

**GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (GANHRI)**

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

**18-29 October 2021**

## SUMMARY OF RECOMMENDATIONS

<b><u>1. Re-Accreditation (Art. 15 of the GANHRI Statute)</u></b>
<b><u>1.1 Ethiopia: Ethiopian Human Rights Commission (EHRC)</u></b> <b>Recommendation:</b> The SCA recommends that the EHRC be re-accredited with <b>A</b> status.
<b><u>1.2 Korea: National Human Rights Commission of Korea (NHRCK)</u></b> <b>Recommendation:</b> The SCA recommends that the NHRCK be re-accredited with <b>A</b> status.
<b><u>1.3 Mongolia: National Human Rights Commission of Mongolia (NHRCM)</u></b> <b>Recommendation:</b> The SCA recommends that the NHRCM be re-accredited with <b>A</b> status.
<b><u>1.4 Palestine: Independent Commission for Human Rights (ICHR)</u></b> <b>Recommendation:</b> The SCA recommends that the ICHR be re-accredited with <b>A</b> status.
<b><u>1.5 Qatar: National Human Rights Committee (NHRC)</u></b> <b>Recommendation:</b> The SCA recommends that the NHRC be re-accredited with <b>A</b> status.
<b><u>1.6 Samoa: Office of the Ombudsman (Ombudsman)</u></b> <b>Recommendation:</b> The SCA recommends that the Ombudsman be re-accredited with <b>A</b> status.
<b><u>1.7 Serbia: Protector of Citizens of Serbia (PCRS)</u></b> <b>Recommendations:</b> The SCA recommends that the PCRS be re-accredited with <b>A</b> status.
<b><u>1.8 Uruguay: Institución Nacional de Derechos Humanos y Defensoría del Pueblo (INDDHH)</u></b> <b>Recommendation:</b> The SCA recommends that the INDDHH be re-accredited with <b>A</b> status.
<b><u>2. Decision (Art. 14.1 of the GANHRI Statute)</u></b>
<b><u>2.1 Nepal: National Human Rights Commission of Nepal (NHRCN)</u></b> <b>Decision:</b> The SCA decides to <b>defer</b> the special review of the NHRCN for 12 months (or two sessions)
<b><u>2.2 Northern Ireland: Northern Ireland Human Rights Commission (NIHRC)</u></b> <b>Decision:</b> The SCA decides to <b>defer</b> the review of the NIHRC for 12 months (or two sessions)
<b><u>3. Special Review (Art. 16.1 of the GANHRI Statute)</u></b>
<b><u>3.1 Afghanistan: Afghanistan Independent Human Rights Commission (AIHRC):</u></b> <b>Decision:</b> The SCA decides to initiate a Special Review of the AIHRC at its first session of 2022.
<b><u>4. Review (Art. 16.2 of the GANHRI Statute)</u></b>
<b><u>4.1 Sri Lanka: Human Rights Commission of Sri Lanka (HRCSL):</u></b> <b>Recommendation:</b> The SCA recommends that the HRCSL be downgraded to <b>B</b> status.
<b><u>5. Alteration of accreditation classification (Article 18.1 of the GANHRI Statute)</u></b>
<b><u>5.1 Panamá: Defensoría del Pueblo de Panamá (DPP)</u></b> <b>Recommendation:</b> The SCA recommends that the DPP be downgraded to <b>B</b> status

**Report, Recommendations, and Decision of the Virtual Session of the SCA,  
18-29 October 2021**

**1. BACKGROUND**

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

At its June/July 2020 session, the GANHRI Bureau adopted amendments to the SCA Rules of Procedure (RoP) and the General Observations.

At its March 2019 session, the GANHRI General Assembly adopted amendments to the GANHRI Statute.

**1.2** In accordance with the RoP, the SCA is composed of National Human Rights Institutions (NHRIs) representatives from each region: Morocco for Africa (Chair), Guatemala for the Americas, Palestine for Asia-Pacific and the Great Britain for Europe. In accordance with Section 4.7 of the SCA's RoP, the NHRI of New Zealand, as alternate member for Asia-Pacific, participated in the session representing Asia-Pacific, as the NHRI of Palestine was scheduled for review during the session.

**1.3** The SCA virtually convened from 18-29 October 2021. OHCHR participated as a permanent observer in its capacity as GANHRI Secretariat. In accordance with established procedures, regional networks of NHRIs were invited to attend as observers. The SCA welcomed the participation of representatives from the Secretariats of the Asia-Pacific Forum (APF), European Network of National Human Rights Institutions (ENNHRI), Network of African National Human Rights Institutions (NANHRI) and Network of National Human Rights Institutions in the Americas (RINDHCA). The SCA also welcomed the participation of a representative from the GANHRI Head Office.

**1.4** Pursuant to Article 14.1 of the Statute, the SCA took a decision to defer the special review of the NHRI of Nepal and the re-accreditation of the NHRI of Northern Ireland.

**1.5** Pursuant to Article 15 of the Statute, the SCA considered applications for re-accreditation from the NHRIs of Ethiopia, Korea, Mongolia, Northern Ireland, Palestine, Qatar, Samoa, Serbia and Uruguay.

**1.6** Pursuant to Article 16.1 of the Statute, the SCA reviewed certain issues regarding the NHRI of Afghanistan.

**1.7** Pursuant to Article 16.2 of the Statute, the SCA reviewed certain issues regarding the NHRI of Nepal and Sri Lanka.

**1.8** Pursuant to Article 18.1 of the Statute, the SCA reviewed the NHRI of Panamá.

**1.9** In accordance with the Paris Principles and the SCA RoP, the classifications for accreditation used by the SCA are:

**A:** Compliance with the Paris Principles;

**B:** Not fully in compliance with the Paris Principles or insufficient information provided to make a determination.

**1.10** In the interests of clarity and as a good practice, where the SCA has recommended that an NHRI be accredited with other than A status, it has divided its recommendations between those that it “notes with concern” and those that it “notes”. The issues that have been noted “with concern” constitute the primary reasons for which the NHRI has not been accredited with A status.

**1.11** The General Observations, as interpretative tools of the Paris Principles, may be used to:

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

**1.12** 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.

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

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

- i) The recommendation of the SCA shall, as soon as practicable, be forwarded to the applicant NHRI;

- ii) The applicant NHRI can challenge a recommendation of the SCA by submitting a letter addressed to the GANHRI Chairperson and copied to the GANHRI Secretariat within twenty-eight (28) days of the date of communication of the recommendation;
- iii) At the end of this twenty-eight (28) day period, the GANHRI Secretariat will forward to Bureau members, as soon as practicable, the recommendations of the SCA. If the applicant NHRI has not challenged the recommendation, it shall be deemed accepted by the Bureau;
- iv) If an applicant NHRI submits a challenge within these twenty-eight (28) days, the GANHRI Secretariat will forward to the Bureau, as soon as practicable, all relevant materials related to the challenge. GANHRI Bureau members will be provided with twenty (20) days in which to determine whether or not to support this challenge;
- v) Any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the Chair of the SCA and the GANHRI Secretariat of this support. If the challenge does not receive the support of at least one (1) Bureau member within twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;
- vi) If at least one (1) member of the GANHRI Bureau supports the challenge of the applicant NHRI within these twenty (20) days, the GANHRI Secretariat will notify members of the Bureau as soon as practicable of this support and will provide any additional relevant information;
- vii) Once provided with this notification and any additional relevant material, any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the GANHRI Chairperson and GANHRI Secretariat of this support. If the challenge does not receive the support of at least four (4) Bureau members in total coming from not less than two (2) regions within the twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;
- viii) If the challenge receives the support of at least four (4) Bureau members in total coming from not less than two (2) regions, the recommendation of the SCA shall be referred to the following GANHRI Bureau meeting for a decision.

