

[Adopted by the GANHRI Bureau at its Meeting held in Geneva on 21 February 2018]

GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (GANHRI)

General Observations of the Sub-Committee on Accreditation

Introduction

1. The 'Principles relating to the status of national institutions' (Paris Principles), endorsed by the World Conference on Human Rights and the United Nations General Assembly, are the minimum international standards for the establishment of National Human Rights Institutions (NHRIs). They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism.
2. NHRIs are established by States for the specific purpose of advancing and defending human rights at the national level, and are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground. The establishment and strengthening of NHRIs pursuant to the Paris Principles falls within the set of international human rights commitments made by States. It is therefore the responsibility of the State to ensure that it has in place a Paris Principle-compliant NHRI.
3. As a core function, the Global Alliance of NHRIs (GANHRI) promotes the establishment and strengthening of NHRIs in conformity with the Paris Principles and uses the Principles as criteria to determine GANHRI membership. The GANHRI Sub-Committee on Accreditation (SCA) has been delegated the task of assessing institutional compliance with the Paris Principles.
4. Since 2006, the SCA has used the knowledge gained through the GANHRI accreditation process to develop an important body of jurisprudence to give meaning to the content and scope of the Principles. Section 2.2 of the SCA Rules of Procedure provide the SCA with authority to develop 'General Observations' on common and important interpretative issues on the implementation of the Paris Principles.
5. The SCA, with its depth of experience and extensive study of the guiding principles, is well placed to articulate its standards and deliver the necessary guidance to ensure a consistency of approach in its implementation and application. The SCA possesses an understanding of the issues faced by NHRIs, operating in a wide range of circumstances, including a diversity of institutional models and political systems. As a result, it has developed clear examples of compliance with the Paris Principles in practice.
6. The General Observations are referred to in the SCA's recommendations issued to NHRIs upon review of their application for GANHRI accreditation, re-accreditation or special review. 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 NHRI 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 NHRI's compliance with any of the General Observations, it may consider what steps, if any, have been taken by the NHRI to address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts have been made, it will be open to the SCA to interpret such lack of progress as non-compliance with the Paris Principles.
7. The SCA is aware of the different NHRI structural models in existence, including: commissions; ombudsman institutes; hybrid institutions; consultative and advisory bodies; research institutes and centres; civil rights protectors; public defenders; and parliamentary advocates. (For a more complete discussion of the different model-types, the SCA refers to *Professional Training Series No.4: National Human Rights Institutions: History, Principles, Roles and Responsibilities*, United Nations Office of the High Commissioner for Human Rights, New York and Geneva, 2010, pp. 15-19). The SCA is of the view that its General Observations must be applied to every NHRI, regardless of its structural model type.
8. The citation of General Observations is done in tandem with the issuance of specific recommendations on individual accreditation applications, the latter of which are narrow in application and value to the NHRI concerned. Inversely, the General Observations, being independent of a specific set of facts pertaining to a single domestic context, are universal in their application and provide guidance in both individual cases and more generally.
9. The categorization of the General Observations into the following two sections clarifies for all stakeholders which of the General Observations are direct interpretations of the Paris Principles, and which are drawn from the SCA's extensive experience in identifying proven practices to ensure independent and effective NHRIs in line with the Paris Principles:
- i. Essential requirements of the Paris Principles; and
 - ii. Practices that directly promote Paris Principles compliance.
10. As it gains further experience, the SCA will seek to develop new General Observations. In 2011, GANHRI adopted a formalized multi-stage process for doing so. This procedure was designed to promote their accessibility by ensuring consistency in their content and format; being clearly written, of reasonable length and readily understandable to a broad range of readers, primarily NHRIs and States.

11. The first stage consists of a discussion amongst SCA members, representatives of GANHRI Regional Networks, and OHCHR on the topic of the General Observation. Secondly, a Working Group is established. It canvasses GANHRI members, through the Regional Networks, for their views on the topic to be addressed. Thirdly, the Working Group, taking into account any comments received from the GANHRI membership, develops a draft and presents it to the SCA for review and comment. Lastly, once approved, the SCA will recommend the revised draft be formally adopted through its sessional reports to the GANHRI Bureau.
12. The SCA's work in developing a comprehensive and detailed interpretation of the Paris Principles is of widespread value as it serves to enrich the understanding of the requirements to ensure the effective establishment, functioning and strengthening of NHRIs. Ultimately a synthesis of the most important issues of interpretation that have been uncovered by the individual accreditation applications, the General Observations are relevant to NHRIs globally, including those not currently the subject of the immediate accreditation review. The General Observations further enable stakeholders to take a proactive approach to effect the necessary changes to their own processes and mechanisms without requiring the SCA to provide them with specific recommendations resulting from the outcome of an accreditation review.
13. NHRIs are reliant upon their national government to implement many of the provisions of the Principles, including their legislative establishment and provision of adequate funding. Where the SCA notes as an issue of concern, the failure of the State to fulfill its obligations pursuant to the Paris Principles, the NHRI may use the standards articulated in the General Observations to recommend the action required by the State to effect the necessary change to address or remedy issues before the accreditation status of the NHRI is next reviewed.
14. The General Observations have also been developed to preserve the institutional memory of the SCA and to ensure a consistency in approach taken by its rotational membership.
15. The appropriate implementation of General Observations is key to advancing NHRI maturity. By clarifying the requirements of the Paris Principles, the General Observations provide NHRIs with accessible, relevant and readily contextualized norms to speed their evolution into more efficient and effective institutions, resulting in the enhanced promotion and protection of human rights on the ground.

