

NOTE

As of 4 March 2019 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 Human Rights Commission of Mauritania, “the Bureau decided to adopt the recommendation of the SCA relating to the NHRI of Mauritania of October 2018, 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, 15-19 October 2018**

## SUMMARY OF RECOMMENDATIONS

<b><u>2. Re-Accreditation (Art. 15 of the GANHRI Statute)</u></b>
<b><u>2.1 Denmark: The Danish Institute for Human Rights (DIHR)</u></b> <b>Recommendation:</b> The SCA recommends that the DIHR be re-accredited with <b>A</b> status.
<b><u>2.2 Georgia: The Office of the Public Defender (OPD)</u></b> <b>Recommendation:</b> The SCA recommends that the OPD be re-accredited with <b>A</b> status.
<b><u>2.3 Namibia: The Office of the Ombudsman (Ombudsman)</u></b> <b>Recommendation:</b> The SCA recommends that the Ombudsman be re-accredited with <b>A</b> status.
<b><u>2.4 Rwanda: The National Commission for Human Rights of the Republic of Rwanda (NCHR)</u></b> <b>Recommendation:</b> The SCA recommends that the NCHR be re-accredited with <b>A</b> status.
<b><u>2.5 Timor-Leste: The Provedoria for Human Rights and Justice (PDHJ)</u></b> <b>Recommendation:</b> The SCA recommends that the PDHJ be re-accredited with <b>A</b> status.
<b><u>2.6 Zambia: The Human Rights Commission (HRCZ)</u></b> <b>Recommendation:</b> The SCA recommends that the HRCZ be re-accredited with <b>A</b> status.
<b><u>3. Decision (Art. 14.1 of the GANHRI Statute)</u></b>
<b><u>3.1 Argentina: The Defensor del Pueblo de la Nación Argentina (DPNA)</u></b> <b>Decision:</b> The SCA decides to <b>defer</b> the review of the DPNA to its second session of 2019.
<b><u>3.2 Ecuador: The Defensor del Pueblo de Ecuador (DPE)</u></b> <b>Decision:</b> The SCA decides to <b>defer</b> the Special Review of the DPE to its second session of 2019.
<b><u>4. Review (Art. 16.2 of the GANHRI Statute)</u></b>
<b><u>4.1 Chile: The Instituto Nacional de Derechos Humanos (INDH)</u></b> <b>Recommendation:</b> The SCA recommends that the accreditation status of the INDH be maintained.
<b><u>5. Alteration of accreditation classification (Article 18.1 of the GANHRI Statute)</u></b>
<b><u>5.1 Mauritania: The Commission Nationale des droits de l'homme (CNDH)</u></b> <b>Recommendation:</b> The SCA recommends that the CNDH be downgraded to <b>B</b> status.

## **Report, Recommendations, and Decision of the Session of the SCA, 15-19 October 2018**

### **1. BACKGROUND**

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

At its February 2018 session, the Bureau adopted amendments to the SCA Rules of Procedure and the General Observations.

At its February 2018 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), Morocco for Africa, Philippines for Asia-Pacific and Canada for the Americas. In accordance with section 3.1 of the SCA's Rules of Procedure, the NHRI of the Netherlands participated as alternate member for Europe to learn about the procedures in practice, in advance of serving on the next SCA first session in 2019, during which the NHRI of France will be reviewed.

**1.3** The SCA convened from 15 to 19 October 2018. 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), and Network of African National Human Rights Institutions (NANHRI). The SCA also welcomed the participation of a representative from the GANHRI Head Office.

**1.4** Pursuant to article 15 of the Statute, the SCA considered applications for re-accreditation from the NHRIs of Denmark, Georgia, Namibia, Rwanda, Timor-Leste and Zambia.

**1.5** Pursuant to article 14.1 of the Statute, the SCA took a decision regarding the reaccreditation of the NHRI of Argentina.

**1.6** Pursuant to article 16.2 of the Statute, the SCA conducted a special review of the NHRIs of Ecuador and Chile. It took a decision regarding the special review of the NHRI of Ecuador pursuant to article 14.1 of the Statute.

