 Bulgaria: Ombudsman of the Republic of Bulgaria (ORB)

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

The SCA notes that, in March 2011, it recommended that two (2) institutions from Bulgaria, the ORB and the Commission for the Protection against Discrimination, be accredited with B status.

Section 6.3 of the SCA's Rules of Procedure sets the requirements when more than one NHRI from a UN Member State seeks accreditation by GANHRI.

During the session, the SCA received documents¹ which satisfied it that the requirements of section 6.3 have been met in this case.

The SCA commends the ORB for advocating for the amendment of its enabling law to address the previous SCA recommendations. In particular, the ORB advocated for a broader mandate which includes the ability to address human rights violations resulting from the acts and omissions of private individuals and entities.

The SCA wishes to highlight its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts to improve and to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during the review.

The SCA notes:

1. Selection and appointment

According to Art. 8 and 10 (2) of the amended Act, the Ombudsman is elected by the National Assembly in a transparent and public way by a majority vote of more than half (1/2) of the voting national representatives. Further, Art. 10 (1) provides that the proposal for election of Ombudsman may be made by national representatives, parliamentary groups and non-profit legal entities in the public interest.

The SCA is of the view that the selection process outlined in the Law would be strengthened by explicitly requiring the advertisement of vacancies, and by describing the means by which broad consultation and/or participation of civil society in the process is to be achieved.

Further, Art. 11(1) provides for the election of the Deputy Ombudsman by the National Assembly with an open vote, following a public, transparent and competitive nomination and selection procedure.

The ORB reports that, prior to the election of the Deputy Ombudsman, the Ombudsman made a public invitation to civil society organizations to nominate candidates, and that several such nominations were made. Nevertheless, the SCA is again of the view that the selection process outlined in the Law would be strengthened by explicitly requiring the advertisement of vacancies, and by describing the means by which broad consultation and/or participation of civil society in the process is to be achieved.

¹ Documents include: a) Council of Ministers Decision No. 825 of 29 December 2017 approving the draft Law Amending and Supplementing the Ombudsman Act, proposing to the National Assembly to review and adopt the draft law and for the Deputy Prime Minister on Judicial Reform and the Minister of Foreign Affairs to present the draft Law in Parliament; b) Report to the Deputy Prime Minister of the Republic of Bulgaria; c) Reasons to the draft law amending and supplementing the Ombudsman Act; and d) the letter of support of the Commission for Protection against Discrimination.

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 ORB to advocate for the formalization and application of a broad and transparent process that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups;
- 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 own 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 ORB reports that, while its budget has improved, it would benefit from additional funding in order to carry out its functions (including as an NPM and NMM), to establish regional offices, and to ensure that its communications are accessible to all.

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. Where an 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 ORB to continue to advocate for the funding necessary to ensure that it can effectively carry out the full extent of its mandate.

The SCA refers to Paris Principles A.3 and B.2, and to its General Observations 1.10 on 'Adequate funding' and 2.8 on 'Assessing the performance of NHRIs as National Preventive and National Monitoring Mechanisms'.

3. Recommendation by NHRIs

Annual, special, and thematic reports of NHRIs serve to highlight key national human rights concerns and provide the means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities.

The ORB reports that it has made various recommendations on the issue of domestic violence, including in relation to the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. It further reports that there has been an inadequate response to these recommendations by relevant State authorities.

In fulfilling its protection mandate, an NHRI must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow-up activities to promote and advocate for the implementation of its recommendations and findings, and the protection of those whose rights were found to be violated.

Public authorities are encouraged to respond to recommendations from NHRIs in a timely manner, and to provide detailed information on practical and systematic follow up action, as appropriate, to the NHRI's recommendations.

The SCA encourages the ORB to continue to conduct follow up activities to monitor the extent to which their recommendations have been implemented.

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

3.3 Croatia: Ombudsman of the Republic of Croatia (ORC)

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

The SCA commends the efforts undertaken by the ORC to promote and protect human rights and notes with appreciation the efforts made by the ORC to address the previous recommendations made by the SCA.

The SCA wishes to highlight its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts to improve and to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during the review.

The SCA notes:

1. Selection and appointment

In accordance with articles 93 of the Constitution and 10 of the Law the Ombudsman is appointed by the Croatian parliament from amongst two (2) candidates proposed by the Committee for the Constitution, Standing Orders and Political System, with the prior opinion of the Committee for Human Rights and Rights of National Minorities.