**1.15** At each session the SCA conducts a teleconference with every NHRI. It may also consult with and seek further information from NHRIs where necessary.

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

**1.17** At any time, the SCA may receive information that raises concern that the circumstances of an NHRI have changed in a way that affects its compliance with the Paris Principles, and the SCA may then initiate a Special Review of that NHRI's accreditation status.

- 1.18** Pursuant to Article 16.4 of the Statute, any review of the accreditation classification of an NHRI must be finalized within eighteen (18) months.
- 1.19** The SCA acknowledges the high degree of support and professionalism of the GANHRI Secretariat (OHCHR-NIRMS).
- 1.20** The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and gave one (1) week to provide any comments on them. The summaries are only prepared in English, due to financial constraints.
- 1.21** Once the recommendations of the SCA are adopted by the GANHRI Bureau, the report of the SCA is placed on the SCA website (<https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx>).
- 1.22** The SCA considered information received from civil society. The SCA shared that information with the concerned NHRIs and considered their responses.
- 1.23 Notes:** The GANHRI Statute, the Paris Principles, the General Observations and the Practice Notes referred to above can be downloaded in Arabic, English, French and Spanish from the SCA website at <https://www.ohchr.org/EN/Countries/NHRI/Pages/GANHRISubCommitteeAccreditation.aspx>

## **SPECIFIC RECOMMENDATIONS**

### **1. REACCREDITATION (Art. 15 of the GANHRI Statute)**

#### **1.1 Ethiopia: Ethiopian Human Rights Commission (EHRC)**

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

The SCA commends the efforts made by the EHRC to promote and protect human rights in the challenging context in which it operates, including its efforts to address the previous recommendations made by the SCA through its activities since its last review in 2013. The SCA welcomes the adoption of the 2020 amendment to the EHRC enabling law.

The SCA highlights that NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

The SCA encourages the EHRC to continue to actively engage with the OHCHR, GANHRI, NANHRI, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

**The SCA notes:**

#### **1. Encouraging ratification of/or accession to international human rights instruments**

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

The SCA notes that Article 6(5) of Proclamation no. 210/2000 (the Proclamation) mandates the EHRC to make recommendations for the revision of existing laws, enactment of new laws and formulation of policies. The SCA acknowledges that the EHRC interprets this provision broadly and that, on this basis, it undertakes the function of encouraging ratification in practice.

The SCA notes that 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 SCA considers it important that these duties form an integral part of the enabling legislation of an NHRI.

The SCA encourages the EHRC to advocate for appropriate amendments to its enabling legislation to include an explicit mandate to encourage ratification of/accession to international human rights instruments.

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

#### **2. Recommendations by NHRIs**

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

The EHRC reports that it has made several recommendations to the House of Peoples' Representatives' Legal and Justice Affairs Standing Committee, the Federal Office of the Attorney General and relevant ministries.

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

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

The SCA encourages the EHRC to conduct follow-up activities to monitor the extent to which its recommendations have been implemented.

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

### **3. Adequate funding**

The SCA welcomes the introduction of Article 36(2) of the Proclamation, which provides for the approval of the EHRC's annual budget by the House of Peoples' Representatives. Further, Article 36(3) states that the EHRC enjoys full financial autonomy to administer its budget.

While the SCA acknowledges that the EHRC has undertaken activities within its existing budget, it notes that the EHRC has reported that it does not have sufficient funding, particularly in view of its efforts towards restructuring of the institution, as well as strengthening its staff technical capacity to fully discharge its mandate.

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

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

- a) The allocation of funds for premises that 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 government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) Salaries and benefits awarded to staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- c) Remuneration of members of the decision-making body (where appropriate);
- d) The establishment of a well-functioning communications system including telephone and internet; and
- e) The allocation of a sufficient amount of resources for mandated activities.



The SCA encourages the EHRC to continue to advocate for an increase of its budget allocation and an appropriate level of funding to carry out its mandate.

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

#### **4. Term of office**

Pursuant to Article 14(1) of the Proclamation, EHRC members are appointed for a five-year renewable term. The Proclamation is silent on the number of times a member can be re-appointed, which leaves open the possibility of unlimited tenure.

In order to promote institutional independence, the SCA is of the view that it would be preferable for the term of office to be limited to one re-appointment.

The SCA encourages the EHRC to continue to advocate for amendments to its enabling legislation to provide for such limits on the term of office.

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

### **1.2 Republic of Korea: National Human Rights Commission of Korea (NHRCK)**

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

The SCA commends the NHRCK’s efforts to promote and protect human rights in the Republic of Korea.

The SCA highlights that NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

The NHRCK is encouraged to continue to actively engage with the OHCHR, GANHRI, APF, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening their institutional framework and working methods.

#### **The SCA notes:**

##### **1. Selection and appointment**

Article 5.2 of the National Human Rights Commission Act (the Act) states that the President of the Republic shall appoint four (4) persons nominated by the National Assembly (two of whom serve full-time), the President of the Republic shall nominate four (4) persons (one of whom serves full-time) and the Chief Justice of the Supreme Court should nominate three (3) persons. According to Article 3 of the NHRCK Rules on Affairs, the vacancies are published on the NHRCK’s website. However, the NHRCK Rules on Affairs are silent on a single consistent formalized selection process used by the three appointing institutions.

The NHRCK reports that in practice, the President receives recommendations from a Candidate Recommendation Committee, the National Assembly receives recommendations from political parties and the Supreme Court receives recommendations from civil society organizations and the Korean

Bar Association. The SCA acknowledges that the NHRCK has submitted amendments to its Act to formalize the establishment of the Candidate Recommendation Committee.

The SCA encourages the NHRCK to advocate for the inclusion in its Act or other administrative guidelines, the establishment of a single independent selection committee.

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

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

## **2. Financial autonomy**

The SCA notes that Article 43.5 of the National Finance Act empowers the Minister of Economy and Finance to adjust the quarterly budget allocation plan or take measures to withhold the execution of any budget allocated for proper management of financial balance of revenue and expenditure, and efficient control of execution of budgetary activities, etc. The SCA acknowledges that the independence of the NHRCK is highlighted in the draft amendment to the Act, which is currently before the National Assembly, to ensure its independence vis-à-vis the National Finance Act.

The SCA notes that 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 the 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 SCA acknowledges the amendments proposed by the NHRCK to its enabling law and encourages it to continue to advocate for their adoption by parliament.

The SCA refers to Paris Principle B.2 and to its General Observation 2.7 on 'Administrative regulation of NHRIs'.

### **1.3 Mongolia: National Human Rights Commission of Mongolia (NHRCM)**

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

The SCA highlights that NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

NHRCM is encouraged to continue to actively engage with the OHCHR, GANHRI, the APF, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

**The SCA notes:**

## **1. Selection and appointment**

According to the Article 12.5 of the NHRCM's enabling legislation, Law on the National Human Rights Commission of Mongolia (the Law), the Standing Committee of Legal Affairs shall establish a working group to conduct a competitive selection process within sixty (60) days. The working group shall nominate applicants with the highest scores from the selection process to fill any vacant Commissioner roles and the Standing Committee of Legal Affairs shall then discuss the nominations. In addition, Article 12.6 provides that the Standing Committee of Legal Affairs shall discuss the nomination within a week and decide whether to submit its proposal to a plenary session of State Great Khural to appoint the recommended candidate(s) as Commissioner(s).

