

**INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR
THE PROMOTION AND PROTECTION OF HUMAN RIGHTS**

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

Geneva, 17-21 March 2014

SUMMARY OF RECOMMENDATIONS

<u>2. Accreditation (Art. 10 of the ICC Statute)</u>
2.1 <u>Netherlands: Netherlands Institute for Human Rights (NIHR)</u> Recommendation: The SCA recommends that the NIHR be accredited with A status.
2.2 <u>Slovakia: National Centre for Human Rights (SNCHR)</u> Recommendation: The SCA recommends that the SNCHR be accredited with B status.
<u>3. Re-Accreditation (Art. 15 of the ICC Statute)</u>
3.1 <u>Ghana: Commission on Human Rights and Administrative Justice (CHRAJ)</u> Recommendation: The SCA recommends that the Commission on Human Rights and Administrative Justice (CHRAJ) be re-accredited A status
3.2 <u>Republic of Korea: National Human Rights Commission of Korea (NHRCK)</u> Recommendation: The SCA recommends that consideration of the re-accreditation of the NHRCK be deferred to its second session of 2014.
3.3 <u>Paraguay: Defensoria del Pueblo (DP)</u> Recommendation: The SCA recommends that consideration of the re-accreditation of the DP be deferred to its second session in 2014.
3.4 <u>Thailand: National Human Rights Commission of Thailand (NHRCT)</u> Recommendation: The SCA recommends that consideration of the re-accreditation of the NHRCT be deferred to its second session in 2014
3.5 <u>Ukraine: Office of the Ukrainian Parliament Commissioner for Human Rights</u> Recommendation: The SCA recommends that consideration of the re-accreditation of the UPCHR be deferred to its second session of 2014
<u>4. Review (Article 16.2 of the ICC Statute)</u>
4.1 <u>Indonesia: Komisi Nasional Hak Asasi Manusia (Komnas HAM)</u> Recommendation: The SCA recommends that Komnas HAM retain its A status.
4.2 <u>Nepal: National Human Rights Commission (NHRC)</u> Recommendation: The SCA recommends that the Special Review of the NHRC be deferred to its second session of 2014.

4.3 Venezuela: Defensoria del Pueblo (DPV)

Recommendation: The SCA decided to undertake a **Special Review** of the accreditation status of the DPV at its second session of 2014.

Report and Recommendations of the Session of the SCA on 17-21 March 2014

1. BACKGROUND

- 1.1.** In accordance with the Statute of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), the SCA has the mandate to consider and review applications for accreditation, reaccreditation and special or other reviews received by the National Institutions and Regional Mechanisms Section (NIRMS) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat, and to make recommendations to the ICC Bureau members with regard to the compliance of applicant institutions with the Paris Principles. The SCA assesses compliance with the Paris Principles in law and in practice.
- 1.2.** In accordance with the SCA Rules of Procedure, the SCA is composed of NHRI representatives from each region: Canada for the Americas, Mauritania for Africa, Qatar for Asia-Pacific (Chair) and France for Europe.
- 1.3.** The SCA convened from 17 – 21 March 2014. OHCHR participated as a permanent observer and in its capacity as ICC Secretariat. In accordance with established procedures, regional coordinating committees of NHRIs were invited to attend as observers. The SCA welcomed the participation of representatives from the Secretariat of the Network of African National Human Rights Institutions, Asia Pacific Forum of NHRIs, the European Group of NHRIs and the Network of NHRIs of the Americas.
- 1.4.** Pursuant to article 10 of the Statute, the SCA considered the applications for accreditation from the NHRIs of Netherlands and Slovakia.
- 1.5.** Pursuant to article 15 of the Statute, the SCA also considered applications for re-accreditation from the NHRIs of Ghana, Republic of Korea, Paraguay, Thailand, and Ukraine.
- 1.6.** Pursuant to article 16.2 of the Statute, the SCA reviewed certain issues regarding the NHRIs of Indonesia, Nepal and Venezuela.
- 1.7.** In accordance with the Paris Principles and the ICC SCA Rules of Procedure, the classifications for accreditation used by the SCA are:
 - A:** Compliance with the Paris Principles;
 - B:** Not fully in compliance with the Paris Principles or insufficient information provided to make a determination;
 - C:** Non-compliance with the Paris Principles.
- 1.8.** The General Observations, as interpretative tools of the Paris Principles, may be used to:
 - a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
 - b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;