The ORC reports that while hearings are held during the selection process and these hearings are open to the public, only members of parliament are able to participate directly in this process.

With respect to the involvement of civil society in the parliamentary process for selecting the Ombudsman, the SCA is of the view that this involvement should be direct rather than through members of parliament. This could be achieved, for example by:

- directly soliciting proposals from civil society; or
- allowing civil society to directly participate in the evaluation of candidates.

The SCA encourages the ORC to advocate for amendments to the selection process to better promote broad consultation and the participation of civil society in the selection process.

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 ORC reports that, while its funding situation has improved, it would benefit from additional funding in order to carry out its functions, including its responsibilities as NPM under OPCAT. The SCA notes that the ORC has recently been mandated with additional responsibilities under the whistle-blower legislation but that no new funding has been allocated to allow it carry out these new responsibilities.

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. Where an 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 ORC to continue to advocate for the funding necessary to ensure that it can effectively carry out the full extent of its mandate, including its newly-mandated responsibilities.

The SCA refers to Paris Principles A.3 and B.2, and to its General Observations 1.10 on 'Adequate funding' and 2.8 on 'Assessing the performance of NHRIs as National Preventive and National Monitoring Mechanisms'.

3. Term of office

In accordance with article 93 of the Constitution and article 10 of the Law, the term of office of the Ombudsman is eight (8) years. The enabling law does not limit the number of times that the Ombudsman can be re-appointed. In order to promote institutional independence, the SCA is of the view that it would be preferable for this to be limited to one (1) reappointment.

The SCA refers to Paris Principle B.3 and to its General Observation 2.2 on 'Full-time members of an NHRI'.

4. Accessibility

The ORC reports that it has opened three (3) regional offices, but that the office in Rijeka is not accessible to persons with disabilities.

The SCA highlights that ensuring the accessibility of the NHRI is particularly important for the most vulnerable individuals or groups, who would otherwise have particular difficulty bringing attention to any violation of their human rights.

The SCA encourages the ORC to continue to seek a solution for this situation, including by advocating for the additional funds necessary to ensure that all of its offices are accessible.

3.4 France: Commission Nationale Consultative des Droits de l'Homme (CNCDH)

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

The SCA notes with appreciation the continuous efforts made by the CNCDH to implement the previous recommendations made by the SCA.

The SCA wishes to highlight its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts to improve and to enhance their

effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during the review.

The SCA notes:

1. Mandate

The CNCDH's enabling law mandates it with powers to advise parliament and government publically on the protection and promotion of human rights. In 2013, the SCA encouraged the CNCDH to broaden its activities in relation to its protection mandate. It notes that the CNCDH has undertaken efforts since its last review to implement this recommendation.

The SCA acknowledges that the CNCDH has been provided with new legislative responsibilities in relation to human trafficking, business and human rights, and anti-LGBT hate. While these new mandates include responsibilities related to protection, the SCA notes that these are thematic mandates and do not provide an explicit broad protection mandate.

The SCA reiterates that all NHRIs should be legislatively mandated with specific functions to both promote and protect human rights. The 'protection' functions are 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 encourages the CNCDH to continue to broaden its activities in relation to its protection mandate and to advocate for amendments to its enabling law to make its broad protection mandate explicit.

The SCA refers to Paris Principles A.1 and A.2 and to its General Observation 1.2 on 'Human rights mandate'.

2. Cooperation with other human rights bodies

The CNCDH reports that it cooperates with other national human rights bodies including the Défenseur des droits, who is an ex-officio member of the institution. It encourages the CNCDH to continue to strengthen its cooperation with the Défenseur des droits and with other national entities with responsibility for the promotion and protection of human rights.

The SCA wishes to highlight that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.

The SCA refers to its General Observation 1.5 on 'Cooperation with other human rights bodies'.

3. Term of office

Article 13 of the 2007 decree states that members' terms are renewable. The decree is silent on the number of times that a term can be renewed except in the case of the Chairperson and the two (2) Deputies, whose terms can only be renewed once. In order to promote institutional independence, the SCA is of the view that it would be preferable for all members' terms to be limited to one (1) renewal.

The SCA encourages the CNCDH to advocate for amendments to the decree to address this issue.

The SCA refers to Paris Principle B.3 and to its General Observation 2.2 on 'Full-time members of an NHRI'.