**1.7** Pursuant to article 18.1 of the Statute, the SCA reviewed the NHRI of Mauritania.

**1.8** 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.

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

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

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

**1.11** 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.

**1.12** 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.

**1.13** 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.
- 1.14** At each session the SCA conducts a teleconference with every NHRI. It may also consult with and seek further information from NHRIs where necessary.
- 1.15** 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.
- 1.16** At any time, the SCA may receive information that raises concern that the circumstances of a NHRI have changed in a way that affects its compliance with the Paris Principles, and the SCA may then initiate a Special Review of that NHRI's accreditation status.
- 1.17** Pursuant to Article 16.3 of the Statute, any review of the accreditation classification of a NHRI must be finalized within 18 months.
- 1.18** The SCA acknowledges the high degree of support and professionalism of the GANHRI Secretariat (OHCHR-NIRMS).
- 1.19** 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/>).

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

**1.21 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%202/Forms/Default%20View.aspx>

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

### **2.1 Denmark: The Danish Institute for Human Rights (DIHR)**

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

The SCA notes with appreciation the efforts undertaken by the DIHR to address the recommendations made in November 2017.

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.

**The SCA notes:**

#### **1. Mandate**

The SCA notes that section 2 of the Act provides the DIHR with a mandate to both promote and protect human rights, and that, in its application, the DIHR has provided details about a wide range of activities it undertakes that would be considered to be protection functions.

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 continue to interpret its protection mandate in a broad manner and to conduct a range of protection actions, including monitoring, enquiring, investigating, and reporting.

Further, the SCA notes that the DIHR is not explicitly mandated with responsibility to encourage ratification or accession to international human rights instruments. While acknowledging the activities the DIHR undertakes in this regard in practice, the SCA encourages the DIHR to advocate for amendments to its enabling law to make this mandate explicit.

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

#### **2. Selection and appointment**

The SCA notes that, in response to its previous recommendation to ensure a broad, transparent and uniform selection process across all appointing entities, 1) the DIHR has amended its Bylaws and 2) the appointing entities have adopted guidelines to better detail the process.

The SCA notes that the Human Rights Council of Greenland has not yet adopted a similar guideline. It encourages the DIHR to advocate for the adoption by the Council of a guideline or similar binding administrative instrument to regulate the selection process.

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

### **3. Dismissal of members**

In accordance with the Bylaws of the DIHR, members of the Board of Directors can be dismissed where they lack the personal and professional integrity to continue to serve on the Board of Directors.

The SCA appreciates that the DIHR has indicated that there is a relevant body of Danish jurisprudence that clarifies “personal and professional integrity”. Nonetheless, and in the interests of clarity and consistency, the SCA encourages the DIHR to provide greater precision in its Bylaws or in another binding administrative guideline on the scope of this ground.

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’.

#### **2.2 Georgia: Office of the Public Defender (OPD)**

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

The SCA commends the efforts undertaken by the OPD to promote and protect human rights and acknowledges that it operates in a challenging context. The SCA notes with appreciation the efforts made by the OPD to address the previous recommendations made by the SCA.

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

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

##### **1. Anti-discrimination mandate**

The SCA acknowledges that the OPD has a broad mandate to promote and protect human rights, and that it exercises this mandate in practice.

The SCA notes, however, that the Anti-discrimination Law obliges public agencies to provide information to the Public Defender while private entities and individuals provide information to the Public Defender only on voluntary basis, and that the UN Committee on the Elimination of Racial Discrimination expressed concern that this may impact the ability of the OPD to effectively examine cases of discrimination (CERD/C/GEO/CO/6-8).

The SCA encourages the OPD to continue to advocate for appropriate amendments to the Anti-discrimination Law to make mandatory the provision of information by private entities and individuals.

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

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

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

The SCA acknowledges that the OPD has produced and made publicly available such reports. It encourages the OPD to continue to do so.

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

The SCA acknowledges that the OPD conducts follow up activities to monitor the extent to which their recommendations have been implemented. It encourages the OPD to continue to do so.

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

### **3. Pluralism and diversity**

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

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

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

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

### **4. Selection and appointment**

In accordance with Article 6(1) of the Law, a person elected as Public Defender must be a citizen of Georgia. The Law is otherwise silent on the criteria to be used in identifying and evaluating candidates.

Further, in accordance with Article 6(2) of the Law, the Public Defender is elected by a majority of the members of the Parliament, and may be nominated by a Parliamentary faction or by a group of at least six (6) members of Parliament who do not belong to any faction.