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

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

1.10. Pursuant to Article 12 of the Statute, where the SCA comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose final decision is subject to the following process:

- i) The recommendation of the SCA shall first be forwarded to the applicant;
- ii) An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt.
- iii) Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau;
- iv) Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the SCA and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;
- v) If at least four members coming from two or more regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;
- vi) The decision of the ICC Bureau on accreditation is final.

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

- 1.12.** Pursuant to Article 16.1 of the Statute, all accredited NHRIs are required to inform the ICC Bureau at the first available opportunity about any change in the circumstances that could affect its compliance with the Paris Principles, whether negatively or positively.
- 1.13.** Pursuant to Article 16.2 of the Statute, “[w]here, in the opinion of the Chairperson of the ICC or of any member of the Sub-Committee on Accreditation, it appears that the circumstances of any NHRI that has been accredited with an ‘A’ status under the former Rules of Procedure may have changed in a way which affects its compliance with the Paris Principles, the Chairperson or the Sub-Committee may initiate a review of that NHRI’s accreditation status”.
- 1.14.** At any time, the SCA may receive information that raises concern that the circumstances of a NHRI have changed in a way that affects its compliance with the Paris Principles, and the SCA may then initiate a special review of that NHRI’s accreditation status. When considering whether or not to initiate a special review, the SCA has adopted a new procedure whereby, in addition to written submissions made by the NHRI, civil society and any other stakeholder, the NHRI is afforded the opportunity to make an oral statement to the SCA during the session.
- 1.15.** Pursuant to Article 16(3), any review must be completed within 18 months.
- 1.16.** The SCA acknowledges the high degree of support and professionalism of the staff of the ICC Secretariat (OHCHR National Institutions and Regional Mechanisms Section).
- 1.17.** The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and gave one week to provide any comments on them. The summaries are only prepared in English, due to financial constraints. Once the recommendations of the SCA are adopted by the ICC Bureau, the report of the SCA is placed on the ICC website (<http://nhri.ohchr.org/>).
- 1.18.** The SCA considered information received from civil society. The SCA shared that information with the concerned NHRIs and considered their responses.
- 1.19. Notes:** The ICC statute, the Paris Principles and the General Observations referred to above can be downloaded in Arabic, English, French and Spanish from the following links:
1. The ICC Statute:
<http://nhri.ohchr.org/EN/AboutUs/Governance/Pages/Statute.aspx>
 2. The Paris Principles and General Observations:
<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>

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

2.1 Netherlands: Netherlands Institute for Human Rights (NIHR)

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

The SCA commends the NIHR for successfully advocating for its establishment in law. The SCA notes:

1 Selection and appointment

While the NIHR advises that it does have selection criteria for its members, these criteria are not formalized in legislation, regulations or binding administrative guidelines.

The SCA encourages the NIHR to advocate for changes to address the concerns outlined above and notes the requirement for a NHRI to have a clear, transparent and participatory selection and appointment process in relevant legislation, regulations or binding administrative guidelines, as appropriate, which includes requirements to:

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

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

2 Functional immunity and independence

Although the NIHR considers that the general law and jurisprudence provide its members with sufficient immunity to perform its duties, the SCA strongly recommends that express provisions be included in national law to protect the members of the NIHR's decision-making body from legal liability for the actions and decisions that are taken in good faith in their official capacity.

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

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

The SCA recognises that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances, such as corruption, it may be necessary to lift immunity. However, the authority 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 the law clearly establishes the grounds, and a clear and transparent process, by which the functional immunity of the decision-making body may be lifted.

The SCA encourages the NIHR to advocate for the inclusion in its founding legislation of express provisions that clearly establish the functional immunity of its members.

