

NOTE

"As of 21 February 2018 the SCA recommendations contained in this report are considered final"

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

GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (GANHRI)

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

Geneva, 13-17 November 2017

SUMMARY OF RECOMMENDATIONS

<p><u>2. Re-Accreditation (Art. 15 of the GANHRI Statute)</u></p>
<p><u>2.1 Bosnia and Herzegovina: The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (IHROBH)</u> Recommendation: The SCA recommends that the IHROBH be re-accredited with A Status</p>
<p><u>2.2 Cameroon: The National Commission on Human Rights and Freedom of Cameroon (NCHRF)</u> Recommendation: The SCA recommends that the NCHRF be re-accredited with A status.</p>
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<p><u>2.5 Panama: The Defensoría del Pueblo de la República de Panamá (DPRP)</u> Recommendation: The SCA recommends that the DPRP be re-accredited with A Status</p>
<p><u>2.6 Poland: The Commissioner for Human Rights (CHRP)</u> Recommendation: The SCA recommends that the CHRP be re-accredited with A Status</p>
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<p><u>2.8 South Africa: The South African Human Rights Commission (SAHRC)</u> Recommendation: The SCA recommends that the SAHRC be re-accredited with A Status</p>
<p><u>2.9 Tanzania: The Commission for Human Rights and Good Governance of Tanzania (CHRAGG)</u> Recommendation: The SCA recommends that the CHRAGG be re-accredited with A Status</p>
<p><u>3. Decision (Art. 14.1 of the GANHRI Statute)</u></p>
<p><u>3.1 Argentina: The Defensoría del Pueblo de la Nación Argentina (DPNA)</u> Decision: The SCA decides that further consideration of the re-accreditation application of the DPNA will be deferred to its second session of 2018.</p>
<p><u>3.2 Denmark: The Danish Institute for Human Rights (DIHR)</u> Decision: The SCA decides that further consideration of the re-accreditation application of the DIHR will be deferred to its second session of 2018.</p>

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

Decision: The SCA decides that further consideration of the re-accreditation application of the PDDH will be **deferred** to its first session of 2018.

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

4.1 Burundi: The Commission Nationale Indépendante des droits de l'homme of Burundi (CNIDH)

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

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

1. BACKGROUND

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

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

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

1.2 In accordance with the SCA Rules of Procedure, the SCA is composed of NHRI representatives from each region: France for Europe (Chair), Mauritania for Africa, Philippine for Asia-Pacific and Canada for the Americas. As the NHRI of Mauritania was reviewed at this session, the NHRI of Morocco represented Africa during the whole session.

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

1.4 Pursuant to article 15 of the Statute, the SCA considered applications for re-accreditation from the NHRIs of Bosnia and Herzegovina, Cameroon, India, Mauritania, Panama, Poland, Portugal, South Africa and Tanzania.

1.5 Pursuant to article 14.1 of the Statute, the SCA took a decision regarding the re-accreditation reviews of the NHRIs of Argentina, Denmark and Nicaragua

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

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

A: Compliance with the Paris Principles;

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

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

a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;

- b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;
- c) Guide the SCA in its determination of new accreditation applications, re-accreditation applications or other review:
 - i) If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.
 - ii) If the SCA has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, or 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.

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

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

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

- i) The recommendation of the SCA shall, as soon as practicable, be forwarded to the applicant NHRI;
- ii) The applicant NHRI can challenge a recommendation of the SCA by submitting a letter addressed to the GANHRI Chairperson and copied to the GANHRI Secretariat within twenty-eight (28) days of the date of communication of the recommendation;
- iii) At the end of this twenty-eight (28) day period, the GANHRI Secretariat will forward to Bureau members, as soon as practicable, the recommendations of the SCA. If the applicant NHRI has not challenged the recommendation, it shall be deemed accepted by the Bureau;
- iv) If an applicant NHRI submits a challenge within these twenty-eight (28) days, the GANHRI Secretariat will forward to the Bureau, as soon as practicable, all relevant material related to the challenge. GANHRI Bureau members will be provided with twenty (20) days in which to determine whether or not to support this challenge;
- v) Any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the Chair of the SCA and the GANHRI Secretariat of this support. If the challenge does not receive the support of at least one (1) Bureau member within twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;
- vi) If at least one (1) member of the GANHRI Bureau supports the challenge of the applicant NHRI within these twenty (20) days, the GANHRI Secretariat will notify

members of the Bureau as soon as practicable of this support and will provide any additional relevant information;

vii) Once provided with this notification and any additional relevant material, any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the GANHRI Chairperson and GANHRI Secretariat of this support. If the challenge does not receive the support of at least four (4) Bureau members in total coming from not less than two (2) regions within the twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;

viii) If the challenge receives the support of at least four (4) Bureau members in total coming from not less than two (2) regions, the recommendation of the SCA shall be referred to the following GANHRI Bureau meeting for a decision.

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

1.13 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.

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

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

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

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

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

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

1. The GANHRI Statute:
<http://nhri.ohchr.org/EN/AboutUs/Governance/Pages/Statute.aspx>
2. The Paris Principles and General Observations:
<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>
3. The Practice Notes:

<http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%20202/Forms/Default%20View.aspx>

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

2.1 Bosnia and Herzegovina: The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (IHROBH)

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

The SCA acknowledges the complex political situation in which IHROBH operates. The SCA commends the efforts of the IHROBH in advocating for the adoption of amendments to its enabling law to address issues of concern noted previously by the SCA. The SCA notes that the proposed legislative amendments have been accepted by the Council of Ministers and are now before the Parliamentary commissions. However, the SCA notes that, while the proposed amendments address some of the issues raised by the SCA in November 2016, they do not address all of the concerns previously raised.

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

With respect to ongoing issues of concern, the SCA notes:

1. Human rights mandate

The enabling law of IHROBH provides for a limited promotion mandate. The SCA acknowledges that the IHROBH has proposed amendments to its Law to more explicitly mandate it with promotional functions. If adopted, the pending amendments would address this concern.

The SCA understands 'promotion' to include those functions that seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy.

Further, the SCA notes that the IHROBH is not explicitly mandated with responsibility to encourage ratification and implementation of international standards. While acknowledging the activities the IHROBH undertakes in this regard in practice, the SCA encourages the IHROBH to advocate for amendments to its enabling law to make this mandate explicit.

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

2. Selection and appointment

In accordance with the Law, the Parliamentary Assembly appoints the Ombudspersons.

The SCA is of the view that the selection process currently enshrined in the existing Law is not sufficiently broad and transparent in that it does not specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process. The SCA acknowledges that IHROBH reports that, in practice, civil society are involved in the 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 IHROBH 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'.

3. Dismissal

In accordance with article 12 of the Law, the Ombudspersons can be dismissed on account of their inability to carry out their functions. The SCA is of the view that this provision should be made explicit in the Law to avoid misinterpretation.

Further, the Ombudspersons are dismissed by the Parliamentary Assembly. The Law does not provide further details on the dismissal process.

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

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

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

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

4. Adequate funding

The SCA notes that the IHROBH provided conflicting information regarding the adequacy of their funding.

In accordance with article 39 of the existing Law, the financial appropriation necessary for the functioning of the IHROBH is included in the budget of the Presidency of Bosnia and Herzegovina. The existing Law does not specify the process by which this budget allocation is made, does not specify whether it appears as a separate budget line, and does not provide for the financial autonomy of the IHROBH over the budget allocation.

The SCA acknowledges that IHROBH reports that it enjoys financial autonomy and that, in practice, its budget appears in a separate budget line. The SCA notes further that article 3 of the proposed amendments to the Law expands upon the details of the budgetary process and enhances the independence of the IHROBH in respect of this budget.

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

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

- a) The allocation of funds for premises which are accessible to the wide community, including for persons 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.

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

The SCA encourages the IHROBH to continue to advocate for the passage of the proposed amendments and to advocate for the funding necessary to ensure that it can effectively carry out its mandate, including for its upcoming NPM function.

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

5. Annual reports

In accordance with article 34 of the Law, the annual report of IHROBH is distributed to a number of entities. In November 2016, the SCA noted that there is no requirement that the annual report is considered by, or discussed in, the relevant Parliaments.

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, to ensure that its recommendations are properly considered, and to promote action on them. Accordingly, it is preferable for the enabling law of an NHRI provide that the legislature discuss and consider the reports of the NHRI, to ensure that its recommendations are properly considered, and to promote action on them.

The SCA recommends that the IHROBH advocate for the inclusion in its enabling law of a process whereby its reports are discussed and considered by the legislature.