**Adopted by the Bureau of the Global Alliance of NHRIs (GANHRI) at its Meeting held in Geneva, Switzerland, 6 March 2017.*

GENERAL OBSERVATIONS

1. Essential requirements of the Paris Principles

- 1.1 The establishment of NHRIs
- 1.2 Human rights mandate
- 1.3 Encouraging ratification or accession to international human rights instruments
- 1.4 Interaction with the international human rights system
- 1.5 Cooperation with other human rights bodies
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- 1.7 Ensuring pluralism of the NHRI
- 1.8 Selection and appointment of the decision-making body of NHRIs
- 1.9 Political representatives on NHRIs
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2. Practices that directly promote Paris Principles compliance

- 2.1 Guarantee of tenure for members of the NHRI decision-making body
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- 2.3 Protection from criminal and civil liability for official actions and decisions undertaken in good faith
- 2.4 Recruitment and retention of NHRI staff
- 2.5 NHRIs during the situation of a coup d'état or a state of emergency
- 2.6 Limitation of power of NHRIs due to national security
- 2.7 Administrative regulation of NHRIs
- 2.8 Assessing NHRIs as National Preventive and National Monitoring Mechanisms
- 2.9 The quasi-judicial competency of NHRIs (complaints-handling)

1. Essential requirements of the Paris Principles

G.O. 1.1 The establishment of NHRIs

An NHRI must be established in a constitutional or legislative text with sufficient detail to ensure the NHRI has a clear mandate and independence. In particular, it should specify the NHRI's role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members. The establishment of an NHRI by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence

JUSTIFICATION

Pursuant to section A.2 of the Paris Principles: "*A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*"

The SCA recognizes that NHRIs are created in different socio-economic circumstances and political systems, which may in turn impact on the manner in which they are formally established. Nonetheless, the Paris Principles are clear on the requirement that NHRIs, regardless of the constitutional and legal system in which they operate, be formally entrenched in law and in this way be distinguished from an agency of state, a non-government organization, or an ad hoc body. Further, it is necessary that the constitutional or legislative text set out the NHRI's mandate as well as the composition of its leadership body. This necessarily requires the inclusion of complete provisions on the NHRI's appointment mechanisms, terms and conditions of office, mandate, powers, funding and lines of accountability.

The SCA considers this provision to be of central importance in guaranteeing both the permanency and independence of the Institution.

The creation of an NHRI in other ways, such as by a decision of the Executive (through a decree, regulation, motion, or administrative action) and not by the legislature raises concerns regarding permanency, independence from government and the ability to exercise its mandate in an unfettered manner. This is because instruments of the Executive may be modified or cancelled at the whim of the Executive, and such decisions do not require legislative scrutiny. Changes to the mandate and functions of an independent agency of state charged with the promotion and protection of human rights should be scrutinised by the legislature and not be at the fiat of the Executive. Any amendment or repeal of the constitutional or legislative text establishing the NHRI must require the consent of the legislature to ensure its guarantees of independence and powers do not risk being undermined in the future.

Excerpt from the Paris Principles

A) Competence and responsibilities –

2. *A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*

1. Essential requirements of the Paris Principles

G.O. 1.2 Human rights mandate

All NHRIs should be legislatively mandated with specific functions to both promote and protect human rights.

The SCA understands 'promotion' to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. 'Protection' functions may be understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling.

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;
- vest the NHRI with the competence to freely address public opinion, raise public awareness on human rights issues and carry out education and training programs;
- provide the authority to address recommendations to *public authorities*, to analyse the human rights situation in the country, and to obtain statements or documents in order to assess situations raising human rights issues;
- authorize unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice;
- authorize the full investigation into all alleged human rights violations, including the military, police and security officers.

JUSTIFICATION

According to sections A.1 and A.2 of the Paris Principles, an NHRI should possess, "*as broad a mandate as possible*", which is to be, "*set forth in a constitutional or legislative text*", and should include both, "*the promot[ion] and protect[ion] of human rights*". Section A.3 of the Paris Principles enumerates specific responsibilities the NHRI must, at a minimum, be vested with. These requirements identify two main issues which must necessarily be addressed in the establishment and operation of an NHRI:

- (i) The mandate of the NHRI must be established in national law. This is necessary to guarantee the independence and autonomy with which an NHRI undertakes its activities in the fulfilment of its public mandate;

- (ii) The NHRI's mandate to both promote and protect human rights must be defined as broadly as possible so as to give the public the protection of a wide range of international human rights standards: civil; political; economic; cultural; and social. This gives effect to the principle that all rights are universal, indivisible, and interdependent.

Excerpt from the Paris Principles

A. Competence and responsibilities –

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

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

1. Essential requirements of the Paris Principles

G.O. 1.3 Encouraging ratification or accession to international human rights instruments

Encouraging ratification of, or accession to international human rights instruments, and the effective implementation of international human rights 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 international human rights law;
- promoting state participation in advocacy for and the drafting of international human rights instruments; and
- conducting assessments of domestic compliance with and reporting on international human rights obligations, for example, through annual and special reports and participation in the Universal Periodic Review process.

NHRIs should, in encouraging their governments to ratify international human rights instruments, advocate that this be done without reservations.

JUSTIFICATION

Sections A.3(b) and (c) of the Paris Principles require that NHRIs have the responsibility to “*promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation*”. Additionally, the NHRI has the responsibility “*to encourage ratification of [these] instruments or accession to those instruments, and to ensure their implementation*”.

In practice this requires NHRIs to review relevant national laws, regulations and policies to determine that they are compatible with the obligations arising from international human rights standards and propose the amendment or repeal of any legislation, regulations or policies that are inconsistent with the requirements of these standards. The SCA is of the view that the NHRI should be legislatively empowered to carry out these responsibilities.

The SCA notes the distinction between the state’s own monitoring obligations as required by these instruments and the distinct role played by the NHRI in monitoring the state’s compliance and progress towards implementing the instruments it ratifies. Where the NHRI undertakes to carry out its own activities in promoting and protecting the rights contained therein, it shall do so in an entirely autonomous fashion. This does not preclude the NHRI from undertaking joint action with the state on certain activities, such as reviewing compliance of existing domestic legislation and regulations with international human rights instruments.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. *A national institution shall, inter alia, have the following responsibilities:*

....

- (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;*
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;*

1. Essential requirements of the Paris Principles

G.O. 1.4 Interaction with the international human rights system

The Paris Principles recognise that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and 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.

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

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

While it is appropriate for governments to consult with NHRIs in the preparation of a state's reports to human rights mechanisms, NHRIs should neither prepare the country report nor should they report on behalf of the government. 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 during the Universal Periodic Review, during periodic reviews before the Treaty Bodies, or in other international mechanisms where independent participation rights for NHRIs exist. Where independent participation rights for NHRIs do not exist in a particular fora and an NHRI chooses to participate in proceedings as part of a state delegation, the manner of their participation must clearly distinguish them as an independent NHRI.

In considering their engagement with the international human rights system, NHRIs are encouraged to actively engage with the Office of the United Nations High Commissioner for Human Rights (OHCHR), GANHRI, their Regional Network and other NHRIs, as well as international and national NGOs and civil society organizations.