The SCA acknowledges that, in practice, civil society organizations, through the Civil Society Council, can participate in the selection and appointment process by attending the public hearings held by the working group set up for the selection process. The SCA recognizes that amendments were introduced to the enabling law in 2020. However, the SCA notes that the process has not been sufficiently formalized to enable the Civil Society Council to play a more active role in this process beyond attendance. Amendments to Article 9.5 of the 'Regulation on the election of Commissioner of the National Human Rights Commission and National Preventive Mechanism against Torture' could establish a clear and consistent role for the council to ask questions alongside the working group. This could ensure the process achieves broad consultation and/or participation of civil society organizations in the application, screening, selection, and appointment process.

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

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

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

In order to ensure its application in practice, the selection process should be formalized in relevant laws, regulations, or binding administrative guidelines.

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

## **2. Adequate funding**

While acknowledging that the budget of the NHRCM has increased, the SCA encourages it to continue to advocate for additional funding to ensure that it can effectively carry out the full breadth of its

mandate, including its recent designation as National Protection Mechanism for human rights defenders.

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

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

### **3. Diversity and pluralism**

While acknowledging the NHRCM Civil Society Council is currently composed of representatives from a wide range of non-governmental organizations (NGOs), the SCA notes that this does not ensure pluralistic representation of ethnic or religious minority groups or other particular groups in its composition of Council members. While the Council plays an important role in the work of the NHRCM, there should also be provisions to ensure that the leadership of the NHRCM itself is as diverse as the society it serves.

The SCA notes the ongoing process to draft new regulations for the Civil Society Council. The SCA encourages the NHRCM to seize this opportunity by enhancing diversity and pluralism in its composition and the composition of the Council. Pluralism and diversity facilitate the appreciation of, and capacity to engage on, all human rights issues affecting the society in which an NHRI operates. In addition, it promotes the accessibility of the NHRI for all people in Mongolia.

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

### **4. Staffing**

The SCA notes that the NHRCM enabling legislation does not specifically empower the NHRCM to recruit its own staff. Rather, in accordance with Article 29 of the Law, the NHRCM staff members shall be civil administrative servants. The NHRCM reports that staff members are recruited in accordance with the Law on Civil Service and selected by the Public Service Council.

The SCA continues to stress that NHRIs should be legislatively empowered to determine their own staffing structure, and the skills required to fulfil the institution's mandate, to set other appropriate criteria such as diversity, and to select their staff in accordance with national law.

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. Such a process promotes the independence and effectiveness of, and public confidence in, the NHRI.

The SCA encourages the NHRCM to advocate for changes to its enabling law to allow it to recruit its own staff.

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

#### **1.4 Palestine: Independent Commission for Human Rights of Palestine (ICHR)**

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

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

The SCA encourages the ICHR to continue to address human rights issues in an active manner.

The SCA further commends actions taken by the ICHR to implement the SCA’s recommendations, through bylaws, including the provision on full-time members and guarantees of tenure for members of the governing body.

The SCA highlights that NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

The ICHR is encouraged to continue to actively engage with the OHCHR, GANHRI, the APF, other NHRIs, as well as relevant stakeholders at international, regional, and national levels in order to continue strengthening their institutional framework and working methods.

#### **The SCA notes:**

##### **1. Establishment of national institutions**

The SCA continues to acknowledge the specific circumstances of the Palestinian Authority and the fact that a draft law that was submitted in 2005 was not able to be adopted as a result of the disruption of the activities of the Palestinian Legislative Council.

The SCA commends the efforts made by the ICHR to advocate for the passage of legislation to elaborate its functional mandate. It notes that the draft legislation had been prepared and submitted to the Palestinian Legislative Council in 2005, before the disruption of its activities in 2007. The SCA notes that Article 31 of the Constitution of the State of Palestine (the Basic Law) provides for the establishment of the ICHR, as well as Article 2 of the Presidential Decree of 1995 stipulating that the ICHR will lay down its constitution, laws and basic regulations, which govern its work, in a manner that would ensure its independence and effectiveness. The SCA recognizes that the ICHR has passed bylaws that provide detail of its functions and powers as an interim measure.

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. However, the SCA acknowledges the ICHR’s implementation and observance of its 2015 bylaws, which, in the view of the SCA, establish a sufficiently detailed mandate and functions in lieu of the adoption of the draft enabling legislation.

The SCA encourages the ICHR to continue to engage with the Palestinian Authority for the adoption of an enabling law in line with the Paris Principles, once the Palestinian Legislature is operational.

The SCA refers to Paris Principle A.2 and to its General Observation 1.1 on 'Establishment of NHRIs'.

## **2. Adequate funding**

The SCA notes that the ICHR receives the majority of its core funding from international donors under a three-year Joint Financial Agreement with a Donor Consortium. This funding is renewed periodically, following an independent review of ICHR operations. The SCA notes that the Government provides only a small percentage of the ICHR's budget, and that it has regularly failed to honour its contribution.

The SCA notes that funding from external sources should not compose the core funding of the ICHR, as that is the responsibility of the Government. However, the SCA recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support an NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases, NHRIs should not be required to obtain approval from the State for external sources of funding, which may otherwise detract from its independence. Donor funding should not be tied to its defined priorities but rather to the predetermined priorities of the NHRI.

The SCA emphasizes that, to function effectively, the State must provide its NHRI with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the institution's operations and the fulfilment of its mandate.

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

The SCA acknowledges the efforts of the ICHR to advocate for stable government funding. It encourages the ICHR to continue its efforts in this regard.

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

## **3. Pluralism and diversity**

The SCA notes that there is gender imbalance in ICHR staff composition. Currently, only 36% of staff are women, and all regional managers are men. While the SCA appreciates that a gender audit was recently carried out, it encourages the ICHR to implement the recommendations of this audit to address the gaps in order to better represent the society it serves. The SCA acknowledges also that in vacancy announcements, women, persons with disability and representatives of minorities are encouraged to apply.

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

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 encourages the ICHR to continue to take steps to ensure pluralism, including appropriate gender balance, in its staff component.

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

### **1.5 Qatar: National Human Rights Committee (NHRC)**

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

The SCA notes the remarks of the NHRC regarding Qatar's first legislative election. The SCA calls on the NHRC to use this opportunity to respond to the SCA recommendations made now and in previous years to strengthen its mandate and independence in line with the Paris Principles.

The SCA highlights that NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

The NHRC is encouraged to continue to actively engage with the OHCHR, GANHRI, APF, as well as relevant stakeholders at international, regional, and national levels in order to continue strengthening its institutional framework and working methods.

#### **The SCA notes:**

##### **1. Selection and appointment**

In accordance with the 2015 Law (no. 12), the NHRC is comprised of no fewer than seven (7) civil society representatives and four (4) representatives from Government Ministries. All members are appointed by Emiri Decree. The 2015 Law also indicates that the civil society representatives should have experience and interest in human rights. The enabling legal framework is otherwise silent on the process and criteria used to determine the suitability of applicants. In March 2009, the SCA requested the NHRC to advocate for changes to its enabling legal framework to provide for a transparent, participatory, and merit-based selection process.