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

6. Cooperation with civil society

In November 2016, the SCA encouraged the IHROBH to develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including civil society organizations. Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to fulfil their mandates effectively.

The SCA acknowledges the IHROBH has improved engagement and cooperation with civil society organizations. The SCA further acknowledges that proposed amendments to the law would include a new Article 36 (a) providing for "regular and thematic consultations with civil society organizations, international organizations and bodies of the profession and the academic community".

The SCA encourages the IHROBH to continue to develop, formalise and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including civil society organizations and to continue to advocate for the passage of the legislative amendments.

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

7. Interaction with the international human rights system

In November 2016, the SCA noted that, while the IHROBH indicates that it interacts with regional and international human rights systems, the Law does not explicitly provide for this function.

The SCA notes that article 4 of the proposed amendments to the Law provides that, for the purposes of promotion and protection of human rights and freedoms, the IHROBH may hold regular and thematic consultations with civil society organizations, international organizations and bodies of professional and academic communities. The proposed amendments would therefore address the previously-stated concerns of the SCA. The SCA encourages the IHROBH to continue to advocate for the passage of these amendments.

The SCA commends the IHROBH for its interaction with regional and international human rights system and encourages it to continue to advocate for the passage of the proposed amendments to explicitly mandate this interaction.

The SCA recognizes 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.

In considering their engagement with the international human rights system, NHRIs are encouraged to actively engage with the OHCHR, the GANHRI, its Regional NHRI Coordinating Committees, and other NHRIs, as well as international and national NGOs and civil society organization.

The SCA highlights that effective engagement with the international human rights system may include:

- submitting parallel or shadow reports to the Universal Periodic review, Special Procedures 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 IHROBH to continue to engage with and seek assistance from OHCHR, GANHRI and ENNHRI as appropriate.

The SCA refers to Paris Principle A.3 and to its General Observation 1.4 on ‘Interaction with the International Human Rights System’.

2.2 Cameroon: Commission nationale des droits de l’homme et des libertés (NCHRF)

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

The SCA acknowledges the complex political situation in which NCHRF operates.

The SCA commends the efforts of the NCHRF in advocating for the adoption of amendments to its enabling law. The SCA notes that the proposed law, if passed, would address the previously stated concerns with respect to mandate, political representatives on NHRIs, tenure, conflict of interest, and ratification or accession to international human rights instruments.

The SCA once again draws the NCHRF’s attention to the fact that the title of the draft law, article 1, article 30 and article 31(1) refer explicitly to the creation of a new institution, the repeal of existing laws related to the NCHRF, and the substitution of the new institution for the NCHRF, respectively. The SCA is of the view that these provisions, when taken together, may have the effect of creating a new institution, which would affect the current accreditation status of the NCHRF and require it to apply for accreditation as a new institution following one year of operation and the publishing of an annual report under its new enabling law.

The SCA draws the NCHRF’s attention to its Practice Note 4 on ‘NHRIs in Transition’ and encourages the NCHRF to work with OHCHR and NANHRI to develop and propose appropriate transitional provisions are inserted into the draft law to safeguard the current standing of the NCHRF and its accreditation classification.

With respect to ongoing issues of concern, the SCA notes:

1. Selection and appointment

In accordance with section 6 of the existing Law, the Chairperson and Vice Chairperson are appointed by a decree of the President.

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

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

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 notes that the NCHRF has proposed extensive amendments to section 6 of the Law to provide that vacancies be advertised, and for the use of an ad hoc committee in screening candidates. These amendments, if passed, would substantially address the SCA's previously stated concerns regarding selection and appointment. However, the SCA notes that the ad hoc committee is comprised primarily of political representatives, and that the draft law does not specify the process for achieving participation of civil society in the application, screening, selection and appointment process.

The SCA encourages the NCHRF 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. Political representatives on NHRIs

In accordance with section 6 of the existing Law, four (4) members of the NCHRF are Members of Parliament, two (2) are representatives of the Senate, and four (4) are representatives of government departments in charge of social affairs, justice, penitentiary affairs and women's affairs, respectively. The SCA notes that, while the representatives of government departments participate only in an advisory capacity, the Members of Parliament and representatives of the Senate have full rights, including voting rights.

The Paris Principles require that an NHRI be independent of government in its composition, operation and decision-making. It must be constituted and empowered to consider and determine

the strategic priorities and activities of the NHRI based solely on its determination of the human rights priorities in the country, and free from political interference.

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

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

Where government representatives or members of parliament are included in the decision-making body, they should be excluded from attending parts of meetings where final deliberations and strategic decisions are made, and should not be able to vote on these matters.

The SCA notes that the NCHRF has proposed substantial amendments to article 6 of the Law to remove political representatives from its membership. If passed, these amendments would address the previously stated concerns of the SCA. Accordingly, the SCA encourages the NCHRF to continue to advocate for the passage of the amendments. Until the amendments are passed, the SCA encourages the NCHRF to consider policy options to address the potential independence issue raised by having political representatives present in the decision-making body of the NCHRF.

The SCA refers to Paris Principle B.3 and to its General Observation 1.9 on ‘political representative of NHRIs’.

3. Dismissal

In May 2016, the SCA noted that the procedure for dismissal of Commissioner is not specified in the existing Law. It further noted that, in accordance with article 8 of the Law, the term of office of a Commissioner shall end following the loss of status that justified their appointment, and that this provision may allow ‘recall’ of a nominated member by the appointing authority for inappropriate reasons.

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

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

The SCA notes that the NCHRF has proposed amendments to article 8 of the Law to specify grounds for dismissal, and to provide that the President and Vice President may be removed from office by a decree of the President following a decision taken by 2/3 of Commissioners prescribed

by the Rules. While this provision does partially address the previously-stated concerns of the SCA, the SCA notes that the grounds for dismissal continue to be broad, and that the process for dismissal for members of the Commission besides the President and Vice President is not specified.

The SCA encourages the NCHRF to continue to advocate for appropriate amendments to its enabling law to provide for an independent and objective dismissal process.

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.’

4. Conflict of interest

In May 2016, the SCA noted that the existing Law does not include a provision to address a situation where members have an actual or perceived conflict of interest.

The avoidance of conflicts of interest protects the reputation, and the real and perceived independence of, an NHRI. Members should be required to disclose conflicts of interest and to avoid participation on decisions where these arise.

The SCA notes that the NCHRF has proposed amendments to article 8 of its draft law to address conflicts of interest. These amendments would address the previously-stated concerns of the SCA. Accordingly, the SCA encourages the NCHRF to continue to advocate for the passage of these amendments.

5. Adequate funding

The NCHRF reports that its present budget and staff are insufficient to carry out its mandate as the budget allocated does not reflect what has been requested. It further reports that contributions from donors have greatly decreased.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to these priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the NHRI’s operation 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. Where an NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

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

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

6. Accessibility

In May 2016, the SCA noted that the head office of the NCHRF, located in the capital Yaoundé, is not easily accessible to persons with disabilities.

The SCA notes that the NCHRF reports that a project to construct a new building is underway. It encourages the NCHRF to continue these efforts to ensure that its premises are accessible to all.

7. Encouraging ratification or accession to international human rights instruments

In May 2016, the SCA noted that the existing Law does not explicitly mandate the NCHRF to encourage ratification or accession to international human rights instruments.

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

The SCA notes that the NCHRF has proposed amendments in its draft law to address this issue. The SCA encourages the NCHRF to continue to advocate for the passage of these amendments.

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

8. Annual report

In accordance with article 19(2) of the existing Law, the annual report of the NCHRF is submitted to the President, the President of the National Assembly and the President of the Senate.

The SCA considers it important that the enabling laws of an NHRI establish a process whereby its reports are required to be widely circulated, discussed and considered by the legislature. It encourages the NCHRF to advocate for amendments to the enabling law to require its annual report to be tabled and discussed in Parliament.

The SCA notes that, while the NCHRF has proposed amendments to article 19 of the Law, these amendments do not appear to address the SCA's concern that the report is not directly tabled or discussed in Parliament.

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

9. Appointment of the Secretary General

Section 11.1 of the Law provides that the Secretary-General is appointed by a decree of the President.

The SCA emphasizes that 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 is of the view that this practice has the potential to impact on the perceived independence of the NHRI.

It recommends that the law provides that the Secretary-General be recruited through an open, merit-based selection process. Until such time as an amendment to this effect can be adopted, the SCA encourages the NCHRF to pursue policy and/or administrative measures to provide the NCHRF with greater control over the process, including by setting the selection criteria and by participating in the evaluation of candidates.

The SCA refers to Paris Principle B.2 and to its General Observation 2.5 on 'Staffing of the NHRI by secondment.'