JUSTIFICATION

Sections A.3(d) and A.3(e) of the Paris Principles give NHRIs the responsibility to interact with the international human rights system in three specific ways. That is, NHRIs are required:

1. To contribute to country reports submitted to United Nations bodies and committees, and to regional institutions, in line with the States' treaty obligations;
2. To express an opinion on the subject, where necessary, with due respect for their independence; and
3. To cooperate with the United Nations and any other organization in its system, as well as with regional human rights institutions and the NHRIs of other countries.

The SCA is of the view that NHRI engagement with international bodies is an important dimension of their work. Through their participation, NHRIs connect the national human rights enforcement system with international and regional human rights bodies. Domestically, NHRIs play a key role in raising awareness of international developments in human rights through reporting on the proceedings and recommendations of treaty-monitoring bodies, special procedures mandate holders and the Universal Periodic Review. Their independent participation in human rights mechanisms through, for example, the production of parallel reports on the State's compliance with treaty obligations, also contributes to the work of international mechanisms in independently monitoring the extent to which states comply with their human rights obligations.

Moreover, NHRI participation in regional and international coordination bodies serves to reinforce their independence and effectiveness, overall. Through exchanges, NHRIs are provided with an opportunity to learn from shared experiences. This may lead to collectively strengthening each other's positions and contributing to resolving regional human rights issues.

NHRIs are encouraged to monitor the states' reporting obligations under the Universal Periodic Review and the international treaty bodies, including through dialogue with the relevant treaty body committees.

While it is appropriate for governments to consult with NHRIs in the preparation of a state's reports to human rights mechanisms, NHRIs should neither prepare the country report nor should they report on behalf of the government. NHRIs must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right.

The SCA wishes to clarify that an NHRI's contribution to the reporting process through the submission of stakeholder or shadow reports under relevant international instruments should be done independently of the state, and may draw attention to problems, issues and challenges that may have been omitted or dealt with inadequately in the state report.

The SCA recognizes the primacy of an NHRI's domestic mandate, and that its capacity to engage with the international human rights system must depend on its assessment of domestic priorities and available resources. Within these limitations, NHRIs are encouraged to engage wherever possible and in accordance with their own strategic priorities. In so doing, the SCA highlights that NHRIs should:

- avail themselves of the assistance offered by OHCHR, which provides technical assistance and facilitates regional and global cooperation and exchanges among NHRIs; and
- engage with GANHRI, their respective regional SCA representative and Regional Network.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, inter alia, have the following responsibilities:

....

- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty*

obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

- (e) *To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;*

1. Essential requirements of the Paris Principles

G.O. 1.5 Cooperation with other human rights bodies

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.

JUSTIFICATION

In prescribing the NHRI's methods of operation, sections C(f) and C(g) of the Paris Principles require NHRIs to: "*maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions)*".

The Principles specifically recognize "*the fundamental role played by the non-governmental organizations in expanding the work of the national institutions*", and therefore encourage NHRIs to, "*develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas*".

To give full effect to these Paris Principle requirements, the SCA recommends that NHRIs should develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights. Interaction may include the sharing of knowledge, such as research studies, best practices, training programmes, statistical information and data, and general information on its activities. For the following reasons the SCA considers such cooperation necessary to ensure the full realization of human rights nation-wide:

- *National human rights framework* – The effectiveness of an NHRI in implementing its mandate to protect and promote human rights is largely dependent upon the quality of its working relationships with other national democratic institutions such as: government departments; judicial bodies; lawyers' organizations; non-governmental organizations; the media; and other civil society associations. Broad engagement with all stakeholders may provide a better understanding of: the breadth of human rights issues across the state; the impact of such issues based on social cultural, geographic and other factors; gaps, as well as potential overlap and duplication in the setting of policy, priorities and implementation strategies. NHRIs working in isolation may be limited in their ability to provide adequate human rights protections to the public.
- *Unique position of NHRIs* – The character and identity of an NHRI serves to distinguish it from both government bodies and civil society. As independent, pluralistic institutions, NHRIs can play an important role.

- *Improved accessibility* – The NHRI’s relations with civil society and NGOs is particularly important in improving its accessibility to sections of the populations who are geographically, politically or socially remote. These organizations are likely to have closer relations with vulnerable groups as they often have a more extensive network than NHRIs and are almost always likely to be closer to the ground. In this way, NHRIs may utilize civil society to provide an outreach mechanism to engage with vulnerable groups.
- *Expertise of other human rights bodies* – As a result of their specialized mandates, other human rights bodies and civil society groups may provide an NHRI with valuable advice on the major human rights issues facing vulnerable groups across the nation. As such, NHRIs are encouraged to regularly consult with other human rights bodies and civil society at all stages of programme planning and implementation, as well as policy making, to ensure the NHRI’s activities reflect public concerns and priorities. Developing effective relationships with the mass media, as a section of civil society, is a particularly important tool for human rights education.
- *Formalized relationships* – The importance of formalizing clear and workable relationships with other human rights bodies and civil society, such as through public memoranda of understanding, serves as a reflection of the importance of ensuring regular, constructive working relationships and is key to increasing the transparency of the NHRI’s work with these bodies.

Excerpt from the Paris Principles

C) Methods of operation –

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

...

- (f) *Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);*
- (g) *In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.*

1. Essential requirements of the Paris Principles

G.O. 1.6 Recommendations by NHRIs

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

NHRIs, as part of their mandate to promote and protect human rights, should undertake follow up action on recommendations contained in these reports and should publicize detailed information on the measures taken or not taken by public authorities in implementing specific recommendations or decisions.

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 on its recommendations and findings, and the protection of those whose rights were found to have been 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.

JUSTIFICATION

The Paris Principles are not only explicit in their direction that NHRIs have the responsibility to make recommendations to public authorities on improving the national human rights situation, but also that NHRIs ensure their recommendations are widely publicized. Specifically, section A.3(a) of the Paris Principles requires NHRIs to “*submit to the Government, Parliament and any other competent body, [...] recommendations [...] on any matters concerning the promotion and protection of human rights*”, and enumerates the three areas that these recommendations shall relate to:

1. The creation or amendment of any legislative or administrative provisions, including bills and proposals;
2. Any situation of violation of human rights within a state;
3. Human rights in general and on more specific matters.

In prescribing its methods of operation, section C(c) of the Paris Principles requires NHRIs to, “[...] *publicize its opinions and recommendations*”, “[...] *directly or through any press organ [...]*”.