4. Adequate funding

The CNCDH reported a 25% increase of its budget over a 5-year period. However, the SCA notes that during this period, the CNCDH has been vested with significant additional responsibilities and that this increase may not be sufficient.

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. An insufficient budget can limit an NHRI from reaching its full effectiveness. 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.

The SCA emphasizes that, where an NHRI has been mandated with additional responsibilities, it must be provided with the adequate funding to effectively fulfil these duties.

The SCA encourages the CNCDH to continue to advocate for adequate funding to effectively carry out the full extent of its mandate.

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

3.5 Ghana: Commission on Human Rights and Administrative Justice (CHRAJ)

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

The SCA encourages the CHRAJ to continue efforts to promote and protect human rights, including by continuing to advocate for amendments to its enabling law. The SCA notes that the consideration of the Constitution Review Committee report has been tabled before Parliament.

While the SCA has recommended that the CHRAJ be re-accredited in this instance on the basis of its existing legislative framework and performance and that constitutional reform is pending, it wishes to highlight its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts to improve and to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during the review.

The SCA notes:

1. Mandate

The enabling law does not provide the CHRAJ with an explicit mandate to interact with regional and international human rights systems, or to encourage ratification or accession to regional and international human rights instruments.

Encouraging ratification of, or accession to, regional and international human rights instruments, and the monitoring of the effective implementation of those instruments to which the State is a

party, is a key function of an NHRI. The SCA considers it important that these duties form part of the enabling legislation of an NHRI.

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

The SCA acknowledges that the CHRAJ has provided advisory opinions to the government on the ratification of international instruments, and that it interacts with regional and international human rights systems. The SCA encourages the CHRAJ to advocate for amendments to its enabling law to explicitly mandate it with responsibility to both interact with regional and international human rights systems, and to encourage ratification of or accession to regional and international human rights instruments.

The SCA refers to Paris Principle A.3 (b), (d) and (e) and to its General Observations 1.3 and 1.4 on 'Encouraging ratification or accession to international human rights instruments' and 'Interaction with the international human rights system'.

2. Selection and appointment

In March 2014, the SCA noted that the Commissioner and Deputy Commissioners of the CHRAJ are appointed by the President of the country, in consultation with the Council of State through a process that is not clearly stipulated in the law. The Council of State is an advisory body that does not currently include members of civil society.

The SCA remains 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
- promote broad consultation and/or participation in the application, screening, selection, and appointment process.

The CHRAJ reports that it has advocated for an amendment to its enabling law to require that the appointment of members be subject to the prior approval of Parliament, and that this has been included in the Constitutional amendments bills that have been prepared for Parliament. However, the SCA is not of the view that this requirement on its own would be sufficient to address the above-noted concerns with respect to the non-advertisement of vacancies and the transparency of the 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 therefore encourages the CHRAJ to continue to advocate for the formalization and application of a process that include requirements to:

- a) publicize vacancies broadly;

- b) maximize the number of potential candidates from a wide range of societal groups;
- 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 own 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 National Human Rights Institutions'

3. Pluralism and diversity

In March 2014, the SCA was concerned that eligibility for appointment as Commissioner or Deputy Commissioner is restricted to lawyers, which may unduly restrict the pluralism of the CHRAJ.

Further, the SCA notes that there is gender imbalance in the staff complement of the CHRAJ.

The SCA reiterates that a diverse decision-making body facilitates a 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.

The SCA notes the proposal provided to the Constitution Review Committee by the CHRAJ that its governing body be expanded to five (5) members (a Commissioner and four (4) Deputy Commissioners including Special Commissioners for children, persons with disabilities and the aged), that non-lawyers should be eligible for appointment, and that gender considerations should be included in the law. The SCA is of the view that this recommendation, if passed, would address the above-noted concern regarding the requirement for the Commissioner or Deputy Commissioners to be lawyers. It therefore encourages the CHRAJ to continue to advocate for passage of this amendment.

The SCA further encourages the CHRAJ to continue efforts to ensure gender balance in the composition of its staff at all levels.

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

4. Term of office

In March 2014, the SCA noted that in accordance with the current provisions of the Constitution, the Commissioner and Deputy Commissioners cease to hold office upon attaining the ages of seventy (70) and sixty-five (65), respectively.

The SCA acknowledges that, in the ongoing review of the Constitution, a recommendation has been made to provide for a non-renewable fixed term appointment of ten (10) years for its members. The SCA is of the view that this recommendation, if implemented, would address the above-noted concern. It therefore encourages the CHRAJ to continue to advocate for the implementation of this recommendation.