While the NHRC has formed its own selection committee, which included representatives from the Shura Council, to nominate candidates for appointment, and has also advocated for changes to its enabling legal framework, the SCA notes that the recommendations it made in 2009 and 2015 with regard to selection and appointment remain unaddressed. The SCA reiterates its recommendations formulated in previous reviews that a transparent, participatory, merit-based selection process should be entrenched in the enabling legal framework.

In particular, the current legal framework does not:

- require the advertisement of vacancies;
- maximise the number of potential candidates from a wide range of societal groups

- establish clear and uniform criteria upon which the Selection Committee assesses the merit of applicants; and
- promote broad consultation and/or participation in the application, screening, selection, and appointment process.

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

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

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

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

## **2. Political representatives on NHRIs**

While the SCA acknowledges that the four (4) representatives from Government Ministries within the decision-making body of the NHRC do not have voting rights, the SCA highlights the lack of clarity as to the current vice-chair's relationship to the Ministry of Municipality and Environment (MME). 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.

The SCA invites the NHRC to ensure that the real and perceived independence of the NHRC decision-making body is protected to ensure it can retain the public's trust in its ability to fulfil its mandate.

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.

The SCA refers to Paris Principles B1, B2, and B3 and to its General Observation 1.9 on 'Political representatives on NHRIs'.

### **3. Diversity and pluralism**

The existing enabling legal framework is silent with regard to the pluralism and diversity of members and staff of the NHRC.

The SCA further notes that the NHRC reports that the recruitment of its staff is based on merit and professional background in human rights rather than on diversity and pluralism.

The SCA notes that, at present, only three (3) of the fourteen (14) NHRC members are women. The SCA further emphasises that 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. This facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI.

The SCA encourages the NHRC to advocate for the inclusion in its enabling law a requirement that its members and staff be reflective of the principles of pluralism and diversity.

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

### **4. Term of office**

In accordance with Article 7 of the 2020 Decree Law (no. 20), the NHRC members serve a five-year term, renewable with no limitation on the number of terms. This leaves open the possibility for unlimited tenure. In order to promote institutional independence, the SCA is of the view that the term of office should be limited to a term of between three (3) and seven (7) years, with the option to renew once only.

The SCA strongly encourages the NHRC to advocate for amendments to its enabling law to provide for such limits on the term of office and reappointments.

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

### **5. Dismissal**

In accordance with Article 10 of the 2010 Decree Law (no. 17), termination of a member is effected by an Emiri Decree upon a proposal of the NHRC for reasons which include performing "an act contrary to the objectives of the NHRC or that would disrupt the performance of its duties and terms of reference" and "a disability which may prevent the member from performing the duties of his membership".

The SCA is of the view that:

- the initial ground of termination is not appropriately defined and could be open for misuse; and
- the latter ground should require the determination of an incapacity by an appropriate independent medical professional or tribunal.

Further, the SCA notes that the exact procedure for dismissal is not outlined in the Decree Law or the broader enabling legal framework and has not been established in practice.

The SCA reiterates its recommendations from 2009 and 2015 that, in order to address the requirement for a stable mandate, which is important in reinforcing independence, the enabling law of a NHRI must contain an independent and objective dismissal process similar to that accorded to members of other independent State agencies.

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

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

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

### **1.6 Samoa: Office of the Ombudsman/National Human Rights Institution Samoa (Ombudsman)**

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

The SCA highlights that NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

The Ombudsman is encouraged to continue to actively engage with the OHCHR, GANHRI, APF, as well as relevant stakeholders at international, regional, and national levels in order to continue strengthening its institutional framework and working methods.

**The SCA notes:**

#### **1. Human rights mandate**

The SCA still notes that Section 2 of the Ombudsman (Komesina o Sulufaiga) Act 2013 (the Act) defines human rights as those contained in the Constitution, other laws, customary international law and international human rights treaties listed in Schedule 1 of the Act, which does not include the Covenant on Economic, Social, and Cultural Rights. The SCA also notes that the mandate of the Ombudsman does not encompass the acts or omissions of private entities.

The SCA acknowledges that the Ombudsman interprets its mandate broadly to include economic, social, and cultural rights under the Universal Declaration of Human Rights as customary international law, and implements activities to address issues surrounding these rights, including the right to education, health, employment, and the impact of climate change on the full range of rights. The SCA encourages the Ombudsman to continue to interpret its mandate broadly to include the promotion and protection of all human rights.

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.

The SCA further emphasizes that the mandate of an NHRI should extend to the acts and omissions of both the public and private sectors.

The SCA encourages the Ombudsman to advocate for the amendment of its enabling law to include the ability to address all human rights violations resulting from the acts and omissions of private entities.

In this regard, the SCA emphasizes that, where an NHRI has been mandated with additional responsibilities, it must be provided with additional resources to enable it to assume the responsibilities of discharging these functions.

The SCA refers to Paris Principles A.1, A.2, A.3, and B.2 and to its General Observations 1.2 on 'Human rights mandate' and 1.10 on 'Adequate funding of NHRIs'.

## **2. Addressing human rights violations**

The SCA notes that the Ombudsman has never received any human rights violations complaints from individuals, even if provided for under Section 38 of the Act. The SCA acknowledges that the Ombudsman has received individual complaints relating to matters of good governance and special investigations, which often have human rights dimensions.

The SCA encourages the Ombudsman to strengthen its efforts to raise public awareness on its mandate to protect human rights and address human rights violations. The SCA further encourages the Ombudsman to ensure that its positions on these issues are made publicly available, as this will contribute to strengthening the credibility and accessibility of the institution for all people in Samoa.

The SCA emphasizes 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.

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

## **3. Monitoring places of deprivation of liberty**

Section 33(e) of the Act provides the Ombudsman with the power to visit all public and private places of voluntary confinement or detention subject to certain limitations and procedural requirements under Section 48 of the Act.

While the SCA acknowledges that, in some circumstances, it may be necessary to provide notice for such visits for reasons such as security, it is of the view that an NHRI should be mandated to conduct 'unannounced' visits to all places of detention within its jurisdiction as these limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

The SCA encourages the Ombudsman to advocate for amendments to its enabling law to provide for an explicit mandate to conduct ad hoc and unannounced visits to all places of deprivation of liberty.

In the interim, the SCA encourages the Ombudsman to continue to access all places of deprivation of liberty in a timely, regular and ad-hoc manner in order to effectively monitor, investigate, and report on the human rights situation, especially in the context of the COVID-19 pandemic. It further encourages the Ombudsman to undertake systematic follow-up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of detainees.

The SCA refers to Paris Principles A.2, A.3, and D(d) and to its General Observations 1.2 on 'Human rights mandate' and 1.6 on 'Recommendations by NHRIs'.

#### **4. Adequate funding**

While the SCA acknowledges that the Ombudsman's budget has increased since 2017 and that it has utilized its existing budget to undertake relevant activities, it notes that the Ombudsman has reported that it does not have sufficient funding, particularly in view of its efforts to conduct more research and advocacy activities on emerging issues such as the human rights implications of technology.

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

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

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

The SCA encourages the Ombudsman to continue to advocate for an appropriate level of funding to carry out its mandate effectively and independently.

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

## **5. Annual report**

Section 40 of the Act requires the Ombudsman to submit a report on the status of human rights to the Legislative Assembly. The Act requires the Legislative Assembly to refer the report to the Parliamentary Committee responsible for human rights to scrutinize the report. However, the Ombudsman reports that in practice, these provisions, are not always implemented.

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 SCA stresses 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. 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.