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

2.2 Slovakia: National Centre for Human Rights (SNCHR)

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

The SCA notes:

1. Human rights mandate:

The enabling law provides the SNCHR with a clear mandate to promote and protect human rights, but with an emphasis on areas of equality and discrimination.

While the SCA acknowledges that the SNCHR interprets its mandate broadly to encompass all human rights, it encourages the SNCHR to advocate for legislative changes to explicitly include power to:

- a) Submit to the Government opinions, recommendations, proposals and reports on any matters concerning human rights;
- b) Promote and ensure harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party;
- c) Encourage ratification or accession to international human rights instruments;
- d) Create awareness of human rights norms through teaching, research and addressing public opinion; and
- e) Effectively investigate complaints of human rights violations.

The SCA refers to Paris Principles A.1, A.2 and A.3, and to its General Observations 1.2 on 'Human rights mandate' and 1.3 on 'Encouraging ratification or accession to international human rights instruments'.

2. Selection and appointment

The SCA understands that the administrative board, the decision making body of the SNCHR, is made up of members selected by nine separate appointing authorities, each of which can define its own selection criteria.

It is critically important to ensure the formalization 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 a NHRI.

The SCA encourages the SNCHR to advocate for the formalization of such a selection process in relevant laws, regulations or binding administrative guidelines, and for its subsequent application in practice, including the requirements to:

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

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

3. Pluralism (Diversity)

The current arrangements for the appointment of members do not ensure pluralism in the composition of the Administrative Board.

A diverse decision-making and staff body facilitates a NHRI’s appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRI to all citizens. Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism, for example, in the context of gender, professional background, ethnicity or minority status.

The SCA encourages the SNCHR to ensure that its membership and staff complement is representative of the diverse segments of society.

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

4. Political representatives on NHRIs

The SCA notes that one member of the Administrative Board is a member of parliament, who also has the right to vote on the Administrative Board.

The Paris Principles require a NHRI be independent of government in its composition, operation and decision making. It must be constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights situation in the country.

While it is important for a NHRI to maintain effective working relationships, and where relevant, consult with government, for the reasons outlined above, government officials should not be represented on a NHRI’s governing body. For the same reason, members of parliament should not be members of, nor participate in the decision making organs of a 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 encourages the SNCHR to advocate for the necessary changes in its governance structure to ensure that members of parliament do not have voting rights on the Administrative Board.

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

5. Functional immunity and independence

The SCA notes that the enabling legislation does not explicitly include provisions to protect the members from legal liability for the actions undertaken and decisions made in good faith in their official capacity.

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

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

The SCA recognises that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances, such as corruption, it may be necessary to lift immunity. However, the authority 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 the law clearly establishes the grounds, and a clear and transparent process, by which the functional immunity of the decision-making body may be lifted.

The SCA encourages the NIHR to advocate for the inclusion in its founding legislation of express provisions that clearly establish the functional immunity of its members.

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

6. Tenure of members

In accordance with Article 3a(4)(c) of the enabling law, membership of the Administrative Board can be terminated by recall of the appointing authority.

The SCA is of the view that in order to address the Paris Principles requirement for a stable mandate, which is necessary to ensure independence, the enabling legislation of a NHRI must have an independent and objective dismissal process. The SCA emphasizes that dismissal should not be solely dependent on the discretion of appointing authorities.

The SCA encourages the SNCHR to advocate for the formalization of a dismissal process that includes the following elements:

- a) Dismissal is made in strict conformity with all the substantive and procedural requirements prescribed by law;
- b) Grounds for dismissal are clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfill their mandate; and

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

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

7. Adequate funding

The SCA notes the concerns expressed by the Committee on the Elimination of Racial Discrimination (CERD/C/ SVK/CO/9-10), the Committee on Economic, Social and Cultural Rights (E/C.12/SVK/CO/2) and the Human Rights Committee (CCPR/C/SVK/CO/3) regarding the adequacy of the SNCHR's funding.

