

GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (GANHRI)

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

7-18 December 2020

SUMMARY OF RECOMMENDATIONS

<u>1. Accreditation (Art. 10 of the GANHRI Statute)</u>
<u>1.1 Côte d'Ivoire: Conseil National Des Droits De L'homme (CNDH)</u> Recommendation: The SCA recommends that the CNDH be accredited with A status.
<u>1.2 Estonia: Chancellor of Justice of Estonia (CJE)</u> Recommendation: The SCA recommends that the CJE be accredited with A status.
<u>1.3 Uzbekistan: Authorized Person of the Oliy Majlis Of the Republic of Uzbekistan For Human Rights (Ombudsman)</u> Recommendation: The SCA recommends that the Ombudsman be accredited with B status.
<u>2. Re-Accreditation (Art. 15 of the GANHRI Statute)</u>
<u>2.1 Albania: People's Advocate of Albania (PA)</u> Recommendation: The SCA recommends that the PA be re-accredited with A status.
<u>2.2 Chile: Instituto Nacional de Derechos Humanos (INDH)</u> Recommendation: The SCA recommends that the INDH be re-accredited with A status.
<u>2.3 Latvia: Ombudsman of the Republic of Latvia (Ombudsman)</u> Recommendation: The SCA recommends that the Ombudsman be re-accredited with A status.
<u>2.4 Mauritania: Commission Nationale Des Droits De L'homme (CNDH)</u> Recommendation: The SCA recommends that the CNDH be re-accredited with A status.
<u>2.5 Slovenia: Human Rights Ombudsman of Slovenia (Ombudsman)</u> Recommendation: The SCA recommends that the Ombudsman be re-accredited with A status.
<u>2.6 The Netherlands: Netherlands Institute for Human Rights (NIHR)</u> Recommendation: The SCA recommends that the NIHR be re-accredited with A status.
<u>3. Decision (Art. 14.1 of the GANHRI Statute)</u>
<u>3.1 Thailand: National Human Rights Commission of Thailand (NHRCT)</u> Decision: The SCA decides to defer the review of the NHRCT for 18 months (or three sessions)
<u>3.2 Serbia: Protector of Citizens of Serbia (PCRS)</u> Decision: The SCA decides to defer the review of the PCRS for one year (or two sessions)
<u>4. Review (Art. 16.2 of the GANHRI Statute)</u>
<u>4.1 Mexico: Comision Nacional de los Derechos Humanos (CNDH):</u> The SCA decides to initiate a Special Review of the CNDH at its first session of 2021
<u>4.2 Panamá: Defensoría del Pueblo de Panamá (DPP):</u> The SCA recommends that the DPP be downgraded to B status.

**Report, Recommendations, and Decision of the Virtual Session of the SCA,
7-18 December 2020**

1. BACKGROUND

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

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

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

1.2 According to 4.1 of the RoP, the SCA is to meet twice a year in Geneva. The SCA session scheduled for March 2020 had to be postponed due to the Covid-19 pandemic. In October 2020, the SCA held a virtual consultation and decided to hold virtually its postponed March session in December 2020.

1.3 In accordance with the RoP, the SCA is composed of NHRI representatives from each region: Morocco for Africa (Chair), France for Europe, Palestine for Asia-Pacific and Canada for the Americas. In accordance with section 3.1 of the RoP, the NHRI of Guatemala participated as alternate member for the Americas to learn about the procedures in practice, in advance of serving on the SCA; and the NHRI of The Philippines participated as support person to the NHRI of Palestine.

1.4 The SCA virtually convened from 7 to 18 December 2020. OHCHR participated as a permanent observer in its capacity as GANHRI Secretariat. In accordance with established procedures, regional networks of NHRIs were invited to attend as observers. The SCA welcomed the participation of representatives from the Secretariats of the Asia-Pacific Forum (APF), European Network of National Human Rights Institutions (ENNHRI), Network of African National Human Rights Institutions (NANHRI) and Network of National Human Rights Institutions in the Americas (RINDHCA). The SCA also welcomed the participation of a representative from the GANHRI Head Office.