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.

The SCA acknowledges that the OPD reports that there are currently efforts underway to amend the Rules of Procedure of the Parliament to provide detail procedures for selection, and that it has been actively involved in this process.

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

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and/or participation in the application, screening, selection and appointment process;
- 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, in addition to its existing mandate, the OPD has been mandated with responsibilities for anti-discrimination activities, as NPM under OPCAT, and as monitoring mechanism under the CRPD.

The OPD reports that the funds allocated for its work have gradually increased since 2012, and it is able to use these funds freely, according to its own priorities. It also reports receiving additional funds from external donor sources.

To function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. Where an NHRI has been mandated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

The SCA encourages the OPD to continue to advocate for the funding necessary to ensure that it can effectively carry out its mandate, including its newly-mandated responsibilities.

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

### **2.3 Namibia: The Office of the Ombudsman (Ombudsman)**

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

The SCA commends the continuing efforts of the Ombudsman advocating for amendments to its enabling law. The SCA notes that the intention of the Government is to repeal and replace its enabling law rather than amend it. While noting that the Ombudsman is entrenched in the Constitution, the SCA nevertheless draws the Ombudsman's attention to its Practice Note 4 on NHRIs in transition and encourages the Ombudsman to work with OHCHR and NANHRI to ensure that the current standing of the Ombudsman and its accreditation classification are safeguarded.

While the SCA has recommended that the Ombudsman be re-accredited in this instance on the basis of its existing legislative framework and performance and notwithstanding that legislative reform is pending, it wishes to highlight its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts 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.

In this case, the SCA expects that the Ombudsman will continue to advocate for the passage of appropriate amendments to its enabling law. It invites the Ombudsman to provide a copy of the amendments once adopted.

**The SCA notes:**

**1. Mandate**

The SCA has noted that, while the Ombudsman's mandate refers to the protection of constitutional rights and freedoms, this includes some, but not all, recognised civil, political, economic, social and cultural rights. Furthermore, the SCA has noted that the enabling legislation refers to protection of human rights, but not to promotion.

An NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights.

While acknowledging that the Ombudsman interprets its mandate in a broad manner, the SCA encourages the Ombudsman to continue to advocate for the appropriate change in its enabling law to provide the institution with an explicit mandate to promote and protect all human rights.

Further, the SCA has noted that the enabling law does not provide the Ombudsman with an explicit mandate to encourage ratification or accession to international human rights instruments.

Encouraging ratification of or accession to international human rights instruments, and the effective implementation of those instruments to which the state is a party, is a key function of an NHRI. The SCA considers it important that these duties form part of the legislative mandate of an NHRI.

The SCA encourages the Ombudsman to continue to advocate for the appropriate amendments to its enabling law in order to have an explicit mandate to encourage ratification or accession to international human rights instruments.

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

**2. Selection and appointment**

In accordance with article 90(1) of the Constitution, the President, on the recommendation of the Judicial Service Commission, appoints the Ombudsman. Similarly, in accordance with section 2(2) of the Act, the Deputy Ombudsman is appointed on the same basis.

The SCA reiterates its previous recommendation, made in November 2016, that the process currently enshrined in the enabling Law is not sufficiently broad and transparent. In particular, it does not

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

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 Ombudsman 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. Adequate funding and financial autonomy**

The SCA notes that the Ombudsman's budget has increased regularly for the exception of 2018-19 due to the application of austerity measures to all public bodies.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. An insufficient budget can limit an NHRI from reaching its full effectiveness.

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

Further, in accordance with section 9 of the enabling law, the budget of the Ombudsman is paid from moneys appropriated for that purpose. The SCA has noted that the law does not specify the source of the funds.

The SCA reiterates that national law should indicate from where the budget of the NHRI is allocated. Government funding should be allocated to a separate budget line applicable only to the NHRI and 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 Ombudsman to advocate for appropriate amendments to its law in order to specify the source of its funding.

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

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

The SCA has noted that the term of the Ombudsman is not limited in the enabling law. Rather, the Constitution stipulates that the Ombudsman shall hold office until the age of 65 but the President may extend the retiring age of the Ombudsman to 70.