The SCA reiterates that NHRIs must be adequately funded in order to function effectively and independently. It notes that the Paris Principles require the State to provide sufficient funding to allow the SNCHR to undertake the range of functions specified in the law.

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;
- 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 the decision-making body;
- d) The establishment of a well-functioning communications system including telephone and internet; and
- e) The allocation of a sufficient amount of resources for mandated activities.

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

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

8. Cooperation with other human rights bodies

The SCA acknowledges that the SNCHR has been working in partnership with the Public Defender of Rights. The SCA encourages the SNCHR to maintain and strengthen this relationship

The SCA wishes to highlight that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to fulfil their mandates effectively. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights.

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

The SCA encourages the NIHR to continue to seek advice from the OHCHR and from the European Network of NHRIs.

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

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

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

The SCA notes:

1. Selection and appointment

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

The SCA commends the CHRAJ's contributions to the Constitutional review process to include members of civil society in the selection process of commissioners and encourages it to pursue this amendment.

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

The SCA encourages the CHRAJ to continue to advocate for the formalization of a transparent and participatory selection process, including a greater number of civil society members. This should be reflected in relevant legislation, regulations or binding administrative guidelines, as appropriate and should include requirements to:

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

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

2. Pluralism (Diversity)

The SCA is concerned that eligibility for appointment as Commissioner or Deputy Commissioner is restricted to lawyers, which may unduly restrict the diversity of the CHRAJ.

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

The SCA refers to Paris Principle B.1 and to its General Observation 1.7 on 'Ensuring Pluralism of the National Human Rights Institution', particularly subsection (d).

3. Term of appointment

The SCA notes that in accordance with the current provisions of the Constitution, the Commissioner and Deputy Commissioners cease to hold office upon attaining the ages of seventy and sixty-five, respectively.

The SCA acknowledges that, in the ongoing review of the Constitution, a recommendation has been made to provide for a fixed term appointment of ten years for the Commissioner and Deputy Commissioners. The SCA encourages the CHRAJ to continue to advocate for the adoption and implementation of this recommendation.

The SCA refers to Paris Principle B.3 and General Observation 2.2 on 'Full-time members of a National Human Rights Institution'.

4. Adequate funding

The SCA notes that the CHRAJ is inadequately resourced to fulfill its three mandates, as NHRI, Ombudsman and as Anti-Corruption Agency.

The SCA also notes that damage by fire to the CHRAJ's offices in Accra has resulted in financial and administrative challenges.

To function effectively, a NHRI must be provided with an appropriate level of funding in order to ensure that it has adequate resources, including an appropriate staff complement, to carry out its mandated activities.

The SCA encourages the CHRAJ to advocate for an increase to its budget in order to increase its staff complement to an appropriate level.

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

5. Financial autonomy:

The SCA notes that the budget of the CHRAJ comes from the Consolidated Fund of the State.

The SCA encourages the CHRAJ to continue to advocate for processes to ensure financial autonomy, and sufficient and sustainable State funding, including the creation of a Democracy Fund for Independent Institutions.

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

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

6. Annual report

The SCA notes that the CHRAJ annual report of 2011 is currently before Parliament and that the annual reports of 2012 and 2013 have not yet been published or tabled.

The SCA stresses the importance for a NHRI to prepare, publicize and widely disseminate an annual report on its national situation with regard to human rights in a timely manner. Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a means by which a NHRI can make recommendations to, and monitor respect for human rights, by government.

The SCA encourages the CHRAJ to ensure that it completes its annual reports in a timely manner and to ensure that these reports are tabled in Parliament and distributed publicly.

The SCA refers to Paris Principle A.3(a) and to its General Observation 1.11 on 'Annual and thematic reports'.

7. Monitoring detention centres

The SCA notes that the CHRAJ does not have an explicit mandate to monitor places of detention. Although the CHRAJ has been conducting this task in practice, the lack of specific legal power to access and monitor places of detention has the potential to limit the CHRAJ's capacity to undertake this important function.

The SCA encourages the CHRAJ to advocate for changes to its legislation to make clear its power to make unannounced visits to all public and private places of detention or confinement. This will ensure that it continues to enjoy unfettered and unrestricted access to places of detention.