Finally, section D(d) of the Principles, requires NHRIs with quasi-judicial competence, that is, with the ability to hear and consider complaints, to: “*mak[e] recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.*”

The SCA is of the view that the three-fold reinforcement of the obligation to make and publicize recommendations is indicative that the drafters of the Paris Principles considered that NHRIs

would be more effective when provided with the authority to monitor the extent to which public authorities follow their advice and recommendations. To give full effect to this principle, the SCA encourages governments to respond to advice and requests from NHRIs, and to indicate, within a reasonable time, how they have complied with their recommendations.

NHRIs should monitor the implementation of recommendations from annual and thematic reports, inquiries and other complaint handling processes.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, inter alia, have the following responsibilities:

- (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:*

 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;*
 - (ii) Any situation of violation of human rights which it decides to take up;*
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;*
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*

C) Methods of operation –

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

...

- (c) *Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;*

...

D) Additional principles concerning the status of commissions with quasi-judisdictional competence –

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

...

- (d) *Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.*

1. Essential requirements of the Paris Principles

G.O. 1.7 Ensuring pluralism of the NHRI

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

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

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

a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow and restrict the diversity and plurality of the composition of the NHRI's membership should be avoided;

b) Pluralism through the appointment procedures of the governing body of the NHRIs for example, where diverse societal groups suggest or recommend candidates;

c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or

d) Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member NHRIs, such as an Ombudsperson.

JUSTIFICATION

Ensuring the pluralistic composition of the NHRI is a prime requirement of the Paris Principles as a guarantee of institutional independence. Section B.1 states: "*The composition of the national institution and the appointment of its members [...] shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights.*" The same provision highlights that pluralism is intended to promote effective cooperation with an indicative list of stakeholders representing:

- (a) *Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;*
- (b) *Trends in philosophical or religious thought;*
- (c) *Universities and qualified experts;*
- (d) *Parliament;*
- (e) *Government departments*

The SCA considers the pluralistic composition of the NHRI to be fundamentally linked to the requirement of independence, credibility, effectiveness and accessibility.

Where the members and staff of NHRIs are representative of a society's social, ethnic, religious and geographic diversity, the public are more likely to have confidence that the NHRI will understand and be more responsive to its specific needs. Additionally, the meaningful participation of women at all levels is important to ensure an understanding of, and access for, a significant proportion of the population. Likewise, in multilingual societies, the NHRI's capacity to communicate in all languages is key to its accessibility.

The diversity of the membership and staff of an NHRI, when understood in this way, is an important element in ensuring the effectiveness of an NHRI and its real and perceived independence and accessibility.

Ensuring the integrity and quality of members is a key factor in the effectiveness of the NHRI. For this reason, selection criteria that ensure the appointment of qualified and independent decision-making members should be legislatively established and made publicly available prior to appointment.

The SCA recommends that the adoption of such criteria be subject to consultation with all stakeholders, including civil society, to ensure the criteria chosen is appropriate and does not exclude specific individuals or groups.

The SCA cautions that criteria that may be unduly narrow and restrict the diversity and plurality of the composition of the NHRI's membership and staff body, such as the requirement to belong to a specific profession, may limit the capacity of the NHRI to fulfil effectively all its mandated activities. If staff and members have a diverse range of professional backgrounds, this will help to ensure that issues are not narrowly framed.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

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

1. Essential requirements of the Paris Principles

G.O. 1.8 Selection and appointment of the decision-making body of NHRIs

It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the 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. Such a process should 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.

JUSTIFICATION

Section B.1 of the Paris Principles specifies that: *“The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights.”*

Section B.1 further enumerates which groups may be included in this process. These are “representatives of:

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

The SCA interprets the reference to an election or other like process, together with the reference to broad participation, as requiring a clear, transparent, merit-based and participatory selection and appointment process.

Such a process is fundamental in ensuring the independence and effectiveness of, and public confidence in, the NHRI.

For this reason, it is important that the selection process be characterized by openness and transparency. That is, it should be under the control of an independent and credible body and involve open and fair consultation with NGOs and civil society. Not only is this a means of

developing a good relationship with these bodies, but consideration of the expertise and experience of NGOs and civil society is likely to result in an NHRI with greater public legitimacy.

Advertising vacancies broadly maximises the potential number of candidates, thereby promoting pluralism.

Promoting broad consultation and participation in the application, screening, selection and appointment process promotes transparency, pluralism and public confidence in the process, the successful candidates and the NHRI.

The assessment of applicants on the basis of pre-determined, objective and publicly available criteria promotes the merit-based appointment of candidates, limits the capacity for undue interference in the selection process, and serves to ensure the appropriate management and effectiveness of the NHRI.

Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent is likely to result in an independent and professional membership body.

It is recommended that the selection and appointment process, bearing the hallmarks described above, be formalized in relevant legislation, regulations or binding administrative guidelines, as appropriate.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

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

1. Essential requirements of the Paris Principles

G.O. 1.9 Political representatives on NHRIs

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. 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. 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 NHRI.

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

The participation of government representatives or members of parliament, or representatives of government agencies, 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 representatives should be limited and should not exceed the number of other members of the NHRI's governing body.

JUSTIFICATION

Paris Principle C(a) states that an NHRI must be able to "freely consider any question falling within its competence".

Paris Principle B.2 states that the requirement of an appropriate infrastructure is intended to ensure the NHRI is "independent of the government".

Paris Principle B.3 requires that members of an NHRI are appointed officially, thereby promoting a stable mandate "without which there can be no real independence".

Paris Principles B.1 specifically provides that representatives of government departments can participate "only in an advisory capacity".

By clearly promoting independence in the composition, structure and method of operation of an NHRI, these provisions seek to avoid any possible interference in the NHRI's assessment of the human rights situation in the State and the subsequent determination of its strategic priorities. It follows therefore that members of parliament, and especially those who are members of the ruling political party or coalition, or representatives of government agencies, should not in general be represented on, nor should they participate in decision making, since they hold positions that may at times conflict with an independent NHRI.

The SCA acknowledges the value in developing and maintaining effective links with relevant ministers and government agencies, particularly where cooperation will assist in promoting the NHRI's mandate. However, it stresses that this must be done in a way that ensures both real and perceived independence of decision making and operation, and avoids a conflict of interest. The creation of Advisory Committees is an example of a mechanism where such relationships can be maintained without impacting on the NHRI's independence.