In practice, the SCA encourages that a term of between three (3) and seven (7) years with the option to renew once be provided for in the NHRI's enabling law. The SCA encourages the

Ombudsman to continue to advocate for amendments to its enabling law to provide for such a fixed term.

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

## **5. Staff**

The SCA has noted that the enabling legislation does not specifically empower the Ombudsman to recruit its own staff. Rather, in accordance with section 7(1) of the Act, the Office of the Ombudsman is staffed by Public Service Officers that have been made available.

The SCA continues to stress that 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.

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

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

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

### **2.4 Rwanda: The National Commission for Human Rights of the Republic of Rwanda (NCHR)**

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

The SCA notes with appreciation the efforts made by the NCHR to address the recommendations made by the SCA in May 2013. The SCA commends the continuing efforts of the NCHR to promote and protect human rights despite the challenging context in which it operates, including by advocating for amendments to its enabling law.

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.

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

##### **1. Addressing human rights violations**

The SCA received information which raises concerns regarding the effectiveness of the NCHR in dealing with serious human rights issues, including arbitrary detention, enforced disappearances and discrimination against minorities.

The SCA notes that the NCHR reports to have undertaken various activities to address these issues, including visiting places of detention, monitoring court proceedings, and conducting work

in relation to the economic and social rights of marginalised groups. The NCHR also reports that it has advocated for the ratification of the International Convention for the Protection of all Persons from Enforced Disappearances.

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

NHRIs are required to promote and ensure respect for all human rights, democratic principles and the strengthening of the rule of law in all circumstances, and without exception. Where serious violations of human rights are imminent, NHRIs are expected to conduct themselves with a heightened level of vigilance and independence.

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

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

## **2. NPM mandate**

The SCA notes that the enabling law of the NCHR has been amended and published in the Official Gazette entrusting it with the mandate of NPM under OPCAT.

The SCA notes that the NCHR is in the process of defining the structure and the implementation of its activities under the NPM mandate. The SCA encourages the NCHR to discharge this mandate in an independent, effective and functional manner and to ensure that it is effectively undertaking all relevant roles and functions provided under OPCAT.

The SCA emphasizes that, where an NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to effectively discharge these functions. The SCA encourages the NCHR to advocate for additional resources to enable it to effectively carry out its mandate as the NPM.

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

## **3. Dismissal of members**

The SCA notes that, according to Article 26 of the Law, a Commissioner may be removed from office on various grounds. The Law is silent on the process for 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. Dismissal should not be allowed based solely on the discretion of appointing authorities.

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

The SCA encourages the NCHR to advocate for amendments to the law to ensure 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.'

## **2.5 Timor-Leste: Provedoria dos Direitos Humanos e Justica (PDHJ)**

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

The SCA commends the efforts undertaken by the PDHJ to address the recommendations made by the SCA in November 2013. It further notes with appreciation the activities undertaken by the PDHJ to promote and protect human rights, including by monitoring places of detention, and encourages it to continue this work.

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.

### **The SCA notes:**

#### **1. Cooperation with civil society organisations**

The SCA acknowledges that the PDHJ engages with a broad range of civil society organisations including through the Advisory Council. It encourages the PDHJ to continue to maintain systematic and formalised working relationships and cooperation with civil society organisations.

Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates, and contributes to the accessibility of the Institution for all citizens, including those who are geographically, politically or socially remote.

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

#### **2. Pluralism and diversity**

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

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

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

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

### **3. Selection and appointment of Deputy Provedor**

Article 16(1) and (2) of the Law stipulates that the Provedor may appoint two (2) or more Deputies for a renewable period of 4 years 'on the basis of transparent and objective criteria, giving consideration, notably, to their integrity, independence, impartiality and qualifications'.

The SCA acknowledges that PDHJ has developed a *Provedor Dispatch* establishing the procedures regarding appointment criteria for the Deputies, and that this is a binding administrative guideline.

The SCA is of the view that this is sufficient for the purpose of Paris Principles compliance. However, in the interest of clarity and transparency, the SCA encourages the PDHJ to continue to advocate for formalization of the selection criteria in its enabling law.

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'.

### **4. Adequate Funding**

The SCA received information that the PDHJ would benefit from additional funding to effectively carry out the full breadth of its mandate.

The SCA emphasises 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 realisation of improvement in the NHRI's operations and the fulfilment of its mandate.