3.2 Republic of Korea: National Human Rights Commission of Korea (NHRCK)

Recommendation: The SCA recommends that consideration of the re-accreditation of the NHRCK be **deferred** to its second session of 2014.

The SCA notes that some of its recommendations from November 2008 have not been implemented, and that the NHRCK did not provide sufficient explanation for this. The SCA emphasizes the need for its recommendations to be actively considered and implemented where appropriate, even when 'A' status has been granted.

The SCA notes:

1. Selection and appointment:

The SCA had previously expressed a concern about the failure of the legislation to provide a clear, transparent and participatory selection process in compliance with the Paris Principles.

Article 5(2) of the enabling law provides that Commissioners are appointed by the President of the Republic of Korea, including 4 persons selected by the National Assembly, 4 persons nominated by the President, and 3 persons nominated by the Chief Justice of the Supreme Court.

While Article 5(2) specifies limited 'eligibility' criteria, the SCA is of the view that this provision does not ensure a sufficiently transparent and participatory selection process, and one that promotes merit-based selection. In particular, the SCA notes that the enabling law does not appear to:

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

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

The SCA encourages the NHRCK to advocate for the formalization of a process that includes requirements to:

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

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

2. Pluralism (Diversity):

While the enabling law contains a provision regarding gender diversity in the selection of NHRCK members, it does not contain provisions to ensure diversity in other ways.

Diversity in its membership and staff facilitates a NHRI's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRI for all citizens.

While the SCA notes that the NHRCK indicated its members reflect the diversity of Korean society, it encourages the NHRCK to advocate for the inclusion of provisions in its enabling legislation to ensure diversity in its membership and staff.

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

3. Functional immunity and independence:

The SCA notes that there is no provision in the law to provide immunity for its members from legal liability for actions undertaken in good faith in their official capacity.

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

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

The SCA recognises that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances, such as corruption, it may be necessary to lift immunity. However, the authority 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 the law clearly establishes the grounds, and a clear and transparent process, by which the functional immunity of the decision-making body may be lifted.

The SCA encourages the NHRCK to advocate for the inclusion in its founding legislation of provisions that clearly establish functional immunity by protecting members from legal liability for actions undertaken in good faith in the course of their official duties.

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

The SCA encourages the NHRCK to seek assistance and advice from the OHCHR and the Asia Pacific Forum of NHRIs.

3.3 Paraguay: Defensoria del Pueblo (DP)

Recommendation: The SCA recommends that consideration of the re-accreditation of the DP be **deferred** to its second session in 2014.

At its second session in 2013, the SCA received and considered a submission from civil society that raised serious concerns as to the effective performance of the DP. Although the DP has responded to some of these issues, the SCA remains concerned about the DP's effectiveness in some areas, including:

- providing recommendations to the State to ensure a clear and effective mandate to provide assistance to victims of human rights violations, including those arising from the Dictatorship;
- interpreting its mandate in a broad, liberal and purposive manner;
- proactively providing information and assistance to victims of the Dictatorship; and
- advocating strongly for the appointment of a new Defensor, given that the current Defensor's fixed term ended in 2008.

In fulfilling its mandate, the SCA stresses that the NHRI should effectively monitor, investigate and report on alleged human rights violations in a timely manner. Furthermore, it should take active steps to ensure that all relevant information to help victims of human rights violations is easily accessible and, where relevant, provide strong recommendations to the State in order to address human rights concerns. It should also

undertake rigorous and systematic follow up activities regarding its findings and recommendations.

At its current session, the SCA was advised that the new parliament has been inaugurated and that the process for appointment of a new Defensor is to be undertaken.

The SCA stresses the importance of the DP addressing the above noted concerns, failing which the SCA will recommend that the DP be accredited with B status at its second session in 2014.

The SCA refers to Paris Principle A.2 and to its General Observation 1.2. on 'Human rights mandate', and Paris Principle A.3, C(c) and to its General Observation 1.6. on 'Recommendations by NHRIs'.