2.3 India: The National Human Rights Commission of India (NHRCI)

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

The SCA commends the efforts taken by the NHRCI to address its previously noted concerns. It notes that the NHRCI has proposed amendments to its enabling law, and encourages the NHRCI to strengthen its legislative framework by continuing to advocate for passage of these amendments.

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

With respect to ongoing issues of concern, the SCA notes:

1. Composition and pluralism

In November 2016, the SCA was of the view that the requirement that the Chair be a former Chief Justice of the Supreme Court and that the majority of members be recruited from the senior judiciary severely restricts the potential pool of candidates, particularly as it relates to the representation of women in the governing body of the NHRCI. The SCA acknowledged that the justification for these requirements is based on the NHRCI's quasi-judicial function. However, it noted that: 1) the quasi-judicial function is but one of the ten (10) functions enumerated in section 12 of the Act; 2) section 3(2) also provides for the appointment of two (2) members amongst persons having knowledge of, or practical experience in, matters relating to human rights, who are not required to be chosen from the judiciary; and 3) no women had been appointed to any of the positions on the governing body of the NHRCI since 2004.

The SCA further noted that, of the 468 staff positions in the NHRCI, only 92 (or 20%) were women.

The SCA acknowledges with appreciation the steps that the NHRCI has taken to address the concerns noted by the SCA regarding gender balance in its membership and staff.

With respect to its membership, the SCA notes that a woman was appointed in April 2017, and that the NHRCI has advocated for changes to its Act to increase the number of members and provide that one (1) be a woman. The SCA notes, however, that the proposed amendment has not been adopted, and that having only one (1) member who is a woman does not represent appropriate gender balance. It encourages the NHRCI to continue to advocate for changes to its enabling law to provide for appropriate gender balance in the composition of its membership.

With respect to its staff, the SCA notes the efforts made by the NHRCI in recent appointments to increase the representation of women, as well as the gender sensitization programme it organized for its staff in July 2017 in collaboration with APF. It encourages the NHRCI to continue these efforts, in particular by ensuring that diversity of Indian society is represented including, but not limited to, Dalits and other religious or ethnic minorities.

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

2. Selection and appointment

In accordance with section 4 of the Act, the Chairperson and other members of the NHRCI are appointed by the President of India based on the recommendation of a Committee consisting of the Prime Minister, the Speaker of the House of the People, the Minister in-charge of the Ministry of Human Affairs in the government of India, the Leader of the Opposition in the House of the People, the Leader of the Opposition in the Council of States, and the Deputy Chairperson of the Council of States.

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

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

The SCA acknowledges that the NHRCI has advocated for changes to the selection process to include requirements to require the advertisement of vacancies and the establishment of clear and uniform criteria upon which to assess the merit of eligible applicants. The SCA notes, however, that 1) these proposed changes would not address the previously-stated concerns of the SCA with respect to the requirement that there be broad consultation and/or participation in the application, screening, selection and appointment process, and 2) it is unclear whether the process would be formalized in legislation, regulation, or in another binding administrative guideline.

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

3. The appointment of the Secretary General

Section 11 of the Act requires that the Central Government second to the NHRI a civil servant with the rank of Secretary to take the role of Secretary General of the Commission.

In November 2016, the SCA emphasized that a fundamental requirement of the Paris Principles is that an NHRI is, and is perceived to be, able to operate independent of government interference. Where an NHRI's members are seconded from the public service, and in particular where this includes those at the highest level in the NHRI, it raises question about its capacity to function fully independently.

The SCA again acknowledges the NHRCI's position that the fact that this individual is seconded from senior levels in the civil service means that he or she has wide knowledge of government functioning and standing among various levels of government, and that the NHRCI is able to reject the candidates proposed by government. The SCA further acknowledges that the NHRCI has advocated for changes to the way in which the Secretary General is appointed to provide that an invitation be made for those who have less than one (1) year of service prior to their retirement from the civil service.

The SCA continues to be of the view that, notwithstanding the justifications provided and the changes proposed, these practices have a real impact on the perceived independence of the NHRI. It again recommends that the Secretary General be recruited through an open, merit-based selection process. In the interim, the SCA encourages the NHRCI to pursue policy and/or administrative measures to provide the NHRCI with greater control over the process, including by setting the selection criteria and by participating in the evaluation of candidates.

The SCA refers to Paris Principle B.2 and to its General Observation 2.5 on 'Staffing of the NHRI by secondment.'

4. Involvement of police officers in investigations

Section 11 of the Act requires that the Central Government second to the NHRI a police officer of the rank of Director General of the Police or above to take the position of Director (Investigations).

Further, the NHRCI reports that its investigative officers are taken on a deputation basis from various police forces and the Intelligence Bureau.

The SCA again emphasizes that a fundamental requirement of the Paris Principles is that an NHRI is, and is perceived to be, able to operate independent of government interference. Where an NHRI's members are seconded from the public service, and in particular where this includes those at the highest level in the NHRI, it raises question about its capacity to function fully independently.

The SCA acknowledges the position of the NHRCI that 1) these individuals know how the system works and, as a result, are able to unearth truth in cases where others could not, 2) they are thorough professionals who are selected after a detailed background check as to their integrity and professional acumen, 3) they are accountable to the NHRCI and no one else, and 4) their reports are not determinative but rather are meant to inform the decisions of Members who decide the formal course of action.

The SCA continues to be of the view that for victims of abuses by police, there may be a real or perceived conflict of interest in having police officers engaged in the investigation of human rights violations, particularly those committed by the police, and this may impact on the ability to conduct impartial investigations as well as the ability of victims to access human rights justice.

The SCA acknowledges with appreciation the efforts made by the NHRCI to ensure that investigations involving allegations of human rights violations against the police or security forces

are carried out in a way that ensures civilian involvement and oversight. It encourages it to continue these efforts with a view to standardizing this practice for investigations involving police and security forces, with a view to strengthening the independence and impartiality of these investigations. The SCA further encourages the NHRCI to diversify the composition of its investigative team beyond police officers.

The SCA refers to Paris Principles B1, B.2 and B.3 and to its General Observation 2.5 on 'Staffing of the NHRI by secondment'.

5. Cooperation with other human rights bodies

The SCA notes that, prior to its November 2017 session, the SCA received extensive information from various civil society organizations which indicated that the relationship between the NHRCI and civil society is not effective or constructive, particularly with respect to ongoing dialogue and follow-up on issues raised.

In describing its engagement with civil society, the SCA notes that the NHRCI relies to a substantial degree on its Core/Expert Groups as the mechanism for engagement. However, the SCA has received information from civil society at both its November 2016 session and its November 2017 session that these mechanisms are not functioning effectively as a means of engagement and cooperation between the NHRCI and civil society.

The SCA again highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. The SCA encourages the NHRCI to take additional steps to ensure that it engages in ongoing, constructive dialogue and cooperation with civil society and human rights defenders and that this should include regular and ongoing modes of collaboration outside of the Core/Expert Groups.

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

6. Annual report

The most recent annual report of the NHRCI publicly available is for 2012-2013. The SCA acknowledges that the NHRCI annual reports for 2013-2014 and 2014-2015 have been submitted to the government, but as the government has not developed its responses to the recommendations in those reports, they have not been tabled in Parliament or made public.

The SCA considers it important that the enabling laws of an NHRI establish a process whereby its reports are required to be widely circulated, discussed and considered by the legislature. It again notes that the SCA finds it difficult to assess the effectiveness of an NHRI and its compliance with the Paris Principles in the absence of a current annual report.

The SCA notes that NHRCI has proposed amendment to section 20(2) of the Act whereby its annual reports can be tabled in Parliament without Government's memorandum of action. The SCA further notes that the NHRCI reports that it has mitigated this limitation in its ability to publicize current annual reports by publishing other reports on thematic issues or the state of human rights generally. The SCA encourages the NHRCI to continue to advocate for changes to its enabling law and to ensure that, in the interim, it releases additional public reports to inform the public about the situation of human rights and the activities of the NHRCI.

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

2.4 Mauritania: Commission Nationale des droits de l'homme (CNDH)

Recommendation: The SCA recommends that the CNDH 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 year. The SCA notes that the CNDH maintains A status until the SCA's second session of 2018. This allows an opportunity for the CNDH to provide the documentary evidence necessary to establish its continued conformity with the Paris Principles.

In November 2016, the SCA received information from civil society and from the Special Rapporteur on extreme poverty and human rights that expressed concerns regarding the independence of the CNDH including in relation to its composition, the selection and appointment of its members, its working methods and its willingness to address all human rights issues. The SCA also considered information available from Committee against Torture that also expressed concerns regarding the independence of the CNDH.