While the SCA acknowledges that the PDHJ reports to have sufficient funding, it encourages the PDHJ to continue to advocate for an appropriate level of funding to enable it effectively fulfil its mandate, especially its protection activities, and in particular monitoring places of detention.

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

### **5. Dismissal of Deputy Provedor**

Article 16(6) of the Law states that the Deputy Provedor shall be removed from office by the Provedor. While the Law does not provide further details on the dismissal process, the SCA acknowledges that PDHJ has developed a *Provedor Dispatch* establishing the procedures regarding the dismissal of the Deputy Provedor, and is in the process of proposing amendments to its enabling law to incorporate these provisions.

It is the view of the SCA that provisions relating to dismissal of members of the governing body of an NHRI can be appropriately contained in legislation, regulation, or another binding administrative guideline. In this instance, security of tenure for the Deputy Provedor would be further strengthened through an amendment to Article 16(6) of the Law.

The SCA refers to its General Observation 2.1 on 'Guarantee of tenure for Members of governing body'.

## **2.6 Zambia: The Human Rights Commission (HRCZ)**

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

The SCA commends the continuing efforts of the HRCZ to promote and protect human rights despite the challenging context in which it operates, including by advocating for amendments to its enabling law. The SCA notes that the consideration of the draft amendment Bill is ongoing and the Amendment Bill is yet to be tabled before Parliament.

While the SCA has recommended that the HRCZ be re-accredited in this instance on the basis of its existing legislative framework and performance and notwithstanding that legislative reform is pending, it wishes to highlight its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts 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.

In this case, the SCA is satisfied that the HRCZ will continue to advocate for the passage of appropriate amendments to its enabling law. It invites the HRCZ to provide a copy of the amendments once adopted.

### **The SCA notes:**

#### **1. Mandate**

In November 2016, the SCA noted that the enabling Law does not provide the HRCZ with an explicit mandate to interact with the international human rights system, or to encourage ratification or accession to international human rights instruments.

Encouraging ratification of, or accession to, international human rights instruments, and the effective implementation of those instruments to which the State is a party, is a key function of an NHRI. The SCA considers it important that these duties form part of the enabling legislation of an NHRI.

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

The SCA notes that section 5(2) of the Amendment Bill explicitly mandates the HRCZ to both interact with the international human rights system and encourage ratification or accession to international human rights instruments. The SCA is of the view that these amendments, if passed in their present form, would address the previously stated concerns. The SCA therefore encourages the HRCZ to continue to advocate for the passage of the amendments.

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

## **2. Selection and appointment**

In accordance with section 5(2) of the enabling Law, Commissioners are appointed by the President, subject to ratification by the National Assembly. In accordance with section 5(3) of the enabling Law, the Chairperson and Vice-Chairperson shall be persons who have held, or are qualified to hold, high judicial office. The Act is otherwise silent on the merit criteria to be used in selecting Commissioners.

The SCA reiterates its previous recommendation, made in November 2016, that the 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
- 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 another binding administrative guideline, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA notes that, in accordance with Section 6 (1) of the Amendment Bill, Commissioners are appointed by the President, subject to ratification by the National Assembly. It further provides that the Commission is to consist of a Chairperson, a Vice chairperson, and a representative of each of nine different entities. Section 6 (5) of the Amendment Bill provides that the entities referred to nominate their member.

The SCA is of the view that the proposed selection process is not sufficiently broad and transparent, in particular it does not:

- require the advertisement of vacancies;
- establish clear and uniform criteria upon which the nominating entities assess the merit of eligible applicants;
- provide that the members selected by nominating entities serve in their individual capacity rather than on behalf of the organisation they represent; and
- promote broad consultation and/or participation in the application, screening, selection and appointment process for the Chairperson and the Vice chairperson.

The SCA further notes that providing for different nominating entities to select members may result in different entities using different processes for selection. The SCA is of the view that these processes should be harmonized across all nominating entities.

The SCA encourages the HRCZ to continue to advocate for the formalization and application of a harmonized 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**

In November 2016, the SCA noted concerns with respect to the budgetary situation of the HRCZ, and how these constraints had impacted on its ability to recruit and retain staff.