The SCA encourages the Ombudsman to continue to advocate for the full implementation of Section 40 of its enabling law regarding the requirement for the legislature to scrutinize and debate the content of the Ombudsman's annual report.

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

## **6. Term of office**

According to Article 82A(3) of the Constitution, the Ombudsman is 'appointed for a 6-year term and is eligible for re-appointment'. The Constitution and the Act are silent on the number of times the Ombudsman can be re-appointed, which leaves open the possibility of unlimited tenure. The Ombudsman reported that the previous Ombudsman was in office for 27 years.

In order to promote institutional independence, the SCA is of the view that it would be preferable for the term of office to be limited to one (1) re-appointment. The SCA encourages the Ombudsman to advocate for amendments to the Constitution and its enabling law to provide for such limits on the term of office.

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

## **7. Staffing**

The SCA notes that there are only three (3) staff positions in the human rights unit of the Ombudsman, one of which is currently vacant. The SCA also notes that due to limited staff, the Ombudsman works

regularly with consultants and Government Ministries. The Ombudsman reports that in doing this, it also reciprocates, deploying their human rights expertise for different Government Ministries.

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 public servants 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 State agencies.

The SCA encourages the Ombudsman to continue advocating for an adequate level of funding so as to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the NHRI's mandate.

The SCA also encourages the Ombudsman to ensure its independence even while working with external consultants and Government Ministries to implement programs and projects.

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

### **1.7 Serbia: Protector of Citizens of Serbia (PCRS)**

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

The SCA welcomes the efforts made by the PCRS to address the previous recommendations made both through its advocacy in relation to the new draft law on the Protector of Citizens (the draft Law) and its activities in the period since the SCA took the decision to defer the PCRS for further review. The SCA acknowledges that, according to PCRS, the draft Law is likely to be adopted by the Parliament in October 2021.

The SCA highlights that NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

The PCRS is encouraged to continue to actively engage with the OHCHR, GANHRI, ENNHRI, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue to strengthen its institutional framework and working methods.

The SCA encourages the PCRS to continue its efforts to promote and protect all human rights, and to continue to strengthen its institutional framework and effectiveness in line with the recommendations below.

#### **The SCA notes:**

## **1. Selection and appointment**

The SCA is of the view that the draft Law, in its current version, partially addresses its previous concerns with respect to the selection and appointment process of the Protector. However, the SCA remains concerned that the new process would not be fully participatory.

The SCA also emphasises that 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 an NHRI.

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

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

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

## **2. Addressing human rights violations**

The SCA acknowledges that the PCRS provided information in relation to its activities and efforts to address human rights violations in the field of economic, social, and cultural rights, excessive use of force by state actors, and the safety of journalists, media workers and media freedom more broadly. However, the SCA encourages the PCRS to continue to address all violations of human rights and to ensure effective follow-up so that the State makes the necessary changes to ensure that human rights are clearly protected. The SCA further encourages the PCRS to ensure that its positions on these issues are made publicly available, as this will contribute to the strengthening of the credibility and accessibility of the institution for all people in Serbia.

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

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

## **3. Cooperation with civil society**

The SCA welcomes the inclusion of Article 42 of the draft Law, which stipulates that the PCRS shall establish and maintain cooperation with civil society organizations.

The SCA acknowledges that the PCRS has provided information regarding its cooperation with civil society organizations in practice. The SCA encourages the PCRS to continue to enhance and formalize its working relationships and cooperation with the widest range of civil society organizations and human rights defenders.

The SCA is of the view that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandate. Broad engagement with all stakeholders improves the effectiveness of an NHRI in implementing its mandate to promote and protect human rights by providing a better understanding of: the breadth of human rights issues across the state; the different impacts of such issues based on social, cultural, geographic, and other factors; gaps; priorities; and implementation strategies. NHRIs should develop, formalize, and maintain working relationships with other domestic institutions established for the promotion and protection of human rights, including civil society organizations.

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

#### **4. Adequate funding**

The SCA notes that the draft Law provides for additional responsibilities for the PCRS, including as the National Rapporteur on human trafficking and National Monitoring Mechanism under the CRPD.

The SCA was informed by the PCRS of the importance of being able to attract staff with the relevant and specific expertise necessary for the PCRS's existing and new mandates. The SCA encourages the PCRS to advocate for additional funding to ensure it is able to carry out its new mandates, as well as to attract and retain adequately qualified and experienced staff through competitive and attractive salaries.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its ability to freely determine its priorities and activities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of improvement in the NHRI's operations and the fulfilment of its mandate, including salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent institutions of the State. Where an NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

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

- a) the allocation of funds for premises that 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 staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);



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

The SCA refers to Paris Principle B.2 and to its General Observations 1.10 on 'Adequate funding of NHRIs' and 2.8 on 'Assessing NHRIs as National Preventive and National Monitoring Mechanisms'.

### **1.8 Uruguay: Institución Nacional de Derechos Humanos y Defensoría del Pueblo (INDDHH)**

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

The SCA highlights that NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

The SCA encourages the INDDHH to continue to actively engage with the OHCHR, GANHRI, RINDHCA, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening their institutional framework and working methods.

#### **The SCA notes:**

##### **1. Selection and appointment**

Article 37 of Law 18.446 (the Law) establishes that the General Assembly (Senate and the House of Representatives) elect members of the INDDHH Board of Directors by two thirds of the total number of parliamentarians. According to Article 39 of the Law, civil society organizations (CSOs) qualified to participate in INDDHH extraordinary sessions may propose candidates to the General Assembly and the parliamentarians who will prepare a list from which they ultimately elect the Board of Directors. While the involvement of CSOs in the process to propose potential candidates is welcome, the SCA recommends that this proposal process should be open and accessible to all parts of civil society to participate.

Article 40 of the Law states that, in order to conduct the candidate selection procedure, the General Assembly will appoint a Special Commission, comprising representatives of political parties in the Parliament, which will receive the nominations and verify the fulfilment of legal requirements. The Special Commission may interview the candidates and shall establish a final list for submission to the General Assembly at least five (5) days prior to the date convened for the election of the Board of Directors.

The SCA notes that even though the Law is silent on advertisement of the vacancies, the INDDHH reports that, in practice, a call for applications is made public through various media outlets and on the INDDHH website in line with its internal policy.

The SCA is of the view that the process enshrined in the Law is not sufficiently broad and transparent. In particular, it does not require the advertisement of vacancies for members.

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

ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

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

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and/or participation in the application, screening, selection and appointment process

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

## **2. Protection from criminal and civil liability**

The Law is silent on whether and how members of the Board of Directors and staff are protected from criminal and civil liability for official actions and decisions taken in their official capacity in good faith.

The SCA acknowledges that the INDDHH has proposed legislative amendments to its Law to include a provision for protection from criminal and civil liability, and it encourages the INDDHH to continue to advocate for passage of amendments in line with the General Observation 2.3 on Protection from criminal and civil liability for official actions and decisions undertaken in good faith.

The SCA is of the view that the independence of the NHRI and its members is promoted, and the potential for external interference is reduced, by including a clear provision in the enabling legislation of an NHRI to protect the members of the governing body from legal liability for actions undertaken in their official capacity.

The SCA refers to Paris Principle B.3 and to its General Observation 2.3 on ‘Protection from criminal and civil liability for official actions and decisions undertaken in good faith’.

## **3. Recommendations by NHRIs**

The SCA acknowledges that the INDDHH has produced reports and statements, and has made recommendations to relevant authorities.