The SCA refers to Paris Principle B.3 and General Observation 2.2 on 'Full-time members of an NHRI'.

5. Adequate funding and financial autonomy

The SCA, in March 2014, noted that the CHRAJ was inadequately resourced to effectively fulfill its mandates as NHRI, Ombudsman and as Anti-Corruption Agency.

The CHRAJ reports that funding in respect of its programmes and development has not kept pace with the broad mandate that it has been given and the network of offices spread throughout the country which require a substantial outlay of resources.

The SCA reiterates that to function effectively, a NHRI must be provided with an appropriate level of funding in order to ensure that it has adequate resources, including an appropriate staff complement, to carry out its mandated activities. Where an NHRI has been mandated with additional responsibilities, it must be provided with the adequate funding to effectively fulfil these duties.

The SCA encourages the CHRAJ to continue to advocate for an adequate level of funding, including in relation to goods and services.

Further, the SCA noted in March 2014 that the budget of the CHRAJ is charged on the Consolidated Fund of the State.

The SCA notes the Supreme Court's decision, which requires the budget of the Audit Service to be approved by Parliament and not by the Minister of Finance. The SCA also notes that the CHRAJ is of the view that application of this procedure² to it as well would improve its financial autonomy. The SCA further notes that the CHRAJ has advocated for the creation of an independent constitutional body to ensure financial autonomy of independent institutions. It encourages the CHRAJ to continue these efforts at improving its financial autonomy.

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

6. Annual report

In March 2014, the SCA noted that the CHRAJ did not publish its annual report in a timely manner.

The CHRAJ reports that its annual report of 2016 has been completed but not yet published nor tabled before Parliament, and that the annual reports of 2017 and 2018 are being developed.

While acknowledging that the CHRAJ reports that the delay in publishing its annual reports has been due to a lack of adequate funding, the SCA reiterates its previous recommendations and stresses the importance for a NHRI to prepare, publicize and widely disseminate an annual report on its national situation with regard to human rights in a timely manner. Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a means by which a NHRI can make recommendations to, and monitor respect for human rights by government.

The SCA takes note of the commitment of the CHRAJ to complete and publish its pending reports, and encourages it to ensure that its annual reports are finalized in a timely manner, are tabled and discussed in Parliament, and are distributed publicly.

² Supreme Court of Ghana 3 February 2010 decision in the case (No. J1/1/2009): William Brown Vrs Attorney General, Minister of Finance and Controller & Accountant General

The SCA refers to Paris Principle A.3(a) and to its General Observation 1.11 on ‘Annual reports of NHRIs’.

7. Monitoring detention centres

In March 2014, the SCA noted that the CHRAJ does not have an explicit mandate to monitor places of detention although in practice it has been conducting this task. The SCA also noted that the lack of specific legal power to access and monitor places of detention has the potential to limit the CHRAJ’s ability to undertake this important function.

The SCA reiterates its recommendation of March 2014 to advocate for changes to its legislation in such a way as to provide for unannounced visits to all public and private places of deprivation of liberty.

The SCA encourages the CHRAJ to continue to advocate for an explicit mandate to conduct unannounced visits to all public and private places of deprivation of liberty.

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

3.6 Haiti: Office for the Protection of Citizens (OPC)

Recommendation: The SCA recommends that the OPC be reaccredited with **A** status.

The SCA commends the efforts undertaken by the OPC to promote and protect human rights and acknowledges that it operates in a challenging context.

The SCA wishes to highlight its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts to improve and to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during the review.

The SCA notes:

1. Mandate

The SCA acknowledges that the OPC has a broad mandate to promote and protect human rights, and that it exercises this mandate in practice. However, its mandate does not extend to human rights violations resulting from the acts and omissions of private entities.

An NHRI’s 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, including economic, social and cultural rights. Specifically, the mandate should extend to the acts and omissions of both the public and private sectors.

The SCA encourages the OPC to advocate for amendments to its enabling law to allow it to address human rights violations resulting from the acts and omissions of private entities.

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

2. Selection and appointment

According to articles 8-12 of the Law, the position of the Protector of Citizens is advertised and applicants are assessed by both chambers of Parliament on the basis of criteria set out in the law. Both Chambers then submit a list of eligible applicants and the successful candidate is determined by consensus of the President of the Republic, the President of the Senate and the President of the National Assembly.