The SCA notes that Paris Principle B.1 specifically states that representatives of government agencies have only an advisory role, while no such restriction is explicitly stated in relation to representatives of parliament. It notes, however, that in providing an indicative list of relevant stakeholders, Paris Principle B.1 envisages either the "presence" or the ability to establish "effective cooperation" with such representatives. Given the explicit requirements for independence stated throughout the Paris Principles, examples of which are referenced above, the SCA is of the view that a similar restriction must apply to members of parliament, and particularly those who are members of the ruling political party or coalition.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

-*
- (d) Parliament*
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).*

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

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

(C) Methods of operation

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

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

1. Essential requirements of the Paris Principles

G.O. 1.10 Adequate funding of NHRIs

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 NHRI's operations and the fulfilment of its mandate.

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

a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;

b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;

c) remuneration of members of its decision-making body (where appropriate);

d) the establishment of well-functioning communications systems including telephone and internet;

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

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

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

While an NHRI should have complete autonomy over the allocation of its budget, it is obliged to comply with the financial accountability requirements applicable to other independent agencies of the State.

JUSTIFICATION

Section B.2 of the Paris Principles addresses the requirement for NHRIs to be adequately funded as a guarantee of their independence. The purpose of such funding and a definition of what it entails is stated as follows: “*The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*”

While the provision of “adequate funding” is determined in part by the national financial climate, States have the duty to protect the most vulnerable members of society, who are often the victims of human rights violations, even in times of severe resource constraints. As such, the SCA believes that it is nevertheless possible to identify certain aspects of this Paris Principles requirement that must be taken into account in any particular context. They include the following:

- a) *Accessibility to the public* – This is particularly important for the most vulnerable sections of society, who would otherwise have particular difficulty bringing attention to any violation of their human rights.
 - As many vulnerable persons may be geographically remote from the major cities where most NHRIs are located, establishing a regional presence increases the accessibility of NHRIs, giving them as wide a geographical reach as possible, and enabling them to have full national coverage for the receipt of complaints. It is essential that, where regional offices exist, they be adequately resourced to ensure their effective functioning.
 - Another means of increasing the accessibility of NHRIs to vulnerable groups is to ensure that their premises are neither located in wealthy areas nor in or nearby government buildings. This is particularly important where government buildings are protected by military or security forces. Where an NHRI’s offices are too close to government offices, this may not only compromise the perceived independence of the Institution but also risk deterring complainants.
- b) *NHRI staff* – Salaries and benefits awarded to NHRI staff should be comparable to those of civil servants performing similar tasks in other independent institutions of the State.
- c) *NHRI members* – Where appropriate, members of the NHRI’s decision-making body should receive remuneration equivalent to those individuals with similar responsibilities in other independent institutions of the State.
- d) *Communications infrastructure* – The establishment of communications systems, including telephone and internet, is essential for the public to access the NHRI’s office. A well-functioning communications structure, including simplified complaints-handling procedures which may include the receipt of complaints orally in minority languages, increases the reach of vulnerable groups to the NHRI’s services.
- e) *Allocation for activities* – NHRIs should receive adequate public funding to perform their mandated activities. An insufficient budget can render an NHRI ineffective or limit it from reaching its full effectiveness. Where the NHRI has been designated with additional responsibilities by the State, such as the role of National Preventive or Monitoring Mechanism pursuant to an international human rights instrument, additional financial resources should be provided to enable it to discharge these functions.

Donor funding

As it is the responsibility of the State to ensure the NHRI's core budget, the SCA takes the view that funding from external sources, such as from international development partners, should not constitute the NHRI's core funding. However, it recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support an NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. This is particularly applicable in post-conflict States. In these circumstances, NHRIs should not be required to obtain approval for external sources of funding, as this requirement may pose a threat to its independence.

Financial systems and accountability

Financial systems should be such that the NHRI has complete financial autonomy as a guarantee of its overall freedom to determine its priorities and activities. National law should indicate from where the budget of the NHRI is allocated and should ensure the appropriate timing of release of funding, which is particularly important in ensuring an appropriate level of skilled staff. This should be a separate budget line over which the NHRI has absolute management and control. The NHRI has the obligation to ensure the coordinated, transparent and accountable management of its funding through regular public financial reporting and a regular annual independent audit.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

1. Essential requirements of the Paris Principles

G.O. 1.11 Annual reports of NHRIs

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

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

The SCA considers it important that the enabling laws of an NHRI establish a process whereby its reports are required to be widely circulated, discussed and considered by the legislature. It is preferable for the NHRI to have an explicit power to table reports directly in the legislature rather than through the Executive and, in so doing, to promote action on them.

Where an NHRI has made an application for accreditation or re-accreditation, it will be required to submit a current annual report, that is, one from the preceding year's reporting period. Where the published report is not in one of the GANHRI languages, a certified translation of the key elements of the report must be submitted in its application for accreditation. The SCA finds it difficult to assess the effectiveness of an NHRI and its compliance with the Paris Principles in the absence of a current annual report.

JUSTIFICATION

Section A.3(a) of the Paris Principles requires NHRIs to be responsible for, "*submit[ting] to the Government, Parliament and any other competent body, [...] reports on any matters concerning the promotion and protection of human rights.*" It states that institutions "*may decide to publicize them*", and enumerates the four areas that these reports shall relate to:

- (i) Recommendations on the creation or amendment of any legislative or administrative provisions, including bills and proposals;
- (ii) Any situation of violation of human rights;
- (iii) Human rights in general and on more specific matters; and
- (iv) Proposals to put an end to human rights violations, and its opinion on the proposals and reaction of government to these situations.

With a view to assisting NHRIs in fulfilling their obligations pursuant to this provision of the Paris Principles, the SCA provides the following guidance on its requirements, based on international proven practices:

- *Purpose of reports* – Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of an NHRI. The reports also provide a

means by which an NHRI can make recommendations to government and monitor respect for human rights by government;

- *Content of reports* – The annual report of an NHRI is a vital public document that not only provides a regular audit of the government’s performance on human rights but also an account of what the NHRI has done. As such, this report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern, and the government’s action on its recommendations;
- *Publication of reports* – It is important for an NHRI to publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters. It is vitally important that all the findings and recommendations of the NHRI be publicly available as this increases the transparency and public accountability of the NHRI. In publishing and widely disseminating its annual report, the NHRI will play an extremely important role in educating the public on the situation of human rights violations in the country;
- *Submission of reports* – The NHRI should be given the legislative authority to table its reports directly to the legislature rather than through the Executive. The legislature should be required to discuss and consider the reports of the NHRI, so as to ensure that its recommendations are properly considered by relevant public authorities.