At its November 2017 session, the SCA once again received information from the Special Rapporteur on extreme poverty and human rights that the amendments that were made to the enabling law of the CNDH were not sufficient to address the substance of the concerns previously expressed.

The SCA notes with concern the following:

1. Selection and appointment

In accordance with article 12 of the Law, the President and members of the CNDH are appointed by a Presidential decree based on the proposals of various ministries, institutions, professional and civil society organizations. The SCA notes that the legislative amendments establish a selection committee comprising CNDH President, one representative of the Mauritanian Bar Association, one law professor of Nouakchott Al Aasriya University and two civil society representatives.

The SCA notes that it has received information from civil society and from the Special Rapporteur on extreme poverty and human rights that the composition of the CNDH, and the absence of an explanation as to why particular organizations have been chosen to nominate members, has resulted in a lack of independence in the decision-making body.

The SCA notes that the CNDH disputes the characterization of its decision-making body as lacking independence and indicates that its selection and appointment process is clear, transparent and participatory.

The SCA is of the view that, while the new provisions in the law have addressed some of the concerns raised in November 2016, they are not sufficient to address the substance of its previously-stated concerns, which related to the independence of the 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 CNDH 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. Addressing human rights violations

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

In particular, the SCA considered the following information:

- The December 2016 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Mauritania (A/HRC/34/54/Add.1), reports “a troubling lack of complaints being brought forward, even to institutions specifically mandated to assist in such cases, such as the National Bar Association and the National Human Rights Commission, both of which informed the Special Rapporteur that they had never received a complaint of torture”. The report further indicates that “the National Human Rights Commission has a mandate to monitor all types of detention centres through unannounced visits and confidential interviews with inmates and their families, in accordance with its founding legislation (see Law No. 2010-031 of 20 July 2010, art. 4). However, allegedly owing to limited resources, the Commission has been unable to pursue such visits since 2012”.

The SCA acknowledges that the CNDH reported that it had conducted various activities in this regard and that details about these activities were contained in its 2017 annual report. However, the SCA was, as of the date of this review, unable to locate these references in the 2017 annual report. In the absence of such evidence, the SCA is concerned that the CNDH is not effectively carrying out its mandate in relation to monitoring places of deprivation of liberty.

- The SCA received information about the closure of five (5) private television stations in October 2017, allegedly for non-payment of taxes.

During the session, the SCA asked the CNDH to provide details on what, if any, action it took in relation to this issue. The CNDH reported that it did not take any action as this was a tax issue.

The SCA is of the view that the response provided by the CNDH is insufficient and demonstrates an unwillingness to address all human rights issues, including those relating to freedom of expression and right of information of the public.

- In November 2016, the SCA raised the case of Mohamed Cheikh Ould Mohamed who was convicted and sentenced to death for the crime of apostasy. The SCA noted that the CNDH

had issued a statement which supported the application of the death penalty for apostasy. It noted the CNDH's position that, while the statement had been issued, it had not been authorized by the President of the CNDH. The SCA noted, however, that the CNDH did not issue a formal retraction or made public any statements that the application of the death penalty for this crime is inconsistent with international law. The SCA emphasized that NHRIs are expected to promote and ensure respect for all human rights, democratic principles and strengthening of the rule of law in all circumstances and without exception.

During the November 2017 session, the SCA requested information from the CNDH regarding its activities in relation to the application of the death penalty. The CNDH reported that it had taken a position in favour of abolition in its 2017 annual report. However, the SCA was, as of the date of this review, unable to locate this reference in the 2017 annual report. In the absence of supporting evidence, the SCA remains concerned that the CNDH has not taken the steps necessary to implement the recommendations made by the SCA in November 2016.

The SCA is of the view that the CNDH has not spoken out in a manner that promotes protection for 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.

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

2.5 Panama: The Defensoría del Pueblo de la República de Panamá (DPRP)

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

The SCA recognizes the efforts made by DPRP to address the SCA recommendations from 2012. The SCA also commends DPRP for its active engagement with international human rights system.

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

With respect to ongoing issues of concern, the SCA notes:

1. Pluralism and representation of women

The law does not explicitly require pluralistic composition of the DPRP. However, the SCA recognizes the efforts undertaken by DPRP to address pluralism including that it reports that out of the twelve (12) current directors, seven (7) are women, and that out of the eleven (11) regional branches chiefs, eight (8) are women.

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

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

The SCA encourages the DPRP to take further steps to ensure pluralism, including by proposing amendments to its Law.

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

2. Selection and appointment

In accordance with article 6(2) of the Law, the Ombudsperson is appointed by an absolute majority vote of the National Assembly, based on the recommendation of the Human Rights Commission.

The DPRP reports that, in 2016, the Human Rights Commission issued a Selection Regulation to make the process more transparent and consultative, including by requiring that vacancies be advertised in the media and on the National Assembly website. It further reports that, in practice, candidates are interviewed by the Human Rights Commission in a publicly-broadcast interview on the National Assembly's television channel, and that citizens and civil society are free to participate. The SCA notes, however, that the regulation has not been provided to the SCA and that the DPRP reports that a new regulation is issued each time there is a selection and appointment process.

It is critically important to ensure the formalization of a clear, transparent, participatory and consistent 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 DPRP to advocate for the formalization and consistent application of a standardized process that includes requirements to:

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

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

3. Adequate funding and financial autonomy

The DPRP reports that its allocated budget is the lowest of any institution in Panama and is not sufficient to discharge its mandate effectively, including its requirements related to staffing and infrastructure. It further reports that its budget has been decreased as a political punishment due to malpractices of the former administration. The DPRP reports to have requested four (4) reviews on its projected budget due to the insufficient allocation of funds.

Furthermore, the DPRP informs that its offices are not accessible to persons with disabilities.

The SCA acknowledges that the DPRP's financial situation is critical, as it is not allowing the DRPR to recruit and retain its technical employees or to improve its premises. Further, due to financial constraints, the DPRP has not been able to establish its NPM structure despite having been designated as the NPM.

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

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

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

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

The SCA encourages DPRP to continue to advocate for an appropriate level of funding to carry out its mandate, and in particular to secure sufficient funding to establish an effective NPM structure.

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

4. Functional immunity

In accordance with article 3 of the Law, the Ombudsperson enjoys functional immunity. However, the SCA notes that neither the Deputy Ombudsperson nor the staff of the DPRP enjoy such protection.

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

- security of tenure

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

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

The SCA encourages the DPRP to advocate for amendments to its Law to protect the Deputy Ombudsperson and members of the DPRP staff from legal liability for actions that are undertaken in their official capacity in good faith.

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

2.6 Poland: The Commissioner for Human Rights (CHRP)

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

The SCA commends the efforts of the CHRP in discharging its mandate effectively despite the challenging political context in which it operates and expresses appreciation to the current Commissioner, Dr. Adam Bodnar, for his continued commitment and good work in fulfilling his mandate.

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

With respect to ongoing issues of concern, the SCA notes:

1. Mandate

The Constitution and the founding law mandate the CHRP with some responsibility to promote human rights. However, this mandate does not cover the full range of functions that a NHRI should undertake in exercising its promotional mandate.

All NHRIs should be legislatively mandated with specific functions to both promote and protect human rights. The SCA understands 'promotion' to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy.

The SCA acknowledges that the CHRP has provided some examples of activities it has undertaken that would be considered promotional in nature. However, it encourages the CHRP to continue interpreting its mandate in a broad manner and to advocate for amendments to its enabling legislation to give it a more comprehensive mandate to promote human rights.

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

2. Pluralism

In 2012, the SCA noted that the Act does not require a pluralistic composition of the CHRP, including representation of ethnic or minority groups, women, and persons with disabilities.

The SCA notes that the CHRP has provided information about the gender balance and presence of persons with disabilities amongst its staff. The SCA also acknowledges that the CHRP states that it is prohibited by law from inquiring about citizens' ethnic, religious or other background, but reports that its staff is inclusive of members of these groups.

The SCA emphasizes that a diverse decision-making and staff body facilitates an NHRI's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRI for all citizens. The SCA encourages the CHRP to advocate for amendments to its enabling legislation to require a pluralistic composition in its membership and staff.

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

3. Functional Immunity

Article 211 of the Constitution provides that the Commissioner shall not be subject to penal liability nor deprived of liberty without the earlier consent of Parliament. In 2012, the SCA noted that the officers, including Deputy Commissioners, and staff of the CHRP do not enjoy similar protections.