The SCA is of the view that the process currently enshrined in the Law is not sufficiently broad and transparent in that it does not promote 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 the OPC to advocate for the formalization and application of a process that includes requirements to:

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

The OPC is a single member NHRI. In such institutions, the SCA considers that there are diverse models for ensuring pluralism and diversity in its composition, such as by ensuring a diverse staff complement or by cooperating with diverse societal groups.

Pluralism and 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 people in Haiti.

The SCA encourages the OPC to continue to ensure pluralism and diversity through its staff complement and cooperation with civil society.

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

4. Adequate funding

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. Where an

NHRI has been mandated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

While acknowledging that the OPC reports to have sufficient funding, the SCA encourages the OPC to continue to advocate for an appropriate level of funding to enable it to effectively fulfil its mandate.

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

5. Recommendations by NHRIs

Annual, special, and thematic reports of NHRIs serve to highlight key national human rights concerns and provide the means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities.

The SCA acknowledges that the OPC has produced such reports and press releases, which include recommendations to relevant authorities. It encourages the OPC to continue to do so.

In fulfilling its protection mandate, an NHRI must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow-up activities to promote and advocate for the implementation of its recommendations and findings, and the protection of those whose rights were found to be violated.

Public authorities are encouraged to respond to recommendations from NHRIs in a timely manner, and to provide detailed information on practical and systematic follow up action, as appropriate, to the NHRI's recommendations.

The SCA encourages the OPC to conduct follow up activities to monitor the extent to which their recommendations have been implemented.

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

3.7 Nepal: National Human Rights Commission of Nepal (NHRCN)

Recommendation: The SCA recommends that NHRCN be reaccredited with **A** status.

The SCA commends the continuing efforts of the NHRCN to promote and protect human rights, including by advocating for amendments to its enabling law.

The SCA received information that the NHRCN and individual Commissioners have been the subject of threats, intimidation, and reprisals in the performance of their duties. The SCA encourages the NHRCN to take the internal and public measures necessary to ensure that its Commissioners and staff are protected.

The SCA wishes to highlight its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts to improve and to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during the review.

The SCA notes:

1. Selection and appointment

According to Article 248 (2) of the Constitution, the President shall, on the recommendation of the Constitutional Council, appoint the Chairperson and members.

In practice, the NHRCN reports that vacancies for new commissioners are advertised widely and that the Constitutional Council shortlists candidates who participate in parliamentary hearings which are open to media personnel, but not to the general public. The SCA is of the view that the process enshrined in the Law is not sufficiently broad and transparent. In particular, it does not:

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

The SCA notes that the NHRCN has submitted proposed amendments on this issue in the context of the reform of the Constitution of Nepal that is yet to be adopted.

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 NHRCN 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'.

2. Conflict of interest

The existing Law does not include a provision preventing conflicts of interest.

The SCA notes that the Paris Principles require an NHRI to be independent from government in its structure, composition, decision-making and method of operation. The avoidance of conflicts of interest protects the reputation, and the real and perceived independence of an NHRI.

The SCA encourages the NHRCN to advocate for the appropriate amendment to its establishing law to address conflicts of interest.

The SCA refers to Paris Principle B.2.

3. Adequate funding and financial autonomy

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.

The SCA encourages the NHRCH to continue to advocate for the funding necessary to ensure that it can effectively carry out its mandate.

The SCA notes that, according to section 20 (2) of the Law, the NHRCN is required to seek approval from the Finance Ministry, in order to accept donor funding.

The SCA is of the view that NHRIs should not be required to obtain approval for external sources of funding, as this requirement may pose a threat to its independence. It encourages the NHRCN to advocate for appropriate amendments to its law in order to guarantee financial autonomy.

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

4. Annual report

Pursuant to Article 294(1) of the Constitution, the NHRCN, as a Constitutional Body, is required to submit an annual report of its functioning to the President, who shall cause the report to be laid, through the Prime Minister, before the Federal Parliament.

An NHRI should be given the legislative authority to table its reports directly to the legislature rather than through the Executive and, in so doing, to promote action on them. The legislature should be required to discuss and consider the reports of the NHRI, to ensure that relevant public authorities properly consider its recommendations.

The SCA encourages the NHRCN to advocate for the appropriate amendment to its enabling law to allow direct tabling of its annual report before parliament.

The SCA refers to Paris Principle A.3 and to its General Observation 1.11 on 'Annual reports of NHRIs'.