1.5 Pursuant to article 10 of the Statute, the SCA considered applications for accreditation from the NHRIs of Côte d'Ivoire, Estonia and Uzbekistan.

1.6 Pursuant to article 14.1 of the Statute, the SCA took a decision regarding the re-accreditation of the NHRIs of Serbia and Thailand.

1.7 Pursuant to article 15 of the Statute, the SCA considered applications for re-accreditation from the NHRIs of Albania, Chile, Latvia, Mauritania, Serbia, Slovenia, Thailand and The Netherlands.

1.8 Pursuant to article 16.2 of the Statute, the SCA reviewed certain issues regarding the NHRIs of Mexico and Panama.

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

A: Compliance with the Paris Principles;

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

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

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

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

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

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

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

- i) The recommendation of the SCA shall, as soon as practicable, be forwarded to the applicant NHRI;
- ii) The applicant NHRI can challenge a recommendation of the SCA by submitting a letter addressed to the GANHRI Chairperson and copied to the GANHRI Secretariat within twenty-eight (28) days of the date of communication of the recommendation;
- iii) At the end of this twenty-eight (28) day period, the GANHRI Secretariat will forward to Bureau members, as soon as practicable, the recommendations of the SCA. If the applicant NHRI has not challenged the recommendation, it shall be deemed accepted by the Bureau;

- iv) If an applicant NHRI submits a challenge within these twenty-eight (28) days, the GANHRI Secretariat will forward to the Bureau, as soon as practicable, all relevant materials related to the challenge. GANHRI Bureau members will be provided with twenty (20) days in which to determine whether or not to support this challenge;
 - v) Any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the Chair of the SCA and the GANHRI Secretariat of this support. If the challenge does not receive the support of at least one (1) Bureau member within twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;
 - vi) If at least one (1) member of the GANHRI Bureau supports the challenge of the applicant NHRI within these twenty (20) days, the GANHRI Secretariat will notify members of the Bureau as soon as practicable of this support and will provide any additional relevant information;
 - vii) Once provided with this notification and any additional relevant material, any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the GANHRI Chairperson and GANHRI Secretariat of this support. If the challenge does not receive the support of at least four (4) Bureau members in total coming from not less than two (2) regions within the twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;
 - viii) If the challenge receives the support of at least four (4) Bureau members in total coming from not less than two (2) regions, the recommendation of the SCA shall be referred to the following GANHRI Bureau meeting for a decision.
- 1.15** At each session the SCA conducts a teleconference with every NHRI. It may also consult with and seek further information from NHRIs where necessary.
- 1.16** Pursuant to Article 18.1 of the Statute, any decision that would serve to remove accredited "A" status from an applicant can only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the written evidence deemed necessary to establish its continued conformity to the Paris Principles.
- 1.17** At any time, the SCA may receive information that raises concern that the circumstances of 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.
- 1.18** Pursuant to Article 16.4 of the Statute, any review of the accreditation classification of a NHRI must be finalized within 18 months.
- 1.19** The SCA acknowledges the high degree of support and professionalism of the GANHRI Secretariat (OHCHR-NIRMS).
- 1.20** The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and gave one (1) week to provide any comments on them. The summaries are only prepared in English, due to financial constraints.
- 1.21** Once the recommendations of the SCA are adopted by the GANHRI Bureau, the report of the SCA is placed on the GANHRI website (<http://nhri.ohchr.org/>).
- 1.22** The SCA considered information received from civil society. The SCA shared that information with the concerned NHRIs and considered their responses.

1.23 Notes: The GANHRI Statute, the Paris Principles, the General Observations and the Practice Notes referred to above can be downloaded in Arabic, English, French and Spanish from the 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%20/Forms/Default%20View.aspx>

SPECIFIC RECOMMENDATIONS

1. ACCREDITATION (Art. 10 of the GANHRI Statute)

1.1 Côte d'Ivoire: National Human Rights Council of Côte d'Ivoire – CNDH

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

The SCA welcomes the establishment of the CNDH under a new enabling law. It commends the CNDH's efforts to promote and protect human rights.