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

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

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

The SCA encourages the CHRP to advocate for amendments to its enabling legislation to protect the Deputy Commissioners and staff members of the CHRP from legal liability for actions undertaken by them in good faith in their official capacity.

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

4. Adequate funding

The CHRP reports that it does not have adequate resources to effectively fulfil its mandate, including as the NPM.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to these priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the NHRI's operation 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 which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);
- d) the establishment of a well-functioning communications system including telephone and internet; and
- e) the allocation of a sufficient amount of resources for mandated activities. Where an NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

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

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

2.7 Portugal: The Provedor de Justiça (PDJ)

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

The SCA welcomes the amendments to the law that provides a broad mandate to promote and protect human rights. The SCA also congratulates the PDJ on its appointment as the NPM under OPCAT and NMM under the CRPD.

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

With respect to ongoing issues of concern, the SCA notes:

1. Selection and appointment

Article 5(1) of the enabling law provides that the Provedor is elected by Parliament with a two-third (2/3) majority of the members present.

The SCA acknowledges that the PDJ reports that the selection and appointment process is governed by Parliament's Rules of Procedure, which provide for the ability of groups of between ten (10) and twenty (20) members of parliament to nominate candidates, and for public hearings with the candidates. However, the SCA is of the view that the selection process currently enshrined in the enabling law is not sufficiently broad and transparent. In particular, it does not:

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

The SCA emphasises that it is critically important to ensure the formalization of a clear, transparent and participatory selection and appointment process for the Provedor in relevant legislation, regulations or binding administrative guidelines, as appropriate, that promotes merit based selection and the independence of, and public confidence in, the senior leadership of a national human rights institution.

The SCA encourages the PDJ to advocate for the formalization of the selection process for the Provedor in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice. This should include requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups;
- 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 a NHRI'.

2. Dismissal

Article 16(1) of the Statute provides that the Provedor may, at any time, dismiss the deputies chosen. The Statute is silent on the ground and process for such a dismissal.

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 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. The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law. It should not be allowed based solely on the discretion of appointing authorities.

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

The SCA encourages the PDJ to advocate for appropriate amendments to its law to provide for an independent and objective dismissal process for the deputies.

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.'

2.8 South Africa: The South African Human Rights Commission (the SAHRC)

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

The SCA commends the SAHRC for its extensive activities to promote and protect human rights at the national level. It further acknowledges and welcomes the active participation of the SAHRC in regional and international activities.

In addition, the SCA notes with appreciation the efforts undertaken by the SAHRC to address the previously-stated recommendations of the SCA. In particular, the SCA notes that its previous recommendations with respect to encouraging ratification or accession to international human rights instruments, conflicts of interest, and recommendations by NHRIs have now been addressed by the SAHRC.

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

With respect to ongoing issues of concern, the SCA notes:

1. Selection and Appointment process

The SCA notes the following:

- a) Section 193 (5) of the Constitution stipulates that the National Assembly must recommend persons (a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly. However, the process of attaining the names of appointees does not appear to be stipulated in any legal document, although the information indicates that a consultative process including a nation-wide announcement of the vacancies is undertaken and that an ad hoc committee to consider nominations received from the public and interviews of candidates is established, which are then submitted in a shortlist to the National Assembly.
- b) Section 193 of the Constitution stipulates that civil society may be involved in the recommendation process of members of the Commission but the exact role of civil society is not defined in any legislation.
- c) The SAHRC Act S. 5(1)(a)(i) states the minimum criteria for the appointment of SAHRC Commissioners.

While acknowledging that the process reportedly used in recent appointments was clear, transparent and participatory, the SCA notes that the process is not formalized in legislation, regulation, or in a binding administrative guideline.

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

or 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 SAHRC to advocate for the formalization of the selection process in relevant legislation, regulations or binding administrative guideline and application of a process that includes:

- 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. Term of Office

Section 5 (2) of the Act states that the commissioners may, on the recommendation of the National Assembly, be appointed as full-time or part-time commissioners and hold office for such fixed term as the National Assembly may determine at the time of such appointment, but not exceeding seven (7) years. The absence of a definitive fixed term of appointment was noted as an issue of concern during the SCA’s 2012 review of the SAHRC.

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

The SCA encourages the SAHRC to advocate for amendments to its enabling legislation to provide for a fixed-term appointment of between three (3) and seven (7) years, renewable once.

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

3. Dismissal

In accordance with section 194(1) of the Constitution, a commissioner may be removed from office: a) on the ground of misconduct, incapacity or incompetence; 2) a finding to the effect by a committee of the National Assembly; and c) the adoption by the Assembly of a resolution calling for that person’s removal from office. Further, in accordance with section 194(2) of the Constitution, the resolution concerning dismissal of a commissioner must be adopted with a supporting vote of a majority of the members of the Assembly.

The SCA notes that the grounds of ‘misconduct’ and ‘incompetence’ are not defined in the law, and there is not a requirement that the ground of ‘incapacity’ be supported by appropriate medical

evidence. The SCA notes that the SAHRC reports that these terms, although not defined in statute, are defined through jurisprudence. The SCA invites the SAHRC to provide further details in this regard at its next review.

Further, there is no specificity in the law about the process to be employed by the National Assembly in coming to a resolution calling for a commissioner's removal, including who may propose such dismissal, whether a public hearing is to be held, and what mechanisms exist for appeal of a decision. The SCA notes that the SAHRC reports that these details are provided in applicable regulations of Parliament. However, this has not been provided to the SCA at this time. The SCA invites the SAHRC to provide a copy of these regulations during its next review.

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 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. The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law. It should not be allowed based solely on the discretion of appointing authorities.

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

The SCA requests that the SAHRC provide the information requested above during its next review by the SCA.

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.'

4. Monitoring places of deprivation of liberty

The SCA notes that, while the SAHRC has a general protection mandate, it does not have an explicit mandate to monitor places of detention. The SCA acknowledges that, in practice, the SAHRC undertakes activities in this regard. However, it encourages the SAHRC to advocate for the inclusion of explicit mandate to conduct unannounced visit to all places of detention in its law.

The SCA commends the efforts of the SAHRC to advocate for the ratification of OPCAT and encourages the SAHRC to continue its advocacy for the establishment of the NPM.

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

5. Financial autonomy and adequate funding

The SCA notes that the SAHRC has reported that it is advocating to present its budget directly to the Parliament rather than via the Department of Justice and Constitutional Development. The SCA encourages the SAHRC to continue its advocacy in this regard, as it would increase its independence.

The SCA also notes that the Concluding Observations of the Committee on the Rights of the Child recommends that the State “provide sufficient human, technical and financial resources for such an institution and guarantee its independence, in order to effectively promote and protect the rights of the child”, and that those of the Committee on the Elimination of Racial Discrimination express concern that “the Commission does not have sufficient budgetary resources to effectively carry out its mandate, as expanded by Act No. 40 of 2013” and recommended that “the state party provide sufficient human, technical and financial resources for the SAHRC in order to effectively carry out their mandate.”

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

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

The SCA would like to encourage the SAHRC to continue to advocate for an appropriate level of funding to carry out its mandate.

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

2.9 Tanzania: Commission for Human Rights and Good Governance (CHRAGG)

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

The SCA commends the CHRAGG for its continuing efforts to effectively discharge its mandate to promote and protect human rights, including through the protection of human rights defenders. The SCA acknowledges the efforts of the CHRAGG to propose amendments to its enabling law and to the relevant provisions in the draft Constitution to address some of the concerns expressed by the SCA in November 2016 with respect to independence and members’ term of office. It encourages the CHRAGG to continue these efforts to address the concerns outlined below.

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

With respect to ongoing issues of concern, the SCA notes:

1. Independence

In November 2016, the SCA re-iterated its 2011 concerns with respect to articles 130 (3) and (4) of the Constitution and section 16 of the Act, which relate to the ability of the President of Tanzania to direct the CHRAGG to conduct or to not conduct certain inquiries or undertake certain actions.

The SCA notes that the CHRAGG reports that these provisions have never been invoked. Nevertheless, the SCA continues to be concerned that these provisions may impact on the perceived independence of the CHRAGG.

The SCA is of the view that an NHRI's mandate should authorize the full investigation of all alleged human rights violations, including those involving the military, police and security officers. While limitations on the mandate of an NHRI relating to national security are not inherently contrary to the Paris Principles, it should not be unreasonably or arbitrarily applied and should only be exercised under due process.

The CHRAGG indicates that it has advocated for the removal of article 130(4) of the Constitution and sections 16(3) and (4) of the Act in order to remove the power of the President to order the CHRAGG to conduct or not to conduct an inquiry. It has additionally advocated for a provision guaranteeing the independence of the CHRAGG in article 241(1) of the Constitution. These amendments, if passed, would substantially address the SCA's concerns regarding the CHRAGG's independence. The SCA encourages the CHRAGG to continue to advocate for passage of these amendments.