5. Addressing human rights violations

The SCA received information that raises concerns regarding the effectiveness of the NHRCN in dealing with serious human rights issues, particularly those relating to civil and political rights. This includes in relation to the March 2017 demonstrations in Rajbiraj where a number of persons were killed by police. The SCA received a report on this incident from the NHRCN that included general recommendations in relation to the actions of police and security forces. Notwithstanding that response, the SCA is of the view that, in cases like these, it is important that an NHRI clearly identifies human rights violations and takes steps to hold perpetrators to account.

NHRIs are required 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 violations of human rights are imminent, NHRIs are expected to conduct themselves with a heightened level of vigilance and independence.

In fulfilling its protection mandate, an NHRI must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow-up

activities to promote and advocate for the implementation of its recommendations and findings, and the protection of those whose rights were found to be violated.

The SCA encourages the NHRCN to strengthen its efforts to address all human rights violations. The SCA further encourages the NHRCN to ensure that its positions on these issues are publicly made available, as this will contribute to the credibility and accessibility of the institution for all people in Nepal.

The SCA refers to Paris Principles A.1, A.2, A.3 and D (d) and to its General Observation 1.6 on 'Recommendations by NHRIs.'

4. Alteration of accreditation classification (Article 18.1 of the GANHRI Statute)

4.1 Nicaragua: Procuraduría para la Defensa de los Derechos Humanos (PDDH)

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

At its first session of 2018, the SCA recommended that the PDDH be downgraded to B status. In accordance with Article 18.1 of the GANHRI Statute, the SCA gave the PDDH the opportunity to provide, within one (1) year, the written evidence deemed necessary to establish its continued compliance with the Paris Principles.

Prior to this, in November 2016 and November 2017, the SCA decided to defer consideration of the reaccreditation application of the PDDH as a result of ongoing concerns relating to its compliance with the Paris Principles, including with respect to independence and addressing human rights violations.

At its first session of 2019, the SCA reviewed documentation and additional material, including that made available by the PDDH which provided information on the steps it had taken to address the previous concerns of the SCA. During the session, the SCA conducted a telephone interview and gave the PDDH the opportunity to provide its views on various matters, including the following:

- a statement made by the Sub-Procurador on behalf of the Government during the High Level Segment of the 40th Session of the Human Rights Council;
- a statement made by the UN High Commissioner for Human Rights expressing concern about a raid on the headquarters of an NGO coalition as a reprisal for having engaged with OHCHR;
- actions taken in relation to incidents of violence in the context of an alleged "failed coup d'état";
- the institution's engagement with the international human rights system;
- information regarding alleged reprisals against various female detainees following engagement with a visiting EU delegation; and
- the role of the PDDH in the national dialogue process.

The SCA remains concerned that the actual and perceived independence of the PDDH has not been established. In view of all the information provided, the SCA is not satisfied that the PDDH has adequately addressed the substance of the SCA's concerns. Accordingly, the SCA is of the view that the PDDH continues to act in a manner contrary to the requirements of the Paris Principles.

The SCA again notes with concern:

1. Independence

In November 2016 and November 2017, the SCA noted concerns with respect to the independence of the PDDH.

At its first session of 2018, the SCA noted the following ongoing concerns:

“In November 2017, the SCA noted the concerns expressed by the Committee on Migrant Workers regarding the independence and effectiveness of the PDDH, and encouraged the PDDH to provide its response to these concerns.

The SCA acknowledges that the PDDH replied that the Government respects and ensures that all migrant workers and their families enjoy the rights recognized by the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. The PDDH further indicated that it has a mandate to investigate all matters related to migrants workers and outlined its various powers in its enabling law.

The SCA considers that the response given by the PDDH is insufficient as it does not address the substance of the concerns raised by the Committee in terms of effectiveness and independence.

Also in November 2017, the SCA encouraged the PDDH to provide:

- any reports issued by the PDDH in relation to the human rights situation in Nicaragua, as well as its press releases, public statements and any recommendations made to the Government or the National Assembly related to human rights;*
- its submissions to the international and regional human rights system;*
- information about actions the PDDH has undertaken in relation to the request of the Inter-American Commission on Human Rights to undertake a visit to Nicaragua;*
- Follow-up information on the actions the PDDH has undertaken to address cases related to violations of human rights, including that of Maria Luisa Acosta.*

The SCA acknowledges that the PDDH provided a list of 99 publications which describe its activities, public announcements and presentations to the National Assembly. The SCA notes that these postings relate to a variety of topics. However, there is insufficient evidence contained in these documents that the PDDH has engaged in critical assessments of the human rights situation in the country.