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

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

The SCA notes:

1. Selection and appointment

Art. 7 of the Law establishes that the 12 voting members of the CNDH are appointed in accordance with terms determined by a Council of Ministers decree.

The CNDH reports that, in practice, the call for applications is made public by the Secretary of State at the Ministry of Justice and Human Rights and posted on the websites of CNDH and the network of NGOs. In addition, it reports that each designating entity elects the members during their respective general assembly.

However, 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 for members;
- establish clear and uniform criteria;
- ensure that such criteria are uniformly used to assess the merit of eligible applicants;
- promote broad consultation and/or participation in the application, screening, selection, and appointment process for all members.

Further, the SCA is of the view that providing for the different entities to select members according to their respective rules of procedure may result using different selection processes, while a consistent, transparent, merit-based and broadly consultative selection process should be used across all of the 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 CNDH to advocate for the formalization and application of a uniform 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. Conflict of interest

Art. 21 of the Law provides for conflict of interest for the 3 full-time members of the Executive Bureau. However, the Law is silent on whether and how conflicts of interest are to be avoided for the 9 remaining part-time members.

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

The SCA encourages the CNDH to advocate for the appropriate amendment to its establishing law to address conflicts of interest for all its members, including its part-time members.

The SCA refers to Paris Principle B.2.

3. Adequate funding

The SCA welcomes the introduction of Art.33 of the Law which provides for the CNDH budget to be allocated in a specific budget line of the State budget and classifies the CNDH as an administrative independent authority. While the SCA acknowledges that the CNDH has undertaken activities within its existing budget, it notes that the CNDH has reported that it does not have sufficient funding, particularly in view of its efforts to increase its regional presence.

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.

The SCA encourages the CNDH 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 on ‘Adequate funding’.

4. Monitoring places of deprivation of liberty

Art.2 (10) of the Law stipulates that CNDH may visit places of deprivation of liberty, but is silent on whether these visits may be unannounced.

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

The SCA acknowledges that, the CNDH reports that it conducts unannounced visits of places of deprivation of liberty in practice. Nevertheless, it encourages the CNDH to advocate for the explicit mandate to conduct unannounced visits to all places of detention.

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

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

5. 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 CNDH reports that it has made various recommendations, for example in relation to the reform of the Criminal Code. It further reports that there has been a positive response to these recommendations by relevant State authorities.

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

The SCA encourages the CNDH to conduct follow up activities to monitor the extent to which their recommendations have been implemented. It further encourages the CNDH to make publicly available its reports, studies and press releases, including through its website.

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'.

1.2 Estonia: The Chancellor of Justice

Recommendation: The SCA recommends that the Chancellor of Justice be accredited with **A** status.

The SCA welcomes the establishment of the Chancellor of Justice as an NHRI and commends its efforts to promote and protect human rights in Estonia.

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

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

The SCA notes:

1. Selection and appointment

Chapter 2, article 3 of the Act establishes that the Chancellor of Justice shall be appointed by the Parliament on the proposal of the President of the Republic.

The Chancellor of Justice reports that, in practice, before submitting a proposal to the Parliament, the President consults all political parties represented in the Parliament as well as the legal community.

The SCA is of the view that the process enshrined in the Act is not sufficiently broad and transparent.

In particular, it does not:

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

According to Chapter 2, article 3 of the Act, the Chancellor of Justice shall be elected for a 7-year term. The Act is silent on the number of times the Chancellor can be re-appointed, which leaves open the possibility of unlimited tenure. In order to promote institutional independence, the SCA is of the view that it would be preferable for the term of office to be limited to one (1) re-appointment.

The Chancellor of Justice reports that, in the past, re-appointment has not occurred. Nevertheless, the SCA encourages the Chancellor to advocate for amendments to its enabling law to provide for such limits on the term of office.