The SCA notes that the HRCZ reports that it has seen an improvement in its financial situation, as well as its ability to recruit and retain staff. The SCA encourages the HRCZ to continue to advocate for an appropriate level of funding to allow it to effectively carry out its mandate.

Also in November 2016, the SCA noted that the HRCZ relies heavily on donor funding, and that the Law requires the HRCZ to seek the approval of the President in order to accept such funding.

The SCA notes that the HRCZ has clarified that in practice it is not required to seek such approval. It further notes that, in accordance with section 22 (2)(a) of the amendment Bill, the HRCZ may accept money by way of grants or donations from any source within or outside of Zambia, with no requirement for Presidential approval. The SCA is of the view that these amendments, if passed in their present form, would address the previously stated concerns. The SCA therefore encourages the HRCZ to continue to advocate for the passage of the amendments.

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

### **4. Annual report**

The SCA notes that, while Article 241(e) of the Constitution provides that the annual report of the HRCZ is submitted to the National Assembly, section 25 of the enabling Law requires that the HRCZ's annual report is first submitted to the President, who then submits it to the National Assembly. The SCA further notes that there has been a substantial delay in the publication of the HRCZ's annual reports. These issues were raised during the SCA's November 2016 review of the HRCZ.

The SCA stresses the importance of an NHRI preparing, publicizing and widely distributing 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 is preferable for an NHRI to have an explicit power to table reports directly in the legislature, rather than through the Executive, and in so doing promote action on them.

The SCA notes that section 7 (1) of the Amendment Bill provides for the HRCZ to submit reports in relation to its activities during the financial year to the National Assembly. The SCA is of the view that these amendments, if passed in their present form, would address the previously stated concerns. The SCA therefore encourages the HRCZ to continue to advocate for the passage of the amendments.

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

## **5. Dismissal process**

Section 7(2) of the enabling Law provides that a Commissioner may be removed from office for 'inability to perform the functions of their office, whether arising from infirmity of body or mind, incompetence or for misbehaviour'. The enabling Law does not define these terms, and is silent on the process for dismissal. This was raised as an issue of concern during the SCA's November 2016 review of the HRCZ.

The SCA is of the view that, in order to address the Paris Principles requirement for a stable mandate, which is important in reinforcing independence, the enabling legislation of an NHRI must contain an independent and objective dismissal process, similar to that accorded to members of other independent State agencies. 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 grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact on the capacity of the members to fulfil their mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. Dismissal should not be allowed solely on the discretion of the appointing authorities.

The SCA notes that section 7 of the Amendment Bill provides that the HRCZ membership may be terminated by the President on several grounds, including a finding of gross misconduct following an investigation. The SCA is of the view that these amendments, if passed in their present form, would address the previously stated concerns. The SCA therefore encourages the HRCZ to continue to advocate for the passage of the amendments.

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'.

## **6. Full-time members**

The Law is silent on whether members serve in a full-time or part-time capacity, and the HRCZ reports that it has no full-time members. This was noted during the SCA's November 2016 review of the HRCZ.

The SCA is of the view that the appointment of members on full-time basis promotes stability, an appropriate degree of management and reaction, and limits the risk of members being exposed to conflicts of interest upon taking office.

The SCA notes that section 6(1) of the Amendment Bill provides for members to serve on full-time basis. The SCA is of the view that these amendments, if passed in their present form, would address the previously stated concerns. The SCA therefore encourages the HRCZ to continue to advocate for the passage of the amendments.

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

## **7. Tenure**

In accordance with section 7(1) of the enabling Law, a Commissioner is appointed for a term not exceeding three (3) years, subject to renewal. In November 2016, the SCA expressed concern that this term is too short to promote the independence of members and ensure the continuity of programs and services.

The SCA notes that the term of office provided by the existing legislation is the minimum term that the SCA considers appropriate. It further notes that section 7 (1) of the Amendment Bill stipulates that the Commissioner shall hold office for a five (5) year term, renewable once. The SCA is of the view that these amendments, if passed in their present form, would address the previously stated concerns. The SCA therefore encourages the HRCZ to continue to advocate for the passage of the amendments.

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

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

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

### **3.1 Argentina: The Defensor del Pueblo de la Nación Argentina (DPNA)**

**Decision:** The SCA decides to **defer** the review of the DPNA to its second session of 2019.

The SCA has deferred the review of the DPNA on three (3) occasions – in October 2016, in November 2017 and in October 2018 – on the basis of its concern that the position of Defensor has been vacant since 2009 and that, despite multiple attempts, a Defensor has not been appointed.