With respect to its interactions with the international and regional human rights system, the SCA acknowledges that the PDDH indicates that it maintains outstanding participation at the international level, noting its membership and participation in a variety of bodies. The SCA further acknowledges that the PDDH has provided a list of its submissions to the international human rights system since 2010.

With respect to the visit by the Inter-American Commission on Human Rights, the SCA acknowledges that the PDDH indicated in its submission that it had received no formal communication from the Commission referring to an intention to visit Nicaragua and that any such visit would need to be approved by the Executive. The PDDH further indicated that it was “pleased with the good working relationships between the government and the Inter-American system”.

The SCA is of the view that the response provided by the PDDH in its submission is insufficient, as it fails to acknowledge the role of an NHRI in advocating for the government to interact with the international and regional human rights systems.

The SCA acknowledges that it received information during the interview with the PDDH that the Executive has now approved the request of the Inter-American Commission to visit the country. It encourages the PDDH to actively participate in this visit.

With respect to information on activities the PDDH has taken to address cases related to violations of human rights, including that of Maria Luisa Acosta³, the SCA acknowledges that the PDDH indicates that it posted the ruling of the Inter-American Court of Human Rights relating to the case of Maria Luisa Acosta on its website.

The SCA is of the view that the response provided by the PDDH does not provide sufficient indication that it has taken adequate actions to address cases related to violations of human rights. With respect to this specific case of Maria Luisa Acosta, the SCA acknowledges that the decision of the Inter-American Court specifically required the PDDH to post the decision on its website. However, the SCA is of the view that posting a decision on its website without accompanying critical commentary is an inadequate response of an NHRI to a finding of gross violations of human rights. Further, the SCA notes that the website of the PDDH has been and continues to be shut down, and that the PDDH is unable to indicate when it can again be accessed.

In view of the above, the SCA is not satisfied that the PDDH has acted in a manner that adequately demonstrates its independence as an NHRI.

The SCA encourages the PDDH to promote and protect human rights in an independent manner, ensuring respect for all human rights, democratic principles and the strengthening of the rule of law in all circumstances, and without exception.”

The SCA provided the PDDH with the opportunity to respond to these concerns. The SCA acknowledges that the PDDH maintains in its written submissions that it is an independent institution. However, the SCA is of the view that the PDDH has not adequately responded to the substance of the SCA’s concerns, nor has it provided additional documentary or written evidence to respond to the specific concerns raised by the SCA or to support its position that it acts as an independent NHRI.

Further, during the session the SCA received information that the Sub-Procurador addressed the High-Level Segment of the 40th session of the Human Rights Council as the representative of the Government⁴. The SCA also received information that PDDH was advised by OHCHR and GANHRI before making the statement that such participation was incompatible with its status as an independent NHRI. The PDDH did proceed with the statement, the content of which dismissed credible reports of human rights violations having been committed by the authorities.

The PDDH was provided an opportunity to respond to these concerns during the interview conducted by the SCA.

The PDDH indicated that it was invited to deliver this statement and that it considered it important to address the human rights situation in Nicaragua in this specific forum.

The SCA is of the view that the response provided by the PDDH supports the SCA’s ongoing concern that the institution has not acted in a manner that ensures and demonstrates its independence.

³ Case *Acosta y Otros vs. Nicaragua*: http://www.corteidh.or.cr/docs/casos/articulos/seriec_334_esp.pdf

⁴ <http://webtv.un.org/search/nicaragua-high-level-segment-8th-meeting-40th-regular-session-human-rights-council/6007826118001/?term=&lan=english&cat=Regular%2040th%20session&sort=date&page=7>

With respect to its interactions with the international human rights system, NHRIs must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right. NHRIs should not participate as part of a government delegation in international mechanisms where independent participation rights for NHRIs exist.

The SCA refers to Paris Principles A.3 (d), A.3 (e), B.2, B.3 and C (a), and to its 'General Observation 1.4 on 'Interaction with the international human rights system'.

2. Addressing human rights violations

In November 2017, the SCA noted concerns with respect to the PDDH's willingness to address all human rights violations.