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

3. Encouraging ratification or accession to international human rights instruments

The Act does not explicitly mandate the Chancellor of Justice to encourage ratification of and accession to regional and international human rights instruments. However, the SCA acknowledges that the Chancellor of Justice interprets its mandate broadly and carries out activities in this regard in practice, and it encourages the institution to continue to do so.

The SCA is of the view that encouraging ratification of, or accession to, international human rights instruments, and the effective implementation of those instruments to which the State is a party, are key functions of an NHRI. The Paris Principles further prescribe that NHRIs should promote and encourage the harmonization of national legislation, regulations, and practices with these instruments.

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

The SCA encourages the Chancellor of Justice to advocate for an appropriate legislative amendment to make this mandate explicit.

The SCA refers to Paris Principles A3(b) and (c) and to its General Observation 1.3 on 'Encouraging ratification or accession to international human rights instruments'.

1.3 Uzbekistan: Authorised Person of the Oliy Mailis for Human Rights (Ombudsman)

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

The SCA welcomes the establishment of the Ombudsman and the efforts it has made to promote and protect human rights despite the challenging context in which it operates. The SCA encourages the Ombudsman to continue these efforts, and to strengthen its institutional framework and effectiveness in line with the recommendations below.

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

The SCA notes with concern:

1. Addressing human rights violations

The SCA acknowledges information received from the Ombudsman in relation to its activities and efforts to promote and protect a range of human rights. This includes its advocacy in relation to the ratification of OPCAT and the designation of an NPM.

However, the SCA has also reviewed information indicating that the Ombudsman may not be effectively addressing all human rights issues. In particular, the SCA notes:

- In its January 2020 concluding observations, the Committee Against Torture expressed concerns about the effectiveness of the Ombudsman in discharging its mandate to monitor places of deprivation of liberty in respect of complaints related to sexual violence and the referral of allegations of torture to the Ministry of Internal Affairs (CAT/C/UZB/CO/5).
- In its 2019 concluding observations, the Committee on the Elimination of Racial Discrimination noted that the Ombudsman reported not to have received any complaints on racial discrimination from citizens, foreign nationals or stateless persons, and any complaints regarding the provision of redress to victims of racial discrimination (CERD/C/UZB/CO/10-12)

The SCA notes that the Ombudsman has provided some information in its application about its activities in relation to torture and racial discrimination. In terms of the latter issue, the SCA notes that

the Ombudsman indicated that, given that 90% of nationals are of ethnic Uzbek background, it had no concerns with racial discrimination in Uzbekistan.

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

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. 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.

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

2. Recommendations by NHRIs

The SCA acknowledges that the Ombudsman has produced reports and statements, and has made recommendations to relevant authorities. It encourages the Ombudsman to continue and to expand upon these activities, and to increase the visibility of the institution and promote its accessibility for all people in Uzbekistan.

In that regard, the SCA emphasizes the importance of ensuring that its reports and recommendations are made publicly available. Prior to and during the SCA session, the website of the Ombudsman was unavailable as a result of maintenance to upgrade the site. The SCA encourages the Ombudsman to ensure that this situation is remedied as soon as practicable.

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

In fulfilling its protection mandate, an NHRI must not only monitor, investigate 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 encourages the Ombudsman to conduct follow-up activities to monitor the extent to which its recommendations have been implemented.

Paris Principles A.1, A.2 and A.3, and to its General Observation and 1.6 on 'Recommendations by NHRIs'.

3. Selection and Appointment

In accordance with Article 3 of the Law, the Ombudsman is elected by a majority vote of the members of Parliament following the nomination by the President of the Republic.

The SCA is of the view that the process currently enshrined in the Law and in practice 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 for all members.

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

The SCA understands that the mandate of the current Ombudsman expired in May 2020, and no Ombudsman has so far been appointed. This delay may impact the ability of the Ombudsman institution to fulfil its mandate.

The SCA encourages the Ombudsman to advocate for this process to be concluded in a timely manner, using a process that includes requirements to:

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

The SCA further encourages the Ombudsman to advocate for amendments to its Law to formalize this 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'.