The SCA again reiterates in the strongest terms its concern that the failure to appoint a Defensor has an actual or perceived impact on the permanency and institutional independence of the DPNA. It also restricts its ability to effectively carry out the full extent of its mandate. In this regard, the SCA notes that the DPNA is unable to initiate new procedural cases in the absence of a Defensor.

The SCA stresses the need for this situation to be resolved in order to maintain the permanency and institutional independence of the DPNA.

The requirement that the structure and composition of an NHRI be set out in a constitutional or legislative text is of central importance in guaranteeing both the permanency and independence of the institution. It follows that, in order to preserve this permanency and independence, the NHRI must seek to operate in compliance with the legal provisions through which it was created, and in this way be distinguished from an agency of state, a non-government organization, or an ad hoc body. In the absence of this, the SCA is concerned that the DPNA may not be operating in full compliance with the Paris Principles.

The SCA notes that the country will hold national elections in October 2019. The SCA strongly encourages the DPNA to advocate for resolution of this situation prior to the SCA's second session of 2019.

**The SCA further notes:**

**1. 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'.

**2. Selection and appointment**

In November 2017, the SCA noted that the process for selection and appointment currently enshrined in the law is not sufficiently broad and transparent.

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 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'.

**3.2 Ecuador: Defensoría del Pueblo de Ecuador (DPE)**

**Decision:** The SCA decides to **defer** the Special Review of the DPE to its second session of 2019.

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

The SCA decided to initiate a Special Review of the DPE on the basis of a letter received from the GANHRI Chairperson alerting it of the dismissal of the head of the DPE, Dr. Ramiro Rivadeneira, by the Transitory Council on Citizen Participation and Social Control (CPCCS-T).

The SCA took note that:

- On May 2, Dr. Rivadeneira was dismissed following his refusal to cooperate with the CPCCS-T in a review of his position as head of the DPE;
- On May 3, the CPCCS-T appointed Dr. Gina Benavides as acting Defensora; and
- The CPCCS-T was set up as a transitional body following a referendum held on February 4, which mandated it with the authority to evaluate how public bodies have fulfilled their mandate, to dismiss mandate holders, and to immediately begin the selection process for a replacement. The members of the CPCCS-T were elected by the Parliament on the proposal of the President of Ecuador.

The SCA was of the view that this information raised concerns with respect to the continued compliance of the DPE with the Paris Principles and, accordingly, it initiated a Special Review in accordance with article 16.2 of the Statute.

During the session, the SCA considered all of the information provided by the DPE, including that:

- the events giving rise to the Special Review came about as a result of a national referendum that provided a “popular mandate” to the CPCCS-T;
- there were significant concerns expressed by civil society regarding the performance of Dr. Rivadeneira during his tenure as Defensor; and
- the DPE is engaged in a process of institutional reform in order to increase its institutional independence and effectiveness.

While acknowledging that the DPE reports that the results of the referendum are considered equivalent to constitutional law in the Ecuadorian legal context, the SCA remains concerned that the taking of these decisions in this manner could adversely impact the actual and perceived institutional independence of the DPE.

The SCA encourages the DPE to advocate for the appointment of a new Defensor without delay through a process that is independent, broad, transparent and participatory.

Further, the SCA encourages the DPE to continue to carry out its mandate in a manner that promotes and ensures respect for human rights, democratic principles and the strengthening of the rule of law in all circumstances, and without exception.

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

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

##### **4.1 Chile: The Instituto Nacional de Derechos Humanos (INDH)**

**Recommendation:** Following the Special Review initiated in accordance with Article 16.2 of the Statute, the SCA recommends that the accreditation status of the INDH be maintained.

In its May 2018 session, the SCA decided to undertake a special review of the INDH based on information received from a group of civil society organisations alerting it to the dismissal of the Director of the INDH, Branislav Marelic Rokov, and related concerns with respect to an alleged conflict of interest in the selection of his replacement.

In light of the information provided by the INDH, the SCA considers that no further review of the Institution is required at this time.