The SCA finds it difficult to review the accreditation status of an NHRI in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo an accreditation review by the SCA.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. *A national institution shall, inter alia, have the following responsibilities:*

a) *To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:*

(i) *Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;*

- (ii) *Any situation of violation of human rights which it decides to take up;*
- (iii) *The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;*
- (iv) *Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*

2. Practices that directly promote Paris Principles compliance

G.O. 2.1 Guarantee of tenure for members of the NHRI decision-making body

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

The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law.

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfil their mandate.

Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction.

Dismissal should not be allowed based solely on the discretion of appointing authorities.

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

JUSTIFICATION

In prescribing the conditions to ensure a stable mandate for members of the NHRI decision-making body, section B.3 of the Paris Principles is silent on the scenario of their dismissal. Nonetheless, it is the view of the SCA that ensuring the security of tenure of NHRI members is consistent with the Paris Principles requirements regarding the composition of the NHRI and its guarantees of independence and pluralism.

Appropriate procedural protections and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as ensuring the independence of the NHRI and its membership. That is, NHRI members must be able to undertake their responsibilities without fear and without inappropriate interference from the State or other actors. In this light, the SCA highlights the following:

- Members may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the national law.
- The dismissal of members by the Executive, such as before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective functional immunity being available to contest the dismissal, is incompatible with the independence of the NHRI.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

2. Practices that directly promote Paris Principles compliance

G.O. 2.2 Full-time members of an NHRI

The enabling law of the NHRI should provide that members of its decision-making body include full-time remunerated members. This assists in ensuring:

- a) the independence of the NHRI free from actual or perceived conflict of interests;
- b) a stable tenure for the members;
- c) regular and appropriate direction for staff; and
- d) the ongoing and effective fulfilment of the NHRI's functions.

An appropriate minimum term of appointment is crucial in promoting the independence of the membership of the NHRI, and to ensure the continuity of its programs and services. An appointment period of three (3) years is considered to be the minimum that would be sufficient to achieve these aims. As a proven practice, the SCA encourages that a term of between three (3) and seven (7) years with the option to renew once be provided for in the NHRI's enabling law.

A further requirement in ensuring the stability of a member's mandate, and the independence of a NHRI and its members, is the requirement that the terms and conditions of a member's service cannot be modified to their detriment during their period of appointment. Additionally, such terms and conditions should be equivalent to those with similar responsibilities in other independent State agencies.

JUSTIFICATION

Section B.3 of the Paris Principles sets out the requirements to ensure a stable mandate for the members of the NHRI. It specifies that, "*their appointment shall be effected by an official act which shall establish the specific duration of the mandate.*" It further clarifies that, "*this mandate may be renewable [...]*".

Although the provision is silent on the duration of the appointment, the SCA is of the view that specifying an appropriate minimum term in the NHRI's enabling law is crucial in both promoting the independence of the membership and of the NHRI, and to ensure the continuity of its programs and services. Consistent with international good practices, it therefore recommends an appointment period that extends between three and seven years with the option to renew once.

In prescribing the conditions to ensure a stable mandate for members of the NHRI's decision-making body, section B.3 of the Paris Principles does not address the issue of whether members are required to be full-time or whether they are to be remunerated. The SCA is of the view that the appointment of members on a full-time basis promotes stability, an appropriate degree of management and direction, and limits the risk of members being exposed to conflicts of interest upon taking office. Furthermore, it clearly establishes the terms and conditions of service, including proper remuneration of members, and serves to reinforce their independence and integrity.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

2. Practices that directly promote Paris Principles compliance

G.O. 2.3 Protection from criminal and civil liability for official actions and decisions undertaken in good faith

External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a member of the decision-making body or a staff member of the NHRI. For this reason, members and staff of an NHRI should be protected from both criminal and civil liability for acts undertaken in good faith in their official capacity. Such protections serve to enhance the NHRI's ability to engage in critical analysis and commentary on human rights issues, safeguard the independence of senior leadership, and promote public confidence in the NHRI.

While the SCA considers it preferable for these protections to be explicitly entrenched in NHRI legislation or another applicable law of general application, it acknowledges that such protection may also exist by virtue of the specific legal context in which the NHRI operates.

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

JUSTIFICATION

Providing members of the NHRI's decision-making body and staff protection from both criminal and civil liability for actions undertaken in good faith in their official capacity – often referred to as functional immunity – protects them from individual legal proceedings from anyone who objects to a decision or action of the NHRI.

It is now widely accepted that the entrenchment of these protections in law is necessary for the reason that this protection, being one that is similar to that which is granted to judges under most legal systems, is an essential hallmark of institutional independence.

It is recognized that in some national contexts, functional immunity is not part of the legal tradition and it may therefore be unrealistic or inappropriate for the NHRI to request that formal legal provisions be adopted. In such exceptional circumstances, the NHRI under review should provide sufficient information to explain why this is the case given its particular national context. This information will be reviewed in line with other guarantees provided at the national level to ensure independence, security of tenure, and the ability to engage in critical analysis on human rights issues.

It is understood that these protections should not be absolute and should not cover circumstances where NHRI members or staff abuse their official functions or act in bad faith. In well-defined circumstances, the democratically-elected authority, such as the legislature, to which the NHRI is accountable, should have the power to lift these protections in accordance with a fair and transparent process.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

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

C) *Methods of operation –*

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

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;*

...

2. Practices that directly promote Paris Principles compliance

G.O. 2.4 Recruitment and retention of NHRI staff

NHRIs should be legislatively empowered to determine the staffing structure and the skills required to fulfil the NHRI's mandate, to set other appropriate criteria (for example, to increase diversity), and to select their staff in accordance with national law.

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

A fundamental requirement of the Paris Principles is that an NHRI is, and is perceived to be, able to operate independent of government interference. The SCA highlights that this requirement should not be seen to limit the capacity of an NHRI to hire a public servant with the requisite skills and experience. However, the recruitment process for such positions should always be open to all, clear, transparent, merit-based and at the sole discretion of the NHRI. Where an NHRI is required to accept staff assigned to it by the government, and in particular where this includes those at the highest levels in the NHRI, it brings into question its capacity to function independently.

NHRIs must be provided with sufficient resources to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the NHRI's mandate. Such resources should allow for salary levels, and terms and conditions of employment, equivalent to those of other independent of State agencies.