The SCA further notes:

4. Interaction with the international human rights system

The SCA emphasizes that monitoring and engaging with regional and international human rights systems, 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. The SCA highlights that effective cooperation with regional and international human rights systems may include:

- submitting alternative reports to the Universal Periodic Review and Treaty Bodies;
- making statements during debates before review bodies and the Human Rights Council;
- supporting, facilitating and contributing to 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 recommendations originating from regional and international human rights systems.

The SCA acknowledges the activities the Ombudsman has taken in this regard, and encourages it to continue these efforts.

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

5. Term of office

Article 3 of the Law stipulates that the Ombudsman serves a five-year term. The Law is silent on the number of times the Ombudsman can be re-appointed, which leaves open the possibility of unlimited

tenure. In order to promote institutional independence, the SCA is of the view that it would be preferable for the term of office to be limited to one (1) re-appointment.

The SCA encourages the Ombudsman to advocate for amendments to its enabling law to provide for such limits on the term of office.

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

6. Adequate funding

While acknowledging that the Ombudsman's budget has increased in 2020, the SCA encourages the Ombudsman to continue to advocate for additional funding to ensure that it can effectively carry out the full breadth of its mandate and provide capacity building for its regional representatives.

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.

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

7. Cooperation with other human rights bodies

Regular and constructive engagement with all relevant stakeholders is essential for an NHRI to effectively fulfil its mandate. Broad engagement with all stakeholders improves the effectiveness of an NHRI in implementing its mandate to promote and protect human rights by providing a better understanding of: the breadth of human rights issues across the state; the different impact of such issues based on social, cultural, geographic and other factors; gaps; priorities; and implementation strategies.

The SCA encourages the Ombudsman to develop, enhance and formalize relationships and cooperation with other domestic institutions established for the promotion and protection of human rights, including civil society and human rights defenders.

Paris Principles C(f)(g), and to its General Observations 1.5 on 'Cooperation with other human rights bodies'.

2. REACCREDITATION (Art. 15 of the GANHRI Statute)

2.1 Albania: People's Advocate Office (PA)

Recommendation: The SCA recommends that the People's Advocate office should be re-accredited with **A** status.

The SCA commends the efforts of the PA to promote and protect human rights in Albania. It encourages the institution to continue these efforts.

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

The SCA notes:

1. Mandate

The PA's protection mandate does not encompass the acts or omissions of private entities. The PA reports that it interprets its mandate as including public functions exercised by private entities, and that it accepts complaints and develops recommendations to relevant state organs in such situations. An NHRIs' 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. The SCA emphasizes that the mandate of an NHRI should extend to the acts and omissions of both the public and private sectors.

While recognizing that the PA does interpret its mandate broadly as noted above, the SCA encourages the PA to advocate for a broader mandate that includes the ability to address all human rights violations resulting from the acts and omissions of private entities.

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

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

2. Adequate funding

The SCA acknowledges that the PA's staff and budget have increased since 2014. However, the PA reports that the level of funding is insufficient to meet its human resources needs, including retaining full-time staff in its regional offices.

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. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the NHRI's operations and the fulfilment of its mandate, including salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent institutions of the State.

The SCA encourages the PA to continue to advocate for adequate funding, including to ensure full-time staff in its regional offices.

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

3. Encouraging ratification or accession to international human rights instruments

The law does not explicitly mandate the PA to encourage ratification or accession to international human rights instruments. The SCA acknowledges that the PA interprets its mandate broadly and makes recommendations in this regard, and it encourages the PA to continue to do so.

The SCA is of the view that encouraging ratification of, or accession to, international human rights instruments, and the effective implementation of those instruments to which the State is a party, are key functions of an NHRI. The Paris Principles further prescribe that NHRIs should promote and encourage the harmonization of national legislation, regulations, and practices with these instruments. The SCA therefore considers it important that these duties form part of the enabling legislation of an NHRI.