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

### **5.1 Mauritania: Commission Nationale des Droits de l’Homme (CNDH)**

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

In November 2017, the SCA recommended that the CNDH be downgraded to B status. In accordance with Article 18.1 of the GANHRI Statute, the SCA gave the CNDH the opportunity to provide, within one (1) year, the written evidence deemed necessary to establish its continued compliance with the Paris Principles.

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

In October 2018, the SCA reviewed the documentation and additional material made available by the CNDH, summarizing and reporting on all activities it has carried out to implement the previous recommendations of the SCA. The SCA also reviewed information received from civil society. During the session, the SCA conducted a telephone interview and gave the CNDH the opportunity to respond to the information received and provide its views on matters, including:

- the selection and appointment process of members;
- the involvement of civil society in the selection and appointment process;
- the rights of voting and non-voting members;
- the absence of publicly available reports on visits of places of detention;
- the lack of consideration of “politically-sensitive” complaints;
- cases of enforced disappearances in the context of the 2018 elections;
- actions undertaken to protect the rights of marginalised groups such as the Haratines; and
- the public position taken by the CNDH on the amendments to the Mauritanian criminal code in 2018.

The SCA acknowledges that the CNDH has taken some steps to address the previously-stated concerns of the SCA.

However, the SCA remains concerned that the actual and perceived independence of the CNDH has not been established. In view of all the information provided, the SCA is not satisfied that the CNDH has adequately addressed the substance of its concerns.

**The SCA again notes with concern:**

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

In November 2016, the SCA noted concerns with respect to the selection and appointment process. In response to these concerns, the CNDH did advocate for some amendments to its enabling law. However, in November 2017, the SCA noted the following ongoing concerns:

*“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) 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 provided the CNDH the opportunity to respond to these concerns. It acknowledges that the CNDH considers that its existing selection and appointment process is broad and transparent.

However, the SCA is of the view that the CNDH has not adequately responded to the substance of the SCA’s concerns regarding the actual or perceived independence of the members who are selected by the various appointing entities.

A transparent 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 necessary amendments to its selection and appointment

process, in law and in practice, in order to ensure the actual and perceived independence of this process and promote public confidence in the institution.

The SCA again 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**

In November 2016, the SCA noted concerns with respect to the CNDH's willingness to address all human rights violations. In November 2017, the SCA reiterated these concerns and noted the following:

*"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 acknowledges that the CNDH reported that it has undertaken various activities, including:

- conducting visits to places of detention and issuing recommendations;
- undertaking awareness-raising activities, including in relation to the abolition of death penalty;
- providing alternative reports to CAT and CERD; and
- cooperating with some civil society organisations.

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

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

- The SCA remains concerned that it has not received the written evidence necessary to establish that the CNDH is effectively carrying out its mandate in relation to monitoring places of deprivation of liberty. The SCA acknowledges that the CNDH reported that details regarding these activities were contained in its annual report. However, as in November 2017, the SCA was again unable to locate these findings and recommendations in the referenced report. In these circumstances, the SCA is unable to verify that the CNDH is effectively carrying out its mandate.
- The SCA is further concerned that the CNDH has reported in its submission to the Committee Against Torture that it has not found any cases of arbitrary detention. The SCA has received credible reports on the existence of arbitrary detention. Similarly, during the telephone interview during the session, the CNDH reported that there are no cases of extrajudicial executions in the country. Again, the SCA has received credible reports to the contrary. The SCA is of the view that these responses provided by the CNDH demonstrate an unwillingness to address these serious human rights violations.

- The SCA received information about the amendment of the Mauritanian Criminal Code in April 2018, which provides for systematic application of the death penalty in cases of blasphemy and apostasy. During the session, the SCA asked the CNDH to provide details on what, if any, actions it has taken in relation to this issue. The SCA acknowledges that the CNDH provided details of some activities it has undertaken in this regard. However, in taking into consideration all of the information before the SCA, the CNDH has provided insufficient evidence to demonstrate that it is engaging effectively on the issue of the abolition of death penalty.

Based on all the evidence before the SCA at the present session and in previous sessions, the CNDH has not demonstrated that it conducts itself in a manner that promotes protection for all human rights. In this case, the SCA is of the view that the failure to do so evidences a lack of independence. Accordingly, the CNDH is discharging its mandate in a way that seriously compromises its compliance with the Paris Principles.

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

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

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