At its first session of 2018, the SCA reiterated concerns and noted the following:

"In November 2017, the SCA noted that the May 2014 Universal Periodic Review outcome report recommended that Nicaragua to guarantee a safe and enabling environment for journalists and human rights defenders, and ensure that all cases of attacks against them are investigated by independent and impartial bodies. The SCA noted at that time that the PDDH had indicated that it has not received any complaints about attacks against human rights defenders and other human rights violations.

The SCA encouraged the PDDH to provide information about the actions it has taken in relation to the protection of human rights defenders and reports of attacks against these individuals.

The SCA acknowledges that the PDDH indicates that, "in Nicaragua, there is a secure and suitable environment for journalists and defenders of human rights (...) and that there have been no cases of harassment, persecution or assault due to their work against journalists, human rights defenders or anyone due to political, ideological or religious beliefs". Further, the PDDH indicated that it has "an excellent and exemplary level of citizen security and an environment that enables the work of human rights defenders in Nicaragua, thanks to the accurate preventative police model (...) implemented by the national police".

The SCA acknowledges that the PDDH is currently operating in a complex and volatile context. However, the SCA is of the view that the response provided demonstrates an unwillingness to address fundamental human rights issues in a fulsome and independent way.

An NHRI's 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 violations of human rights are imminent, NHRIs are expected to conduct themselves with a heightened level of vigilance and independence.

In fulfilling its protection mandate, an NHRI must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow-up activities to promote and advocate for the implementation of its recommendations and findings, and the protection of those whose rights were found to be violated."

The SCA acknowledges that the PDDH reported that it has undertaken various activities to address human rights violations, including:

- issuing recommendations in respect of the penitentiary system;

- releasing reports in relation to violations of human rights in the context of a failed coup d'état; and
- participating in several sessions of the UN Human Rights Council.

The SCA acknowledges the challenging context in which the PDDH operates.

However, based on all the material before it including the additional information provided during the session, the SCA is not satisfied that the PDDH has substantiated that it is fulfilling its mandate to effectively promote and protect all human rights. This includes in relation to the following issues:

- In the statement made by the PDDH during the 40th session of the Human Rights Council, referenced above, the institution expressed various views that appear to support government positions and contradict credible publically-available information⁵ regarding human rights violations in Nicaragua, including:
 - o that there are no political prisoners,
 - o that there is no evidence of torture or ill-treatment against persons deprived of their liberty,
 - o that there has been no excessive use force by police.

The SCA is of the view that the content of this statement demonstrates that the PDDH does not appropriately respond to credible allegations of serious human rights violations in the manner that would be expected of an independent NHRI.

- The SCA received the statement issued by the UN High Commissioner for Human Rights expressing concern about a raid carried out on the headquarters of an NGO coalition, Red Nicaraguense para la Democracia y Desarrollo, which was considered by the High Commissioner to be a reprisal for the organizations' cooperation with OHCHR⁶.

The PDDH was provided an opportunity to provide its views on this issue during the session. It indicated that this incident was not a raid, but rather a judicial procedure carried out against eight (8) NGOs presumably related to crimes, including money laundering.

The SCA is of the view that this response is inadequate and demonstrates that the PDDH does not appropriately respond to credible allegations of serious human rights violations in the manner that would be expected of an independent NHRI.

- The SCA received information regarding alleged reprisals against individually-named female detainees following their engagement with a visiting EU delegation⁷.

The PDDH was offered the opportunity to respond to this issue during the session. It denied that any reprisals had been carried out by the prison officials, that one detainee had been released, and that they conduct visits to places of detention.

The SCA is of the view that this response is inadequate and demonstrates that the PDDH does not appropriately respond to credible allegations of serious human rights violations in the manner that would be expected of an independent NHRI.

⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23481&LangID=E>;
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23335&LangID=E>;
<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23005&LangID=E>;

⁶ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24148&LangID=E>;

⁷ <https://www.consilium.europa.eu/en/press/press-releases/2019/01/21/nicaragua-council-adopts-conclusions/>.

Based on the above, the SCA is of the view that the PDDH continues not to discharge its mandate in a manner that demonstrates respect for human rights in response to credible allegations of serious human rights violations, including those committed by the authorities. It also continues to fail to address all human rights issues. The failure to do so demonstrates a lack of independence. Therefore, the SCA is of the view that the PDDH continues to act in a way that seriously compromises its compliance with the Paris Principles.

An NHRI's 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.

It encourages the PDDH to cooperate with and seek assistance from OHCHR, GANHRI and RINDHCA to address the issues noted above with a view to re-establishing its full compliance with the Paris Principles.