3.4 Thailand: National Human Rights Commission of Thailand (NHRCT)

Recommendation: The SCA recommends that consideration of the re-accreditation of the NHRCT be **deferred** to its second session in 2014.

The SCA notes that a new enabling law in compliance with the 2007 Constitution has been drafted but is yet to be approved by the Parliament. It commends the NHRCT for its engagement in this process, and encourages it to continue to advocate for legislation that is fully compliant with Paris Principles.

The SCA also acknowledges the steps taken by the NHRCT to improve its regional presence, including through the establishment of a regional office in Songkhla province, and through partnerships and other initiatives. It encourages the NHRCT to continue to improve its accessibility at the regional level.

However, the SCA draws the NHRCT's attention to the accreditation recommendations from November 2008 and November 2013 that have yet to be implemented. It highlights that these recommendations are intended to promote compliance with the Paris Principles and therefore to strengthen the capacity of NHRCT to effectively promote and protect human rights. The SCA emphasises the need for its recommendations, even in cases when 'A' status has been granted, to be actively considered and implemented where appropriate.

The SCA notes:

1. Functional immunity and independence

The SCA has previously recommended that the NHRCT advocate for the inclusion of a provision in its law to provide members with immunity from legal liability for actions undertaken in good faith in their official capacity.

In response, the NHRCT suggested that section 15 of the enabling law and sections 130 and 257(1) of the Constitution provide its members with immunity. However, on the assumption that these protections apply, the SCA is of the view that they would only provide protection in limited circumstances.

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

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

The SCA recognises that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances, such as corruption, it may be necessary to lift immunity. However, the authority 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 the law clearly establishes the circumstances and a clear and transparent by which the functional immunity of the decision-making body may be lifted.

The SCA encourages the NHRCT to advocate for the inclusion of provisions in its founding legislation that clearly establish functional immunity by protecting members from legal liability for actions undertaken in good faith in the course of their official duties.

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

2. Selection and appointment

The SCA has previously expressed concerns about a lack of transparency and participation in the selection process, and has recommended that the NHRCT advocate for changes.

The existing selection process is entrenched in section 256 of the Constitution and section 8 of the enabling law. The composition of the Selection Committee is entrenched in section 243 of the Constitution.

The SCA is of the view that these provisions do not ensure a sufficiently transparent and participatory selection process that promotes merit-based selection.

In particular, the SCA notes that:

- The selection committee established by Section 8(1) of the enabling law is composed of officials from a small number of public institutions, with no clear representation, or a requirement for consultation with key stakeholder groups or civil society. The SCA commends the NHRCT's undertaking to advocate for broader representation on this committee;
- There is no provision for broad consultation and / or participation, in the application, screening and selection process;
- There is no requirement to advertise vacancies on the NHRCT; and
- There does not appear to be clear criteria upon which to assess the merit of eligible applicants.

The SCA encourages the NHRCT to advocate for the formalization of a comprehensive selection process in relevant laws, regulations or binding administrative guidelines, and for its subsequent application in practice, including the requirements to:

- Publicize vacancies broadly;

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

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

3. Addressing human rights issues in a timely manner

The SCA had expressed concerns about the failure of the NHRCT to release a timely report on the violent demonstrations that occurred in 2010. The report was released in 2013.

In response, the NHRCT referred to the difficulties it faced in investigating and documenting these civil disturbances, in part due to the polarisation of parties and society since 2006. It noted however that its experiences in 2010 had helped it to deal in a more efficient manner with the similar incidents that occurred in late 2013 and in on-going demonstrations. In particular it highlighted the establishment of an Ad Hoc Working Group tasked with media monitoring, news clipping and on-site observation with daily reporting and recommendations submitted to the NHRCT for further action. As a result of this approach, the NHRCT indicated that it expected to release a report on these events in early 2014. The SCA noted however that the NHRCT has yet to release this report and the NHRCT was unable to indicate when it would be completed.