The SCA encourages the PA to continue interpreting its mandate in a broad manner and to advocate for the appropriate amendments to its enabling law to provide it with an explicit mandate to encourage ratification or accession to regional and international human rights instruments.

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

2.2 Chile: Instituto Nacional de Derechos Humanos (INDH)

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

The SCA acknowledges the effectiveness and positive performance of the INDH since its first accreditation in 2012 in accordance with its enabling legislation that provides a broad mandate to both promote and protect human rights. It also notes with appreciation the work of the INDH throughout the country, including monitoring places of deprivation of liberty.

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

The SCA notes:

1. Selection and Appointment

According to Article 6 of the Law, the Council is composed of members who are appointed by various entities.

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 for members;
- establish clear and uniform criteria;
- ensure that such criteria are uniformly used to assess the merit of eligible applicants; and
- promote broad consultation and/or participation in the application, screening, selection, and appointment process for all members.

Further, the SCA is of the view that providing for the different entities to select members according to their respective rules of procedure may result using different selection processes. A consistent, transparent, merit-based and broadly consultative selection process should be used across all of the 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 INDH to advocate for the formalization and application of a uniform 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. **Protection from criminal and civil liability**

The INDH reports that, in the context of its legal system and based on the jurisprudence of the Constitutional Court, it understands that the guarantees of "irremovability" that its members enjoy are sufficient to protect them from criminal or civil liability for official actions and decisions undertaken in good faith.

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

The SCA encourages the INDH to advocate for the inclusion such a provision in its enabling law.

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

2.3 Latvia: Ombudsman of the Republic of Latvia (Ombudsman)

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

The SCA commends the efforts undertaken by the Ombudsman to advocate for the amendments to its founding law to address the SCA recommendations.

The SCA encourages the Ombudsman to continue efforts to address all human rights issues affecting the society in which it operates, including economic, social, and cultural rights.

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

The SCA notes:

1. Selection and Appointment

Section 5 (1) of the Law states that the Ombudsman shall be approved by the Parliament on the proposal of not less than five members of Parliament.

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 for members; and
- promote broad consultation and/or participation in the application, screening, selection, and appointment process for all members.

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

The SCA notes that the Ombudsman has proposed amendments to its enabling law to provide for the advertisement of vacancies and the ability for all interested candidates to submit their application prior to proposals being made by the members of Parliament.

The SCA encourages the 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; 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. Dismissal

In accordance with section 10(1) of the Law, the Ombudsman may be dismissed if he or she has allowed a shameful act that is incompatible with his or her status. The SCA continues to be of the view that this ground for dismissal is insufficiently defined and may be open to misuse.

Further, in accordance with section 10(2), such a dismissal may be proposed by not less than one-third of the Saeima and approved by an absolute majority vote of the Saeima. The SCA understands that a decision to dismiss the Ombudsman could be undertaken with the support of only 26 members of the Saeima. The SCA welcomes the introduction of a requirement that an investigation be undertaken by the Parliamentary Investigation Commission, and be submitted to the Parliament, in advance of a decision being taken. However, the SCA continues to be of the view that the process, even as amended, does not provide sufficient procedural safeguards to ensure that dismissal of the Ombudsman will not be undertaken for political reasons.

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 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 its 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 to be based solely on the discretion of the appointing authorities.

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

The SCA encourages the Ombudsman to advocate for appropriate amendments to its Law to ensure an independent and objective dismissal process.

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

3. Term of Office

According to Section 7 of the Ombudsman Law, the Ombudsman serves a five-year term. The Law is silent on the number of times the Ombudsman can be re-appointed, which leaves open the possibility of unlimited tenure. In order to promote institutional independence, the SCA is of the view that it would be preferable for the term of office to be limited to one (1) re-appointment.

The SCA encourages the Ombudsman to advocate for amendments to its enabling law to provide for such limits on the term of office.