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

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

In that regard, the SCA emphasizes the importance of ensuring a constructive relationship between the INDDHH and the State authorities, including the Government, the General Assembly and the judiciary. The SCA encourages the INDDHH to conduct follow-up activities to monitor the extent to which its recommendations have been implemented.

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

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

## **2. DECISION (Art 14.1 of the GANHRI Statute)**

### **2.1 Nepal: National Human Rights Commission (NHRC)**

**Decision:** The SCA decides to **defer** the special review of the NHRC to its second session of 2022.

In accordance with Article 16.4 of the GANHRI Statute, any review of the accreditation status of an NHRI must be finalized within eighteen (18) months.

In its June 2021 session, the SCA decided to undertake a special review of the NHRC based on information received from a group of civil society organizations. The group alleged that the appointment process of the new NHRC members in February 2021 had failed to implement national guidelines enshrined in Nepalese domestic law and the essential requirements of the Paris Principles, including the need for an open, transparent, and participatory process with broad consultation.

According to the information provided by these civil society organizations, the President of Nepal issued an Ordinance on 15th December 2020 amending the Constitutional Council Act 2010 and authorizing the presence of a reduced quorum in the Constitution Council sufficient for nomination of candidates for NHRC membership appointments. Subsequently, in February 2021, the President appointed five (5) new NHRC members under the new Ordinance. This Ordinance has been challenged as unconstitutional and is currently before the Constitutional Bench of the Supreme Court.

During the October 2021 session, the SCA conducted an interview with the NHRC in which it was asked to provide responses in relation to the following issues:

- The process by which selection and appointment of commissioners took place;
- The status of the appeal before the Supreme Court on the legality of the Ordinance; and
- What the NHRC has done since the repeal of the Ordinance by the new administration to address the concerns regarding selection and appointment by the Constitutional Council.

The SCA acknowledges that the NHRC reported that the selection and appointment process was conducted according to Articles 248 and 292 of the Constitution of Nepal and in line with the Ordinance issued by the President. The SCA further acknowledges that the aforementioned Ordinance was later repealed after a change in administration. However, the SCA remains concerned that the appointment process of the current NHRC members did not meet the requirements of the Paris Principles and could adversely impact the actual and perceived institutional independence of the NHRC, as well as threaten the stability of the institution into the future. Therefore, the SCA defers its review of NHRC, pending the decision of the Constitutional Bench of the Supreme Court on the legality of the recent appointments.

It is critically important to ensure the formalization of a clear, transparent, and participatory selection and appointment process for an NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate.

A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

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

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

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

## **2.2 Northern Ireland (UK): Northern Ireland Human Rights Commission (NIHRC)**

**Recommendation:** The SCA decides that further consideration of the re-accreditation application of the NIHRC will be **deferred** to the second session of 2022.

The SCA acknowledges and commends the work the NIHRC has undertaken to promote and protect a range of human rights, despite its challenging financial situation.

The NIHRC is encouraged to continue to actively engage with the OHCHR, GANHRI, ENNHRI, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

### **The SCA notes with concern:**

#### **1. Adequate funding**

The NIHRC reports that it is operating within a progressively restricted funding environment that has already required it to suspend, limit, or prioritize operations and cease planned recruitment, leaving them 20% below what they considered minimum capacity. In addition, the institution is imminently facing a further proposed annual 5% budget cut until 2025. This will impact its ability to fulfil its core mandate under the Paris Principles.

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

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

- a) the allocation of funds for premises that 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 staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);
- d) the establishment of a well-functioning communications system including telephone and internet; and
- e) the allocation of a sufficient amount of resources for mandated activities.

The SCA regards both the current and prospective funding position as described by the NIHRC as very serious and time sensitive, and strongly recommends that an improved and sustainable position is reached within this deferral period. The SCA notes that the NIHRC has asked for an Independent Review of its core funding in order to agree with the State a sustainable funding position so that it can fulfill its mandate with certainty into the future. The SCA encourages the NIHRC to secure urgent agreement to this Review and/or any other means available to it to advocate for an appropriate and adequate level of funding to effectively carry out its mandate. The SCA recommends open engagement between the NHRI and the State to ensure all budgetary issues are resolved quickly, appropriately, and in a sustainable manner.

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

## **2. Financial autonomy**

In accordance with Schedule 7(6) of the Northern Ireland Act (the Act), the Secretary of State may make grants to the NIHRC from the budget provided by the United Kingdom Parliament.

The SCA notes with concern that the budget allocation to the NIHRC is subject to the United Kingdom Government expenditure priorities, and that this has the potential to impact the NIHRC's effectiveness and functional independence.

The SCA notes that 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 of regulations to ensure State agencies are properly accountable for the 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.

Accordingly, the SCA encourages the NIHRC to advocate for appropriate modifications to applicable administrative procedures to ensure that its functional independence and financial autonomy is guaranteed.

The SCA refers to Paris Principle B.2 and to its General Observations 1.10 on 'Adequate funding of NHRIs' and 2.7 on 'Administrative regulation of NHRIs'.

### **3. Diversity and pluralism**

Section 68(3) of the Act requires that “[i]n making appointments under this section, the Secretary of State shall as far as practicable secure that the Commissioners, as a group, are representative of the community in Northern Ireland”.

The SCA acknowledges NIHRC reporting that there is room for greater gender balance and minority representation among its Commissioners and staff members.

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

The SCA encourages the NIHRC to advocate for pluralism, including gender balance and minority representation in its composition and staffing.

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

### **4. Visiting places of deprivation of liberty**

In accordance with Section 69(C)(1) of the Act for the purposes of an investigation, a person authorized in writing by the NIHRC may enter a specified place of detention in Northern Ireland on one or more occasions during a specified period.

While the SCA notes that the NIHRC can enter only for the purposes of a specific, time-limited formal investigation - for which the terms of reference must be published and open to legal challenge - it encourages the NIHRC to continue to advocate for being able to conduct ‘unannounced’ visits as this limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

Reiterating its previous concern from 2011 and 2016, the SCA encourages the NIHRC to continue to access all places of deprivation of liberty, including without prior notice. It further encourages the NIHRC to effectively monitor, investigate, and report on the human rights situation in a timely manner, and to undertake systematic follow-up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those detained.

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

### **3. SPECIAL REVIEW (Art. 16.1 of the GANHRI Statute)**

#### **3.1 Afghanistan: Afghanistan Independent Human Rights Commission (AIHRC)**

**Decision:** The SCA decides to initiate a **Special Review** of the AIHRC at its first session of 2022.

The SCA received correspondence from the AIHRC Chairperson under Article 16.1 of the GANHRI Statute, dated 3rd September 2021 notifying the GANHRI Chairperson of circumstances concerning the continued compliance of the AIHRC with regards to the Paris Principles.

The SCA is of the view that publicly available information raises serious concerns with respect to the continued compliance of the AIHRC with the Paris Principles, including concerns about its inability to fulfil its mandate.

The SCA emphasizes that in the situation of 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.

The SCA refers to Paris Principles A.1 and A.3 and to its General Observation 2.5 on ‘NHRIs during the situation of a coup d’état or a state of emergency’.

In view of the information before it, the SCA decides to initiate a Special Review in accordance with Article 16.1 of the GANHRI Statute in order to determine the AIHRC’s ongoing compliance with the Paris Principles.