JUSTIFICATION

Pursuant to section B.2 of the Paris Principles, an NHRI is required to be provided with adequate funding, the purpose of which is *"to enable it to have its own staff [...] in order to be independent of the Government"*. The Sub-committee interprets this provision to mean that:

- (i) NHRIs should possess the legislative authority to hire their own staff according to written recruitment guidelines based on merit and conducted through a transparent selection process using published criteria.
- (ii) NHRIs should be resourced in such a manner as to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the NHRI's mandate. Additionally, such resources should allow for salary levels, terms and conditions of employment applicable to the staff of the NHRI to be equivalent to those of similarly independent State agencies and members of the public service undertaking similar work and with similar qualifications and responsibilities.

In this way, the SCA recognises that fulfilling the requirements of Paris Principle B.2 is fundamental to ensuring the independence and efficient functioning of an NHRI. Where the NHRI lacks either adequate resources or the legislative ability to recruit its own staff, particularly at the senior-level – and these are instead appointed by the Executive – this undermines the principle of institutional independence.

Restrictions on the capacity of an NHRI to hire its own staff, or requirements to hire or accept assigned personnel from government agencies, except in exceptional or relevant circumstances, impacts on the real and perceived independence of an NHRI and may impede its ability to conduct its own affairs in an autonomous manner, free from government interference. This situation is

particularly compounded where senior staff members, who set the direction and foster the culture of the NHRI, are seconded.

The SCA highlights that this requirement should not be seen to limit the capacity of an NHRI to hire a public servant with the requisite skills and experience, and indeed acknowledges that there may be certain positions within an NHRI where such skills are particularly relevant. However, the recruitment process for such positions should always be open to all, clear, transparent, merit-based and at the sole discretion of the NHRI.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

Practices that directly promote Paris Principles compliance

G.O. 2.5 NHRI during the situation of a coup d'état or a state of emergency

In the situation of a coup d'état or a state of emergency, it is expected that an NHRI will conduct itself with a heightened level of vigilance and independence, and in strict accordance with its mandate.

NHRIs are expected to promote and ensure respect for human rights, democratic principles and the strengthening of the rule of law in all circumstances and without exception. In situations of conflict or a state of emergency, this may include monitoring, documenting, issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

JUSTIFICATION

The Paris Principles do not explicitly give guidance on the expected conduct of an NHRI when its country is experiencing a state of emergency or coup d'état. However, Paris Principle A.1 clearly specifies that NHRIs shall have the responsibility to promote and protect human rights. Furthermore, Paris Principle A.3 specifies the powers and responsibilities of an NHRI including:

- reporting on human rights violations (Paris Principle A.3(a)(ii) –(iii));
- monitoring and reporting on government action or inaction (Paris Principle A.3(a)(iv)) ; and
- publicizing its views on any matters concerning the promotion and protection of human rights (Paris Principle A.3(a)). This responsibility is further elaborated in Paris Principle C(c), which provides the capacity to address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.

While the impact of emergency circumstances varies from one case to another, the SCA is aware that they almost always have a dramatic impact on the rights recognized in international human rights standards, particularly on vulnerable groups. Disruptions to peace and security in no way nullify or diminish the relevant obligations of the NHRI. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. In such circumstances, the protection of human rights becomes all the more important, and NHRIs must ensure that individuals have accessible and effective remedies to address human rights violations.

NHRIs, as independent and impartial bodies, play a particularly important role by investigating allegations of violations promptly, thoroughly and effectively. As such, NHRIs will be expected to promote and ensure respect for human rights, democratic principles and strengthening the rule of law in all circumstances without exception. This may include issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

In order to fulfil its obligations, it is necessary that the NHRI continue to conduct itself with a heightened level of vigilance and independence in the exercise of its mandate. The SCA will scrutinize the extent to which the NHRI concerned has taken steps to the maximum of its available

resources to provide the greatest possible protection for the human rights of each individual within its jurisdiction.

Excerpt from the Paris Principles

A. Competence and responsibilities –

1. A national institution shall be vested with competence to promote and protect human rights.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

...

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

...

C. Methods of operation –

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

...

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

2. Practices that directly promote Paris Principles compliance

G.O. 2.6 Limitation of power of NHRIs due to national security

The scope of the mandate of an NHRI may be restricted for national security reasons. While this limitation is not inherently contrary to the Paris Principles, it should not be unreasonably or arbitrarily applied and should only be exercised under due process.

JUSTIFICATION

According to section A.2 of the Paris Principles, an NHRI should possess, “*as broad a mandate as possible*”. To give full effect to this Principle, the SCA recommends that this provision be understood in the widest sense. That is, the mandate of the NHRI should extend to protect the public from acts and omissions of public authorities, including officers and personnel of the military, police and special security forces. Where such public authorities, who may potentially have a great impact on human rights, are excluded from the jurisdiction of the NHRI, this may serve to undermine the credibility of the Institution.

NHRIs, in their analysis of the human rights situation in the country, should be authorized to fully investigate all alleged human rights violations, regardless of which State officials are responsible. This should include the ability to have unannounced and unimpeded access to inspect and examine any public premises, documents, equipment and assets without prior written notice. Although the authority of NHRIs to undertake such an investigation may be restricted for national security reasons, such restriction should not be unreasonably or arbitrarily applied and should be exercised under due process.

Excerpt from the Paris Principles

A) Competence and responsibilities –

2. *A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*

2. Practices that directly promote Paris Principles compliance

G.O. 2.7 Administrative regulation of NHRIs

The classification of an NHRI as an independent State agency has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting.

Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for their use of public funds, the application of such rules or regulations on an NHRI is not considered inappropriate provided they do not compromise the NHRI's ability to perform its role independently and effectively.

The administrative requirements imposed on an NHRI must be clearly defined and should be no more onerous than those applicable to other independent of State agencies.

JUSTIFICATION

Section B.2 of the Paris Principles considers the “*adequate funding*” of an NHRI as a necessary guarantee of its independence. The purpose of this funding is: “*in order to be independent of the Government and not to be subject to financial control which might affect its independence.*” Such a provision is not, however, intended to limit the application of laws that require an appropriate level of financial accountability by public agencies.

To ensure respect for the principle of independence in circumstances where certain aspects of the administration of an NHRI is regulated by the Government, the SCA cautions that such regulation must not compromise the NHRI's ability to perform its role independently and effectively.

It may therefore be appropriate for the State to impose general regulatory requirements to promote:

- fair, transparent and merit-based selection processes;
- financial propriety in the use of public funds; or
- operational accountability.