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

4. Protection from criminal and civil liability

In accordance with section 4 of the Law, an administrative sanction of the Ombudsman is permitted in relation to breaches of the Administrative Code when sanctioned by the Saeima. The Ombudsman advises that the Constitution provides that the Saeima may sit if at least half (50) of the members participate therein and that a decision may be taken by an absolute majority vote of the members present at the sitting. As a result, the SCA understands that a decision to administratively sanction the Ombudsman could be undertaken with the support of only 26 members of the Saeima.

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

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

The SCA recognizes that no office holder should be beyond the reach of the law and thus, in certain circumstances, such as corruption, it may be necessary to lift immunity. However, the authority to do so should not be exercised by an individual, but rather by an appropriately constituted body such as the superior court or by a special majority of parliament. It is recommended that the law clearly establishes the grounds, and a clear and transparent process, by which the functional immunity of the decision-making body may be lifted.

The SCA continues to encourage the Ombudsman to advocate for the inclusion in its founding legislation of express provisions that clearly establish the functional immunity of the Ombudsman for actions taken in his or her official capacity in good faith.

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

2.4 Mauritania: Commission Nationale des Droits de l'Homme (CNDH)

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

The SCA commends the efforts of the CNDH to address the SCA's 2018 recommendations with respect to the real or perceived independence of its members, and addressing all human rights violations.

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

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

The SCA notes:

1. Addressing human rights violations

In November 2016, November 2017 and October 2018, the SCA expressed concerns over information received relating 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, freedom of expression and the death penalty.

The SCA notes that the CNDH reports to have increased its efforts to address all human rights violations, including in relation to the issues noted above. The CNDH further reports that, when addressing these issues, it cooperates with relevant national and international actors, including governmental bodies, civil society organizations, OHCHR and the EU.

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 rights that were found to be violated.

The SCA encourages the CNDH to continue to strengthen its efforts to address all human rights violations and to ensure that its position on these issues are made publicly available, where appropriate, as this will contribute to the credibility and accessibility of the institution for all people in Mauritania. It further encourages the CNDH to conduct follow-up activities to monitor the extent to which its recommendations are implemented.

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. Accessibility (website)

Prior to and during the SCA session, the CNDH website was unavailable.

The SCA acknowledges that the CNDH reports that this situation arose as a result of required maintenance, as well as efforts to add a complaints-handling page.

The SCA highlights the importance of ensuring the accessibility of information about an NHRI, its services and activities, as this assists individuals and groups in bringing attention to violations of human rights.

The SCA encourages the CNDH to resolve this issue as soon as practicable and ensure that its website is accessible to all. It further encourages the CNDH to ensure that its reports and statements are made available on this website.

3. Adequate funding

The CNDH reports that, while its budget has been increased, it 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.

The SCA encourages the CNDH to continue to advocate for an appropriate level of funding to enable it to effectively fulfil its mandate.

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

4. Pluralism and diversity

The SCA notes that there is gender imbalance in the staff complement of the CNDH, with only 25.92% women.

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 Mauritania.

The SCA encourages the CNDH to take steps to ensure pluralism, including appropriate gender balance, in its composition.

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

5. Cooperation with civil society

The SCA emphasizes that regular and constructive engagement of all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates, and contributes to the accessibility of the institution for all, including those who are geographically, politically or socially remote. The SCA further notes that broad engagement with all stakeholders improves the effectiveness of an NHRI in implementing its mandate to promote and protect human rights by providing a better understanding

of: the breadth of human rights issues across the state; the impact of such issues based on social, cultural, geographic and other factors; gaps; priorities; and implementation strategies. The SCA refers to Paris Principles C(f) and (g) and to its General Observation 1.5 on “Cooperation with other human rights bodies.”

2.5 Slovenia: Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman)

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

The SCA commends the efforts undertaken by the Ombudsman to advocate for the 2017 amendments to its enabling legislation in order to address the SCA recommendations.

The SCA encourages the Ombudsman to continue efforts to address all human rights issues affecting the society in which it operates, including the rights of migrants and refugees, rights of persons with disabilities, and human trafficking.

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

The SCA notes:

1. Selection and appointment

In accordance with the provisions of the Act, the Ombudsman is elected by a 2/3 majority vote of the National Assembly after a proposal of candidates by the President.