In fulfilling its protection mandate, the SCA stresses that a NHRI should effectively monitor and investigate human rights violations, and provide reports in a timely manner. It should also undertake rigorous and systematic follow up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those whose rights have been violated.

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

4. Independence and neutrality

The SCA received reports that some NHRCT staff members display publicly their political affiliations whilst undertaking their official functions.

The SCA stresses that such displays undermine the independence and public confidence in, the NHRCT. In situations of political unrest, such as currently exist in Thailand, victims of human rights violations may find it difficult to approach the NHRCT if it is clear that some staff are politically affiliated with the alleged violators.

The SCA stresses that in a situation of civil unrest, and more broadly in any circumstances, it is expected that a NHRI will conduct itself with a heightened level of vigilance and maintain its independence, 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 coup d'état, state of emergency or civil unrest, 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.

The SCA refers to Paris Principles A.3 and to its General Observation 2.6 'National Human Rights Institutions during the situation of a coup d'état or a state of emergency'.

5. Legislative process:

According to the NHRCT, a new enabling law in compliance with the 2007 Constitution has been drafted and is yet to be approved by the Parliament once it is inaugurated.

The on-going legislative process provides an opportunity for the NHRCT to advocate that its legislation be fully compliant with the Paris Principles. The SCA encourages the NHRCT to address all issues raised above.

The SCA refers to Paris Principle A.2 and to its General Observation 1.1 on 'Establishment of National Human Rights Institutions'.

The NHRCT is encouraged to seek advice and assistance from the OHCHR and the Asia Pacific Forum of NHRIs.

3.5 Ukraine: Office of the Ukrainian Parliament Commissioner for Human Rights (UPCHR)

Recommendation: The SCA recommends that consideration of the re-accreditation of the UPCHR be **deferred** to its second session of 2014.

The SCA acknowledges the work being done by the UPCHR in an extremely volatile environment in Ukraine. In particular, it commends the UPCHR for its work in monitoring and inquiring into alleged human rights violations since November 2013. The SCA encourages the UPCHR to continue these efforts.

Given the current volatility in Ukraine and the upcoming Presidential elections in May 2014, the SCA believes that it would not be appropriate to consider the re-accreditation submission of the UPCHR at this time.

The SCA acknowledges that the UPCHR is currently an A status institution. The SCA urges the Government to take steps to ensure that the Parliament Commissioner for Human Rights and her staff are protected in fulfilling the UPCHR's mandate to promote and protect human rights during this challenging period.

4. SPECIFIC RECOMMENDATIONS - Review under Article 16.2 of the ICC Statute

4.1 Indonesia: Komisi Nasional Has Asasi Manusia (Komnas HAM)

Recommendation: The SCA recommends that Komnas HAM retain its **A status**.

The SCA received correspondence from civil society organisations suggesting that the changes made to the internal regulations of the institution and its current functioning fall short of the standards set out in the Paris Principles.

At its last session, the SCA decided to undertake a Special Review of the accreditation status of the NHRC.

The SCA is satisfied that Komnas HAM has addressed the issues of concern raised, and continues to operate in compliance with the Paris Principles.

The SCA notes that the following recommendations were made in March 2012:

1. Composition, selection and appointment

During the 2007 review of Komnas HAM, the SCA expressed concern about lack of pluralism in the governing body, in particular, the low representation of women.

The representation of women remains low with only one in the current governing body.

The SCA is therefore not satisfied that Komnas HAM has taken sufficient action to address the concerns raised in 2007.

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

The SCA encourages Komnas HAM to advocate for the formalization of the selection process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice. This should include requirements to maximize the number of potential candidates from a wide range of societal groups and to ensure pluralism, including appropriate gender representation in the composition of Komnas HAM.

The SCA refers to Paris Principle B.1 and to its General Observations 2.1 on “Ensuring pluralism” and 2.2 on “Selection and appointment of the governing body”.