#### **4. REVIEW (Art. 16.2 of the GANHRI Statute)**

##### **4.1 Sri Lanka: Human Rights Commission of Sri Lanka (HRCSL)**

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

In accordance with Article 18.1 of the GANHRI Statute, a recommendation to downgrade does not take effect for a period of one (1) year. The SCA notes that the HRCSL maintains A status until the SCA’s second session of 2022. This allows an opportunity for the HRCSL to provide the documentary evidence necessary to establish its continued conformity with the Paris Principles.

In February 2021, the SCA received correspondence from civil society organizations regarding the appointment process of the HRCSL, and related concerns with respect to the lack of pluralism in the HRCSL’s membership and staff, as well as its effectiveness in discharging its human rights mandate.

During the session, the SCA conducted a telephone interview with the HRCSL in which the HRCSL was asked to provide responses in relation to the following issues:

- The selection and appointment process that took place for the current Chairperson and Commissioners of HRCSL;
- How pluralism is ensured in the current membership of the Commissioners and staff;
- How the 20<sup>th</sup> amendment of the Constitution of Sri Lanka (the 20<sup>th</sup> Amendment) has affected the HRCSL’s ability to realise and perform its mandate;
- Steps taken by HRCSL to respond to recommendations made by international human rights mechanisms; and

- Actions taken, including public statements/positions, on reports of serious human rights violations including surveillance, intimidation, and judicial harassment of human rights defenders, excessive use of force and arrest and detention of protesters, deaths in police custody and torture by law enforcement officials, and the Prevention of Terrorism Act and the law's repercussion on civil and political rights.

While the SCA acknowledges that the HRCSL has provided some information in relation to the above-mentioned issues, in both its interview and written submission, it considers the responses insufficient to address the substance of its concerns.

In view of the information before it, the SCA is concerned that the institution's independence and effectiveness has not been sufficiently maintained in line with the requirements of the Paris Principles.

The HRCSL is encouraged to continue to actively engage with the OHCHR, GANHRI, APF, and other NHRIs, as well as relevant stakeholders at international, regional and national levels, in order to continue strengthening its institutional framework and working methods.

### **The SCA notes with concern:**

#### **1. Selection and appointment**

The SCA notes the information received regarding the adoption of the 20<sup>th</sup> Amendment in 2020, which significantly changed the selection and appointment process for members of HRCSL in such a manner that could compromise its independence. The 20<sup>th</sup> Amendment abolished the Constitutional Council, a 10-member body with three seats reserved for civil society representatives tasked to recommend candidates for appointment as HRCSL Commissioners. In its place, the 20<sup>th</sup> Amendment reinstated the Parliamentary Council, composed exclusively of members of parliament, with the power to make observations only to the President of the Republic with respect to the appointment of HRCSL Commissioners.

The SCA also notes the information received in third-party submissions that in the recent selection and appointment process in December 2020, the Government did not advertise the vacancies, nor did it detail the criteria for the assessment of the candidates. This resulted in appointments made in a manner that was not wholly transparent to civil society.

The HRCSL was asked to respond to these concerns. The HRCSL reported that as the Parliamentary Council is composed of parliamentarians who represent the public and different groups in society, direct involvement of civil society in the process was not required. The HRCSL also confirmed that the publication of vacancies is not a legal requirement.

In view of the available information before it, the SCA is of the view that the process currently enshrined in law is not sufficiently participatory and transparent. In particular, it does not:

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

The SCA is also of the view that the selection and appointment process undertaken in 2020 was not characterized by openness and transparency and did not provide sufficient opportunities for consultation with or participation of civil society.



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 an NHRI.

The SCA encourages the HRCSL to advocate for amendments in the Constitution and in its enabling law to provide for 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; and
- d) Assess applicants on the basis of pre-determined, objective and publicly available criteria.

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

## **2. Addressing human rights violations**

As noted above, the SCA provided an opportunity for the HRCSL to respond to specific issues of concern raised in third-party submissions on the independent and effective exercise of its human rights mandate. It acknowledges that the HRCSL did provide some information including as follows:

- The HRCSL conducted meetings and sent letters to duty-bearers about the rights and welfare of prisoners amid the COVID-19 pandemic and other issues including allegations of torture, deaths in custody, riot control measures, communication systems between detainees and their family, as well as the establishment of a focal point to expedite communication between HRCSL and the Prison Department. The HRCSL also conducted unannounced visits to police stations, prisons, and other places of deprivation of liberty.
- The HRCSL intervened in a case of a teachers' union activist who was arrested for staging a protest and sent to quarantine with the Sri Lanka Air Force.
- The HRCSL intervened in cases involving the use of quarantine rules by police to harass and arrest people.

Based on the HRCSL written and oral response to the issues above, the SCA is of the view that the HRCSL has not effectively engaged on and publicly addressed all human rights issues including allegations of deaths in custody and torture, nor has it spoken out in a manner that promotes and protects all human rights.

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

Further, the SCA highlights that regular and constructive engagement with human rights defenders and civil society organizations is essential for NHRIs to fulfil their mandates effectively.

The SCA also notes that the HRCSL did not submit a parallel report to the United Nations Human Rights Committee.

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;
- 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.

The SCA encourages the HRCSL to strengthen its efforts to address all human rights issues, including those noted above. The SCA further encourages the HRCSL to ensure that its positions on these issues are made publicly available, as this will contribute to strengthening the credibility and accessibility of the institution for all people in Sri Lanka.

The SCA refers to Paris Principles A.1, A.2, A.3, C(f), and (g) and to its General Observation 1.5 on 'Cooperation with other human rights bodies'.

## **The SCA notes:**

### **1. Pluralism and diversity**

The SCA notes the information received regarding the lack of sufficient plurality within the members of HRCSL. According to the institution, the current members are composed of four (4) Sinhalese and one (1) Tamil, with no Muslim representative, and only one (1) woman.

The SCA acknowledges the response by HRCSL that due to the five-member limit in its membership, it is difficult to cover the pluralistic character of Sri Lankan society and that pluralism is reflected in their staff composition and in their engagement with vulnerable groups.

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 is of the view that it is good practice for the enabling law of an NHRI to include a requirement to ensure pluralism and diversity. This facilitates its appreciation of, and capacity to engage on, all

human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI for all people in the society within which it operates.

The SCA encourages the HRCSL to take steps to ensure pluralism and diversity including appropriate religious, ethnic and gender balance in its composition.

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

## **5. ALTERATION OF ACCREDITATION CLASSIFICATION (Art. 18.1 of the GANHRI Statute)**

### **5.1 Panamá: Defensoría del Pueblo de Panamá (DPP)**

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

Following submissions by civil society organizations and a response by the DPP, in October 2019 the SCA decided to undertake a Special Review of the accreditation status of the DPP at its December 2020 session. The SCA had received information about the recent dismissal and replacement of the previous Defensor. The Inter-American Commission on Human Rights (IACHR) had expressed concerns about the dismissal process, and had referred to serious concerns from several civil society organizations about the political affiliation of, and political pressure applied during the appointment of, the then acting Defensor. The SCA was unable to determine whether the dismissal was undertaken in a manner consistent with the DPP's enabling law and with due process rights. This raised concerns about the ongoing independence of the DPP and its compliance with the Paris Principles.

At the Special Review during the December 2020 session, the SCA recommended that the DPP be downgraded to B status. Ahead of the appointment of a new Defensor due in February 2021, the SCA encouraged the DPP to "*advocate for the application of a participatory and transparent selection process that includes requirements to:*

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

The SCA also encouraged the DPP to demonstrate its independence in practice by conducting activities to promote and protect a broad range of human rights. The SCA recognizes that the DPP has conducted some activities including:

- Special report on the human rights situation of irregular migrants in Darien and Chiriquí provinces in the context of COVID-19;
- Special report on inspections of centers for minors and adolescents;
- Special report on visits to a women center of rehabilitation - Dona Cecilia Orillac de Chiari; and
- National evaluation on the situation of women deprived of liberty, with additional conditions of vulnerability.