Such regulation should not, however, extend to requiring an NHRI to seek government approval prior to carrying out its legislatively mandated activities, since this may compromise its independence and autonomy. Such practice is inconsistent with the exercise of the protection and promotion function that an NHRI is established to carry out in an independent and unfettered manner. For this reason, it is important that the relationship between the Government and the NHRI be clearly defined so as to avoid any undue Government interference.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

G.O. 2.8 Assessing NHRIs as National Preventive and National Monitoring Mechanisms

Where, pursuant to an international human rights instrument, an NHRI has been designated as, or as part of, a national preventive or monitoring mechanism, the SCA will assess whether the applicant has provided sufficient information to demonstrate that it is carrying out its functions in compliance with the Paris Principles.

Depending on the specific roles and functions ascribed to the NHRI, in undertaking this assessment, the SCA will consider, as appropriate:

- whether a formal legal mandate has been provided;
- whether the mandate has been appropriately defined to encompass the promotion and protection of all relevant rights contained in the international instrument;
- whether the staff of the NHRI possess the appropriate skills and expertise;
- whether the NHRI has been provided with additional and adequate resources;
- whether there is evidence that the NHRI is effectively undertaking all relevant roles and functions as may be provided in the relevant international instrument. Depending on the instrument and the mandate of the national human rights institution, such activities might include monitoring and investigation, the provision of constructive and/or critical advice to government and in particular, systematic follow up of its recommendations and findings on alleged human rights violations.¹

The SCA may also consider, as it thinks appropriate, any guidance that has been developed by the relevant treaty body.²

JUSTIFICATION

¹ With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example Articles 17 – 13 of Part III of that instrument and the rights protected in the parent Convention. With regard to National Monitoring Mechanisms under the Convention on the Rights of People with Disabilities, see for example principles and functions outlined in Articles 3, 4, 31, 32, 33 and 35, and the rights protected in Articles 3 – 30.

² With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example the *Preliminary Guidelines for the Ongoing Development of National Preventive Mechanisms* developed by the Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and contained in paragraphs 24 – 29 of its First Annual Report (February 2007 – March 2008). (Ref: CAT/C/40/2).

In recent years, international human rights instruments have begun to incorporate a requirement that States Parties create, or designate an existing domestic agency (or agencies) with responsibility for monitoring and promoting the objectives of that instrument.

These international instruments often specify particular roles and functions to be carried out by the relevant domestic agency or agencies, which are variously referred to as national preventive or monitoring mechanisms.

In response, States have often chosen to designate their NHRI as, or as part of, its national preventive or monitoring mechanisms. In so doing, the State signals that the NHRI has a primary role to play in the promotion and protection of rights contained in those instruments.

In assessing whether an NHRI is carrying out these function in accordance with the Paris Principles, the SCA will consider a range of factors that impact on the capacity of a NHRI to function independently and effectively. With regard to the requirement for a specific legal mandate, this may depend on the scope of a NHRI existing mandate and the breadth of any additional roles and functions ascribed to it as a national preventive or monitoring mechanisms. Where additional powers are proposed, such as specific powers to enter, monitor, investigate and report on places of detention, and these go beyond the powers currently available to the NHRI, a more clearly defined legal mandate may be required in order to ensure the NHRI is able to undertake its role effectively and free from interference.

In undertaking its assessment, the SCA will also consider any guidelines developed by the relevant treaty body. It notes, however, that its role is to assess a NHRI against the Paris Principles, whereas the relevant treaty body undertakes its assessment of a national preventive or monitoring mechanism against the relevant international instrument upon which it is based. Guidelines developed by the relevant treaty body have, in general, been drafted for the broad range of agencies that may be designated as national preventive or monitoring mechanisms, and may not always be directly applicable to an NHRI.

Excerpt from the Paris Principles

(A) Competence and responsibilities.

...

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body . . . opinions, recommendations, proposals and reports on . . . :

(ii) Any situation of violation of human rights which it decides to take up;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty

obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

...

2. Practices that directly promote Paris Principles compliance

G.O. 2.9 The quasi-judicial³ competency of NHRIs (complaints-handling)

When an NHRI is provided with a mandate to receive, consider and/or resolve complaints alleging violations of human rights, it should be provided with the necessary functions and powers to adequately fulfil this mandate.

Depending on its mandate, such powers and functions might include:

- the ability to receive complaints against both public and private bodies in its jurisdiction;
- the ability to receive complaints that are filed by persons on behalf of the alleged victim(s), where consent is given;
- the ability to commence a complaint on its own initiative;
- the ability to investigate complaints, including the power to compel the production of evidence and witnesses, and to visit places of deprivation of liberty;
- the ability to protect complainants from retaliation for having filed a complaint;
- the ability to protect witnesses from retaliation for having provided evidence in relation to a complaint;
- the ability to seek an amicable and confidential settlement of the complaint through an alternative dispute resolution process;
- the ability to settle complaints through a binding determination;
- the ability to refer its findings to courts of law or specialized tribunals for adjudication;
- the ability to refer complaints falling beyond its jurisdiction or in a concurrent jurisdiction to the appropriate decision-making body;
- the ability to seek enforcement through the court system of its decisions on the resolution of complaints;
- the ability to follow up and monitor the implementation of its decisions on the resolution of complaints; and
- the ability to refer its findings to government in situations where a complaint provides evidence of a widespread or systematic violation of human rights.

In fulfilling its complaint-handling mandate, the NHRI should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, an NHRI should:

- ensure that its facilities, staff, and its practices and procedures, facilitate access by those who allege their rights have been violated and their representatives; and
- ensure that its complaint-handling procedures are contained in written guidelines, and that these are publicly available.

JUSTIFICATION

³The term ‘quasi-judicial competence’ as cited in the Paris Principles has been recognized as a translation error. It is instead meant to be understood as ‘quasi-judicial competence’ and it refers to a NHRI’s complaints-handling mandate and its related functions and powers.

The Paris Principles do not require that an NHRI have the ability to receive complaints or petitions from individuals or groups regarding the alleged violation of their human rights. However, where it is provided with this mandate, the Paris Principles suggest that certain functions should be considered (see excerpt below). In essence, NHRIs are expected to handle complaints fairly, speedily and effectively through processes which are readily accessible to the public. NHRIs may be empowered to carry out investigations into complaints and refer their findings to an appropriate authority. NHRIs should have the authority to deal with bodies against which complaints are made and may be authorised to seek compliance with its decisions through the judiciary.

Excerpt from the Paris Principles

'Additional principles concerning the status of commissions with quasi-judisdictional competence'

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

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;*
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;*
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;*
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.*

Geneva, February 2018