2. Administrative regulation

Art. 81(5) of Law No. 39 provides that the position, duties, responsibilities and organizational structure of the Secretariat General of Komnas HAM shall be set forth in a Presidential Decree. The SCA notes that during Komnas HAM’s 2007 review it recommended that these be established through Commission regulations and policies in order to maintain independence and autonomy. It further notes that Komnas HAM has not indicated what steps it has taken to address this recommendation. The SCA is therefore not satisfied that Komnas HAM has sufficiently addressed the recommendation it made in 2007.

The SCA refers to its General Observation 2.10 on “Administrative regulation”. ICC Sub-Committee on Accreditation Report – March 2012.

3. Immunity:

The SCA notes that, during Komnas HAM’s 2007 review, it emphasized the importance of protecting members of the governing body from legal liability for actions undertaken in their official capacity. The provision of such protection in

the institution's founding legislation or other legislation promotes the independence and security of tenure of members of the governing body. The SCA notes however that no such protections have been implemented and is therefore not satisfied that Komnas HAM has sufficiently addressed the recommendations it made in 2007.

The SCA again refers to this General Observation 2.5 on "Immunity".

4. Funding and budget

Komnas HAM expressed concern about the inadequacy of the budget and the failure of the Ministry of Finance to release the fund that were approved by the Parliament.

The SCA emphasizes that NHRIs should have complete financial autonomy. Funds should be allocated to a separate budget line item. Once funds have been allocated by Parliament, the funds should be released to the NHRI and it should exercise absolute management and control.

Komnas HAM should be provided with adequate budget to establish regional offices.

In seeking to address the issues raised above, the SCA encourages Komnas HAM to seek the advice and assistance of the Asia Pacific Forum of NHRIs and the OHCHR.

The SCA further notes that information was provided on some of these issues during the special review. However, all the above recommendations will be considered at the time of the institution's re-accreditation in 2017.

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

Recommendation: The SCA recommends that the Special Review of the NHRCN be **deferred** to its second session of 2014.

The SCA notes that, while the NHRCN remains without a Chairperson and Commissioners, it continues to operate effectively as a NHRI under powers formally delegated to the Acting Secretary.

In the absence of a Chairperson and Commissioners, the SCA does not consider that it can make a decision regarding the accreditation status of the NHRCN.

During its review of the NHRCN in the first session of 2013, the SCA noted concerns about the selection process and also expressed concern that the current political environment *"presented challenges that would likely hamper the selection and appointment of new members . . . to replace the existing members whose term[s] were set to expire in 2013"*.

The SCA was also of the view that the existing provisions do not ensure a sufficiently transparent and participatory selection process.

In particular, the SCA notes the absence of constitutional or legislative provisions requiring:

- The advertising of vacancies for members; and,
- The assessment of all applicants by the selection committee (Constitutional Council) and Parliament, against pre-determined, objective and publicly available criteria that promote merit-based selection.

The SCA encourages the NHRCN to advocate for improvements to the enabling law to ensure there is a comprehensive selection process which includes the requirements to:

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

The SCA refers to Paris Principle B.1 and to its General Observations 1.7 on ‘Ensuring Pluralism’ and 1.8 on ‘Selection and appointment of the governing body’.

The SCA notes that, in accordance with Article 16.3 of the ICC Statute, it will be required to make a final determination regarding the accreditation status of the NHRCN at its next session. Accordingly, the SCA again encourages the NHRCN to engage with relevant stakeholders including the new Constituent Assembly to ensure the timely selection and appointment of new members in a manner compliant with the Paris Principles.

4.3 Venezuela: Defensoria del Pueblo (DPV)

Recommendation: The SCA decided to undertake a **Special Review** of the accreditation status of the DPV at its second session of 2014.

The SCA received information subsequent to the re-accreditation of the DPV in May 2013, which raised concerns that the DPV may no longer be operating in full compliance with the Paris Principles. The issues raised include:

- actions taken or not taken, and statements made or not made by the DPV during the current volatile situation and protests in Venezuela; and
- tweets made from both the DPV’s and the Defensora’s personal Twitter accounts.

The SCA will consider only events and issues that have arisen since the reaccreditation of the DPV in May 2013. Should the SCA receive further information, the information will be shared with the DPV.