In accordance with Article 18.1 of the GANHRI Statute, the SCA gave the DPP the opportunity to provide, within one (1) year, the written evidence deemed necessary to establish its continued compliance with the Paris Principles.

At its October 2021 session, the SCA considered the additional documentation and material provided by the DPP, in particular a document regarding the dismissal of the Defensor and other concerns expressed by the SCA, as well as the Statement of Compliance with the Paris Principles. During the session, the SCA conducted an interview and gave the DPP the opportunity to provide its views on various matters, including the dismissal of the previous Defensor and the participation of civil society in the selection of the new Defensor. The SCA also requested information about the steps taken by the DPP to act on the SCA's December 2020 recommendations, and some of its human rights activities.

In view of the information before it, the SCA is not satisfied that the DPP has adequately addressed the substance of the concerns nor has it provided sufficient documentary or written evidence to respond to the specific concerns regarding the actual and perceived independence of the DPP, and the institution's effectiveness in line with the Paris Principles.

**The SCA notes with concern:**

**1. Independence**

At its December 2020 session, the SCA noted the following ongoing concerns:

*“As noted above, the former Defensor was removed by the National Assembly on 9 October 2019 following allegations of sexual abuse and workplace harassment. This decision was based on Resolution 77 of 7 October 2019, by which the National Assembly adopted a special procedure for the Defensor, citing Article 11-B of the DPP's enabling law, which provides that the Defensor can be removed for “negligence in fulfilling their duty in office” by a 2/3 majority vote of the National Assembly. The SCA notes that the IACHR<sup>1</sup> expressed concerns regarding the dismissal and called upon the State to ensure that the dismissal process was conducted in a manner that ensured the ongoing independence of the DPP and was undertaken in conformity with the law and due process rights.*

*The DPP was asked to respond to these concerns. The DPP reported that the removal of the former Defensor was undertaken by the National Assembly in accordance with its procedure.*

*Prior to the removal of the former Defensor, a new Deputy Defensor was appointed. Upon the removal of the former Defensor, the Deputy Defensor became the Acting Defensor in accordance with the provisions of the DPP's enabling law.*

*The SCA notes that the IACHR indicated that it had received information from several civil society organizations about the political affiliation of the Deputy Defensor and about political pressure applied during this selection process.*

*The DPP was asked to respond to these concerns. The DPP reported that the Deputy Defensor was designated by the former Defensor to become the Acting Defensor. It further reported that it has seen no evidence of political pressure having been applied in the selection process.*

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<sup>1</sup> <https://www.oas.org/es/cidh/prensa/comunicados/2019/260.asp>

*The DPP was asked to respond to the concern that the multiple changes of Defensor in a short period of time may impact on its ability to set priorities and effectively discharge its mandate. The DPP reported that these changes have had no effect on its operations.*

*In view of the available information before it, the SCA is unable to conclude that the removal of the former Defensor, and the appointment of the Deputy Defensor who subsequently became the Acting Defensor, were conducted in such a manner as to ensure the actual and perceived independence of the DPP.*

*Further, it is of the view that the multiple changes in the Defensor in a short period of time has an actual or perceived impact on the permanency of the DPP, and restricts its ability to effectively carry out the full breath of its mandate.*

*Accordingly, it is not clear that the DPP continues to operate in manner consistent with the requirements of the Paris Principles.*

*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.*

*Further, it is critically important to ensure the formalization and application of a clear, transparent and participatory selection and appointment process for an NHRI's decision-making body. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.*

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

*The SCA understands that the term of the current Defensor will end in February 2021, and that a new Defensor will be appointed. The SCA encourages the DPP to advocate for the application of a participatory and transparent selection process that includes requirements to:*

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

*The SCA further encourages the DPP to demonstrate its independence in practice by conducting activities to promote and protect a broad range of human rights.*

*The SCA refers to Paris Principle B.1, B.2 and B.3 and to its General Observations 1.8 on ‘Selection and appointment of the decision-making body of NHRIs’ and 2.1 on ‘Guarantee of tenure for members of the NHRI decision-making body.’*

The SCA provided the DPP with the opportunity to respond to these concerns.

The SCA reiterates that all NHRIs are expected to take the necessary steps to pursue continuous efforts at improvement and to enhance effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA. Failure to do so may result in a finding that a NHRI is no longer operating in compliance with the Paris Principles.

The SCA considers that the DPP has taken inadequate steps to engage with the December 2020 concerns and recommendations of the SCA.

The SCA acknowledges that the DPP maintains that the dismissal of the Defensor by the National Assembly on 9 October 2019 was conducted by the Government Commission of the National Assembly, based on the ground for dismissal stated in Article 11B of the law - the manifest negligence in the performance of his duties - and that due process was observed. The DPP states that the assessment of the dismissal of the Defensor lies with the National Assembly and the DPP has no role in this process.

The SCA also notes that the DPP reported that it is considering a draft aimed at amending the provisions of the law relating to dismissal.

The SCA continues to be of the view that this ground for dismissal as currently enshrined in the law is insufficiently defined and may be open to misuse. This possibility risks affecting the DPP’s actual or perceived independence. In the December 2020 session the SCA communicated that it was unable to conclude that the removal of the former Defensor, and the appointment of the Deputy Defensor who subsequently became the Acting Defensor, were conducted in such a manner as to ensure the actual and perceived independence of the DPP. The SCA considered the response provided by the DPP to these concerns to be insufficient. As a result, the SCA could not establish that the DPP remains fully independent in line with the Paris Principles.

The grounds for dismissal must be clearly defined and appropriately confined to those actions that impact adversely on the capacity of the member to fulfil its mandate. The SCA is of the view that, in order to address the Paris Principles requirement for a stable mandate, which is important in reinforcing independence, the enabling legislation of an NHRI must contain an independent and objective dismissal process.

Dismissals must conform with all the substantive and procedural requirements prescribed by law. Such requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of an NHRI. The SCA encourages the DPP to continue with the drafting process in line with the Paris Principles.

The SCA remains concerned with the recent succession of acting Defensores within a short period of time, noting that this could have an actual or perceived impact on the permanency of the DPP and restrict its ability to effectively carry out the full breadth of its mandate. In response, the DPP reported that the selection process for the new Defensor was conducted earlier in 2021 after a short delay.

The DPP further reported that, although the law does not contain specific provisions on the involvement of civil society, in practice civil society were involved in the process as the process was broadcast. The SCA, however, is of the view that this is not sufficient to ensure a transparent and participatory process.

The SCA considers that the appointment process is not sufficiently participatory and transparent. In particular, it does not:

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

The SCA considers that DPP advocacy for participation of civil society in the selection process, and actual participation as described by the DPP, is insufficient.

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

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

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

The DPP is encouraged to continue to actively engage with the OHCHR, GANHRI, RINDHCA, and other NHRIs, as well as relevant stakeholders at international, regional and national levels, in order to continue strengthening its institutional framework and working methods.

The SCA refers to Paris Principles B.1, B.2, and B.3 and to its General Observations 1.8 on 'Selection and appointment of the decision-making body of NHRIs' and 2.1 on 'Guarantee of tenure for members of the NHRI decision-making body'.