It further encourages the CHRAGG to advocate for the removal of article 130(3) of the Constitution, which provides for the power of the President to issue directives to the CHRAGG on issues of national interest.

The SCA refers to Paris Principle A.1, A.2, A.3 and B.2, and to its General Observations 2.7 on 'Limitation of power of National Human Rights Institutions due to national security' and 1.2 on 'Human rights mandate'.

2. Annual Reports

In November 2016, the SCA noted that the most recent annual report for the CHRAGG that is publicly available was for 2010-2011.

The SCA acknowledges that the CHRAGG has published special reports on various human rights issues and is currently preparing consolidated annual reports for 2012-2016. The CHRAGG informed that, for reasons beyond its control, its current reports have not yet been tabled by the Minister of Constitutional Affairs before Parliament and, consequently, have not been made public.

The SCA emphasizes the importance for a 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 the Institution's reports are required to be widely circulated, discussed and considered by the legislature. It would be preferable if the NHRI has an explicit power to table reports directly in the legislature, rather than through the Executive, and in so doing to promote action on them.

Where an NHRI has made an application for accreditation or, re-accreditation, it will be required to submit a current annual report, that is, one from the preceding year's reporting period. The SCA finds it difficult to assess the effectiveness of a National Institution and its compliance with the Paris Principles in the absence of a current annual report.

The SCA acknowledges that the CHRAGG reports that it will ensure that all overdue reports are tabled in the next Parliamentary session. The CHRAGG further reports that it will continue to advocate for changes to its enabling law to enable its annual reports to be debated in Parliament.

The SCA encourages the CHRAGG to seek a solution to ensure its annual reports are tabled in Parliament, made public as soon as possible, and in doing so to promote action on them.

In the interim, the SCA encourages the CHRAGG to release additional public reports to inform the public about the situation of human rights and the activities of the CHRAGG.

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

3. Adequate funding

The CHRAGG notes that its budget allocation has increased. The SCA recognizes the efforts undertaken by the CHRAGG to improve its funding and encourages it to continue advocating for adequate funding to fully undertake its legislative mandate.

To function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the Institution's operations and the fulfilment of its mandate. Provision of adequate funding by the State should, as a minimum, include the following:

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent Institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);
- d) the establishment of well-functioning communications systems including telephone and internet;
- 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 refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding of NHRIs'.

4. Staffing

The CHRAGG reports that its staff recruitment process is conducted by the Public Service Recruitment Secretariat in collaboration with the CHRAGG, and that it must submit its requirements to this body in order to staff positions.

The use of a whole of government recruitment process for public servants is not inherently problematic so long as the process is transparent and objective, and ensures merit-based selection.

The SCA notes that the CHRAGG has reported that it initiates the recruitment process and determines its personnel requirements and the qualifications for the positions it undertakes to fill. It further reports that senior members of the CHRAGG participate as members of the interview panel for quality assessment. The SCA is of the view, however, that it would be preferable for the CHRAGG to have the power to undertake its own recruitment. The SCA notes that the CHRAGG reports that it is currently seeking ways to directly recruit its own staff.

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

Staff should be recruited according to an open, transparent and merit based selection process that ensures pluralism. Such a process promotes the independence and effectiveness of, and public confidence in, the NHRI.

The SCA encourages the CHRAGG to continue to advocate for the power to directly 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'.

5. Term of office

At its November 2016 session, the SCA re-iterated its 2011 recommendation that the CHRAGG consider seeking an amendment to its legislation to provide that the term of its commissioners be at least three (3) years and not more than seven (7), with the option to renew once.

An appropriate minimum term of appointment is crucial to promote the independence of the membership of an NHRI, and to ensure the continuity of its programs and services. An appointment period of three (3) years is considered the minimum that would be sufficient to achieve these aims.

The SCA acknowledges that the CHRAGG reports that, in practice, the term of appointment of its members is automatically renewed. However, the SCA encourages that a term of between three (3) and seven (7) years with the option to renew once be provided for in the NHRI's enabling law.

The CHRAGG also informed that during the Constitutional review process a staggered process where Commissioners are appointed and leave office at different intervals was considered to ensure continuity. The SCA encourages the CHRAGG to continue advocating for an amendment of its enabling Act to provide for a term of office of between three (3) and seven (7) years, renewable once.

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

6. Cooperation with other human rights bodies

The SCA highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to fulfil their mandates' effectively. In this regard, it acknowledges the CHRAGG's engagement and cooperation with civil society organisations.

The SCA encourages the CHRAGG to develop, formalise and maintain working relationships, as appropriate, 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.'

The SCA encourages the CHRAGG to cooperate with and seek assistance, as necessary, from OHCHR, GANHRI and NANHRI.

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

3.1 Argentina: Defensoría del Pueblo de la Nación Argentina (DPNA)

Decision: The SCA decides that further consideration of the re-accreditation application of the DPNA will be **deferred** to its second session of 2018.

The SCA commends the DPNA for carrying out its mandate in spite of the fact that the position of the Defensor has been vacant since 2009.

The SCA acknowledges the efforts undertaken by the DPNA in following up on the recommendations from the SCA and in advocating for changes to its enabling law in order to address the concerns of the SCA.

The SCA welcomes the increase in the budget of the DPNA.

The SCA notes that the process for selecting and appointing a new Defensor is ongoing, that the vacancy for the position has recently been advertised, that from among the candidates that have applied, the Bicameral Commission has selected three (3) candidates, and that these candidates have been presented to the National Assembly for consideration. However, no new Defensor has yet been appointed. Further, while Article 13 of the enabling Law requires that one of the Deputy Ombudspersons be officiated as acting Ombudsperson, the DPNA is currently headed by the General Undersecretary who was appointed by the National Congress. The SCA reiterates its concern that the delay in the appointment of the Ombudsperson and Deputy Ombudspersons could restrict the DPNA's ability to speak out on significant and controversial human rights concerns.

The SCA further notes:

1. Selection and appointment

In accordance with Article 2 of the Law, the selection process to nominate the Head of the Defensoría del Pueblo should be carried out by a bicameral commission formed by 7 Congress members and 7 Senate members. The bicameral commission revises the candidatures and must propose 1 to 3 candidates to the Senate and to the Congress. Within the next 30 days both the Senate and the Congress shall select and appoint the Defensor by 2/3 of votes.

The SCA notes that the process for selection and appointment currently enshrined in the enabling Law is not sufficiently broad and transparent. In particular, it does not:

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

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 DPNA 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 General Observation 2.2 on ‘Selection and appointment of the governing body’.

2. Human rights mandate

The SCA notes, that, in practice, the DPNA undertakes promotional activities. However, the DPNA’s enabling Law provides for a limited promotion mandate.

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

The SCA notes that draft amendments to the enabling Law have been laid before Parliament, and encourages the DPNA to continue to advocate for passage of these amendments to make its promotional mandate explicit. Until such time as the amendments are passed, the SCA encourages the DPNA to continue interpreting its mandate broadly.

The SCA refers to Paris Principle A.1, A.2 and A.3 and to its General Observation 1.2 on ‘Human Rights Mandate’.

3.2 Denmark: The Danish Institute for Human Rights (DIHR)

Decision: The SCA decides that further consideration of the re-accreditation application of the DIHR will be **deferred** to its second session of 2018.

The SCA notes that when specific issues are raised in relation to accreditation and reaccreditation of an NHRI, that NHRI is required to take steps to address these issues in a subsequent review. It is the expectation of the SCA 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.

The SCA invites the DIHR to provide information at its second session of 2018 on the steps it has taken to address the following ongoing issues of concern:

1. Selection and appointment

In accordance to Section 3 (2) of the Act, the Board is comprised of thirteen (13) members who are appointed in their personal capacity by various authorities. Six are appointed by the Council of Human Rights, four by the Rectors of various universities, two by the Conference of Rectors under Universities Denmark and one elected by the employees of the DIHR. Further, Section 5 of the Act provides that the Council of Human Rights is composed to reflect the prevailing views among civil

society organizations working in the field of human rights, following a public announcement. The law is otherwise silent on the selection and appointment process.

The SCA took note that the Council of Human Rights of the DIHR has decided to change its appointment procedure and now publishes vacancies, calls for candidates amongst its membership, and that its chairmanship recommends six board members for the Council's approval. However, the SCA notes that this process is not formalized in the DIHR's legislation, in regulation, or in another binding administrative guideline.

In addition, the SCA notes that 4 members are appointed by 4 universities and 2 by the Conference of Rectors according to different criteria. The SCA acknowledges the DIHR's view that to further circumscribe the process would interfere with the independence of the universities. However, the SCA is of the view that providing for different stakeholders to select members according to their rules of operation may result in different entities using different processes for selection, and that a consistent, transparent, merit-based and broadly consultative selection process should be used across all appointing entities.

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

The SCA encourages the DIHR to advocate for amendments to its enabling law to provide for a consistent, transparent, merit-based and broadly consultative selection and appointment process. In the interim, the SCA encourage the DIHR to consider policy and/or administrative options that would allow it to provide general guidance to nominating entities about their selection processes in a manner that both respects the principle of academic freedom and the requirements of the Paris Principles. This should include requirements to:

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

In 2012, the SCA noted that the Act is silent in granting immunity to the members for legal liability for actions taken in their official capacity.

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

- security of tenure

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

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

The SCA notes that the DIHR considers such provision as not relevant in the context of Denmark. However, the SCA is of the view that the DIHR failed to provide sufficient explanations to justify the reason why such a provision is neither relevant nor appropriate, given the specific context where it operates.

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

Therefore, the SCA encourages the DIHR to either advocate for provisions to protect members of the governing body from legal liability for actions undertaken in their official capacity, or to provide sufficient information to explain why it would be both unnecessary and inappropriate to introduce such provisions given its particular national context.

The SCA refers to its General Observation 2.3 on 'Guarantee of functional immunity'.

3. Dismissal of members

Article 3(2) of the Act indicates that the employee representative on the Board shall be protected against dismissal and other deterioration of working conditions in the same way as union representatives within concerned or similar areas.

The Act, however, is silent on the grounds or procedures for dismissal of other Board members. This was noted as an issue of concern by the SCA during its 2012 review of the DIHR.

The DIHR reports that its Rules of Procedure have been amended to include a provision by which the Board of Directors can encourage a member to resign, in view of the circumstances of a particular case. The SCA does not consider that this change is sufficient to ensure that members have access to an independent and objective dismissal process.

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

the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law. It should not be allowed based solely on the discretion of appointing authorities.

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

The SCA encourages the DIHR to advocate for appropriate amendments to its law to provide for an independent and objective dismissal process.

The SCA refers the DIHR to its General Observation 2.1 on 'Guarantee of tenure for members of the NHRI decision-making body'.

The SCA further notes:

4. Mandate

During the SCA session, the DIHR indicated that its core mandate is promotion rather than protection.

The SCA notes that section 2 of the Act provides the DIHR with a mandate to protect human rights, and that in its application, the DIHR has provided examples of activities it undertakes that it considers to be protection functions.

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

The SCA encourages the DIHR to interpret their protection mandate in a broad manner and to conduct a range of protection activities including monitoring, enquiring, investigating and reporting. The SCA further encourages the DIHR to provide additional information regarding how it discharges its protection mandate.

Furthermore, the SCA notes that the enabling legislation does not explicitly provide the DIHR with a mandate to encourage ratification or accession to international human rights instruments. The SCA is of the view that encouraging ratification of, or accession to, international human rights instruments is a key function of an NHRI.

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

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

5. Full-time members of an NHRI

Members of the Council of Human Rights and the Board of the DIHR are not full-time. The SCA is of the view that the enabling law of an NHRI should provide that members of its decision-making body include full-time remunerated members.

This assists in ensuring:

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

The SCA encourages the DIHR to advocate for the amendment of its legislation to ensure that the decision-making body includes full-time members.

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

6. Financial autonomy

The SCA welcomes that the DIHR reports that the Ministry of Finance has approved the transition from operating appropriations to reservation appropriations, and that this will enhance its financial autonomy and independence.

The SCA notes that the DIHR receives 18.4 million USD for international work and 4.6 million USD for national work.

The SCA understands that, outside of its core budget provided by the State, the DIHR receives funding from various and diverse sources to carry out specific projects. At the session, the DIHR reported that it receives funding, for example, from the Ministry of Foreign Affairs and development agencies.

The SCA notes that where, an NHRI receives funding from external sources, such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the NHRI. The SCA is of the view that to do otherwise has the potential to impact on the real or perceived independence of the NHRI.

Accordingly, the SCA encourages that the DIHR to provide additional information about the sources of funding it receives, how it determines its priorities in relation to this funding, and what safeguards it has put in place to ensure that the receipt of this funding does not impact on its real or perceived independence and the ability to freely determine its own priorities.

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

3.3 Nicaragua: Procuraduría Para la Defensa De los Derechos Humanos of Nicaragua (PDDH)

Decision: The SCA decides that further consideration of the re-accreditation application of the PDDH will be **deferred** to its first session of 2018.

During the review, a number of issues were brought to the attention of the PDDH pertaining to independence and effectiveness. The SCA recognises that in the interest of procedural fairness the NHRI should be given an opportunity to provide further information to the SCA on the issues that have been raised.

In particular, the SCA encourages the PDDH to provide information in relation to the following issues of concern:

1. Independence

The SCA sought to examine the PDDH's independence. However the SCA is of the view that the information provided by the PDDH to date has been insufficient to enable an adequate assessment.

The SCA notes that the Committee on Migrants Workers stated the following

“27. The Committee is concerned about the lack of information regarding the specific role of the Office of the Human Rights Advocate (Procuraduría de Derechos Humanos) with regard to migration issues, its independence, the existence of a complaints mechanism accessible to migrant workers and members of their families and the conduct of visits to migrant detention and custodial centres.

28. The Committee recommends that the State party entrust the Office of the Human Rights Advocate with the mandate to effectively carry out the promotion and protection of the rights of migrant workers and members of their families under the Convention. The Committee also recommends that the Office of the Human Rights Advocate be vested with the independent authority to investigate all issues relating to the human rights of migrant workers and members of their families, regardless of status, and to conduct unannounced visits to all places where migrant workers and members of their families may be deprived of their liberty. The Committee further recommends that the State party provide the Office of the Human Rights Advocate with adequate financial and human resources to enable it to effectively discharge its mandate in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights“. (CMW/C/NIC/CO/1 - 11th October 2016)

The SCA encourages the PDDH to provide its response to this observation.

Additionally, the SCA encourages the PDDH to provide:

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

The SCA 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.

The SCA notes that the real and perceived independence of an NHRI is fundamental to the Paris Principles. It stresses the importance of public confidence in the independence of a NHRI.

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

The SCA refers to Paris Principles B.2, B.3 and C (a).

2. Addressing human rights violations

The SCA notes that the outcome report of Nicaragua's review under the Universal Periodic Review of May 2014 recommends that Nicaragua guarantee a safe and enabling environment for journalists and human rights defenders and ensure that all cases of attacks against them are investigated by independent and impartial bodies.

The SCA notes that the PDDH has indicated that it has not received any complaints about attacks against human rights defenders and other human rights violations.

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

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.

3. Interaction with the international human rights system

The SCA recognizes 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.

It highlights that effective engagement with the international human rights system may include:

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

The SCA is further of the view that it is the responsibility of an NHRI to encourage the State to engage in an effective manner with the international and regional human rights systems.

The SCA encourages the PDDH to provide the SCA with additional information with respect to its engagement with the international and regional human rights system, including in particular efforts made to assist, facilitate and participate in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact-finding missions and commissions of inquiry.

The SCA continues to encourage the PDDH to increase its engagement with the international human rights system, and with the regional human rights mechanisms including the Inter American system, and to advocate for amendments to its enabling law to formalize the cooperation with the United Nations and other international and regional bodies.

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

The SCA encourages the PDDH to cooperate with and seek assistance from OHCHR, GANHRI and the Network of NHRIs of the Americas Region.

The SCA further notes:

4. Selection and appointment

Pursuant to Articles 138(9)(d) of the Constitution and 1(2) and 8 of the Law, the Ombudsperson and Deputy Ombudsperson are appointed by 60% majority vote of the Parliament. The enabling laws are otherwise silent on the selection process.

The SCA acknowledges that the PDDH reports that section 141 of *Law No. 606* requires that, when a position becomes vacant, the Board of Directors requests that the plenary approve a resolution to call for an election, and that this call is published in a media publication with national circulation.

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

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 PDDH to advocate for the formalization and application of a process that includes requirements to:

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

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

5. Adequate funding

The SCA notes that the Committee on Migrant Workers has expressed concern over the lack of adequate funding of the PDDH.

The SCA emphasizes that, to function effectively, a National Human Rights Institution must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure

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

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

The SCA encourages the PDDH to advocate for an appropriate level of funding to allow it to effectively carry out its mandate.

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

6. Term of office

According to articles 138(9) of the Constitution and 9 of the Law, the Ombudsperson and Deputy Ombudsperson are appointed for a five-year term. The SCA notes however that the Law does not limit the number of renewals.

The SCA reiterates its previously expressed concern that the ability for the term of office of an individual to be renewed without limitations has the potential to impact on the real and perceived independence of members of the decision-making body of an NHRI.

The SCA encourages the PDDH to advocate for an amendment to its enabling law to provide that the term of office of the Ombudspersons is renewable once.

The SCA refers to Paris Principle B.3.

7. Pluralism

The law is silent on the requirement for pluralism and representation of women within the PDDH membership and staff.

Diversity in the membership and staff of an NHRI facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI for all citizens. Pluralism refers to broader representation of national society.

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

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

- a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively

established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow and restrict the diversity and plurality of the composition of the NHRI's membership should be avoided;

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

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

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

The SCA continues to encourage the PDDH to advocate for the inclusion in its enabling law of provisions requiring pluralism in its membership and staff.

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

4. Special Review (Article 16.2 of the GANHRI Statute)

4.1 Burundi: The Commission Nationale Indépendante des droits de l'homme of Burundi (CNIDH)

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

In May 2016, the SCA decided to undertake a Special Review of the accreditation status of the CNIDH at its second session in November 2016 to ensure that the CNIDH continues to operate in full compliance with the Paris Principles.

In November 2016, the SCA recommended that the CNIDH be downgraded to B status. In so doing, the SCA stated the following:

“ The SCA acknowledges that the political situation in Burundi at present is volatile and that the CNIDH is operating in extremely difficult circumstances. It has taken this into account in arriving at this decision.

The SCA received information which raised concerns that the CNIDH may no longer be operating in full compliance with the Paris Principles. The issues raised in May 2016 include actions taken or not taken by the CNIDH since June 2015, in the aftermath of the election in Burundi, and statements made or not made by CNIDH regarding gross human rights violations in the country. The SCA notes that civil society organizations allege that the CNIDH:

- Is perceived as having taken positions that do not demonstrate independence from government;*
- Has not taken a position vis-a-vis abuses by security forces and militias in respect of certain gross human rights violations, including arbitrary detention and extrajudicial executions; and*
- Has underreported instances of serious human rights violations, including with respect to incidences of torture and the existence of mass graves.*

The SCA further takes note of the report A/HRC/33/37 of the United Nations Independent Investigation on Burundi, which asserts that the CNIDH has issued one report since the crisis erupted, and that “The report downplays gross human rights violations by indicating minimal numbers. As an illustration, for the whole of 2015, the report refers to 27 cases of torture and ill-

treatment in contrast to 250 cases of torture and ill-treatment documented by OHCHR between April 2015 and April 2016”.

The SCA takes note of the fact that the CNIDH disputes the allegations of the civil society organizations and the findings of the Independent Investigation.

The SCA considered the information provided by the CNIDH on actions it has undertaken during this period, including the following:

- *Development of a strategy on the monitoring of human rights violations relating to the 2015 electoral period which defines CNIDH’s role in the prevention, monitoring and responses to human rights violations during the electoral period;*

- *Activities undertaken by the CNIDH during the electoral period to promote human rights, including organisation of training and advocacy workshops for a wide range of stakeholders i.e. local administration, judiciary and police, religious leaders, women and youth leaders of the province of Bujumbura;*

- *Visits to 13 places of detention including prisons and custody cells where coup-leaders and demonstrators against the candidacy of the outgoing President were detained;*

- *Recommendations made to the Ministry of Justice on the situation of juvenile detainees;*

- *Declarations and press releases issued throughout the electoral process.*

The SCA also took into consideration the CNIDH’s 2015 annual report which highlights its activities in protecting human rights, including by providing legal assistance to victims, monitoring detention conditions and providing protection to vulnerable groups (children, persons with mental disabilities and foreigners in conflict with the law) or persons under threat. In addition, the NHRI provided data on the number of detainees released following actions having been taken by the CNIDH, improvement of detention conditions and physical protection. Finally, the annual report summarises the recommendations of the CNIDH to the Government, to the Ministry of Justice, to the judiciary, to the law enforcement services, to leaders of political parties, to civil society, to religious leaders, to the international community and to the general population.

During the session, the SCA gave the President of CNIDH the opportunity to provide his view on: the dissolution of the network of human rights observers; cooperation with civil society organisations; regularity of visits of place of detention; neutral position of CNIDH; actions undertaken to protect women victims of human rights violation and rape; downscaling of number of killings reported; number of complaints received; protection of internally displaced persons and refugees; cooperation with the international human rights mechanisms i.e. UN independent investigation on the situation of human rights in Burundi and military armed groups.

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

The SCA gave the CNIDH the opportunity to provide, within one (1) year, the evidence deemed necessary to establish its continued compliance with the Paris Principles.

In November 2017, the SCA reviewed the documentation and additional material submitted by CNIDH. This includes:

- its 2016 annual report;
- its semi-annual report for January – June 2017;

- a copy of a letter to the President of the Republic of Burundi on the establishment of a Commission on Human Trafficking;
- a letter to the Government related to the proposed resumption of cooperation with OHCHR; and
- various public statements and media excerpts.

Furthermore the SCA took into consideration the following information:

- The September 2017 report of the United Nations Commission of Inquiry on Burundi (A/HRC/36/54) which confirms the persistence of grave human rights violations, including extrajudicial executions, enforced disappearances, torture and cruel, inhuman or degrading treatment or punishment, and sexual violence. The report indicates that most of these violations are committed by members of the police, the army and the youth league of the ruling party. With respect to the CNIDH, the report notes is stating “*the lack of independence of the national institutions for monitoring the authorities’ actions in the field of human rights, namely the Independent National Human Rights Commission*”.
- The November 2016 Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/BDI/CO/5-6) which states: “*The Committee welcomes the statutory establishment of the Independent National Human Rights Commission in 2011, but is concerned that the independence of the National Commission may be jeopardized by its insufficient action taken to investigate and report on allegations of human rights violations, including acts of violence against women*”.

During its session, the SCA provided the CNIDH with the opportunity to provide additional information, and to respond to the following issues of concern:

- As noted above, the Commission of Inquiry confirms the persistence of grave human rights violations, including extrajudicial executions, enforced disappearances, torture and cruel, inhuman or degrading treatment or punishment, and sexual violence. When asked to characterize the current human rights situation in Burundi, the CNIDH indicated that the situation has improved, that the number of formal requests they have received has decreased and the number of recorded human rights violations has also decreased. The SCA is of the view that this response is inadequate and demonstrates an unwillingness to appropriately respond to credible allegations of serious human rights violations having been committed.
- In addition to the above, the Commission of Inquiry of Burundi (A/HRC/36/54, September 2017) noted the lack of independence of the CNIDH. When asked to respond to the findings of the Commission of Inquiry including its characterization of the independence of the institution, the CNIDH disputed the findings of the Commission of Inquiry on the basis they have not been granted access to Burundi and as a result, has not taken into account various perspectives. As above, The SCA is of the view that this response is inadequate and demonstrates an unwillingness to appropriately respond to credible allegations of serious human rights violations having been committed
- As noted above, the CEDAW expressed concern that “*the independence of the National Commission may be jeopardized by its insufficient action taken to investigate and report on allegations of human rights violations, including acts of violence against women*”. When asked to respond to this report, the CNIDH indicated that it disputed this characterization and did not know the basis of this analysis. The SCA is of the view that this response again that this response is inadequate and demonstrates an unwillingness to appropriately respond to credible allegations of serious human rights violations having been committed

The SCA acknowledges that the CNIDH continues to operate in volatile and extremely difficult circumstances.

However, based on the above, the SCA is of the view that the CNIDH does not discharge its mandate in a manner that promotes respect for human rights in response to credible allegations of serious human rights violations having been committed by the authorities and has failed to demonstrate a willingness to speak out on all human rights issues. The failure to do so demonstrates a lack of independence. Therefore, the SCA is of the view that the CNIDH is acting in a way that has seriously compromised its compliance with the Paris principles.

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

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

It encourages the CNIDH to cooperate with and seek assistance from OHCHR, GANHRI and NANHRI to address the issues noted above.

Given all the material before it, the SCA is of the view that Burundi is facing a sudden and dramatic change in the internal political order of a state, considering gross violations of human rights noted in particular by the Commission of Inquiry on Burundi, and this is accompanied by the fact that the CNIDH acts in a way that seriously compromises its compliance with the Paris Principles.