The Ombudsman reports that, in practice, the call for applications is made public on the Official Gazette and on the website of the Ombudsman. In addition, it reports that the President consults representatives of the political parties before submitting a proposal to the National Assembly.

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

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

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

The SCA encourages the 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; 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. Adequate funding and financial autonomy

The Ombudsman reports that, while its funding situation has improved, it would benefit from additional funding in order to continue to carry out its functions effectively. The SCA notes that the Ombudsman has recently established a consultative body and a centre for human rights.

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 fulfilment of its mandate.

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

- a) the allocation of funds for premises that are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with 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 Ombudsman to advocate for the funding necessary to effectively carry out the full breadth of its mandate.

The SCA further notes that the Ombudsman reports that the Ministry of Finance has the authority to revise the Ombudsman’s budget proposal in line with the rules governing public finances. If the Government fails to reach an agreement with the Ombudsman on the proposed budget, it is the proposal of the Government that is forwarded to the National Assembly for adoption, while the draft budget prepared by the Ombudsman is included only in the explanation of the budget. The SCA notes that, the Ombudsman reported that a lack of agreement between the Ombudsman and the Government on the draft budget has never happened in practice.

The SCA notes that the classification of an NHRI as an independent State agency has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting. Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for the use of public funds, the application of such rules or regulations on an NHRI is not considered inappropriate provided they do not compromise the NHRI’s ability to perform its role independently and effectively.

The Ombudsman reported that the independence of the Ombudsman, which originates from the Constitution and the Act, is not consistently considered in the rules and regulations governing public finance. Accordingly, the SCA encourages the Ombudsman to advocate for appropriate modifications to applicable administrative procedures to ensure that its independence and financial autonomy is guaranteed.

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

3. Encouraging ratification or accession to international human rights instruments

The law does not explicitly mandate the Ombudsman to encourage the state to ratify or accede to international human rights instruments. However, the SCA acknowledges that the Ombudsman interprets its mandate broadly and carries out activities in this regard in practice.

The SCA is of the view that encouraging ratification of, or accession to, international human rights instruments, and the effective implementation of those instruments to which the State is a party, are key functions of an NHRI. The Paris Principles further prescribe that NHRIs should promote and encourage the harmonization of national legislation, regulations, and practices with these instruments. The SCA therefore considers it important that these duties form part of the enabling legislation of an NHRI. The SCA encourages the Ombudsman to advocate for an appropriate legislative amendment to make this mandate explicit.

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’.

2.6 The Netherlands: The Netherlands Institute for Human Rights (NIHR)

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

The SCA commends the efforts of the NIHR to promote and protect human rights in the Netherlands. It encourages the institution to continue these efforts.

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

The SCA notes that:

1. Mandate

The SCA understands that the NIHR’s jurisdiction includes Caribbean territories of the Netherlands. However, the Dutch Equal Treatment Act is not applicable in these territories and therefore the NIHR, which is also an equality body, cannot discharge the full breath of its mandate in these territories.

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

The SCA encourages the NIHR to advocate for the extension of the applicability of the Equal Treatment Act to the Caribbean territories of the Netherlands.

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

2. Conflict of interest

The part-time members of the governing body as well as staff of the NIHR can engage in other paid and unpaid activities. As referred to in section 17(4) of the NIHR Act and in accordance with Section 13(1) of the Autonomous Administrative Authorities Framework Act “a member of an autonomous administrative authority may not perform outside work that is undesirable with a view to the proper performance of his job or the maintenance of his independence or of confidence therein”.

The NIHR reports that, where a member wishes to engage in such activities, an internal discussion occurs and a decision is made by the governing body of the institution. Further, as it relates to staff, the NIHR reports that relevant details relating to other such activities are made publicly available on its website.

However, there do not appear to be additional provisions – in legislation, regulation, or another binding administrative guideline – that provide further guidance on what types of activities constitute a conflict of interest or the process by which a determination would be made about the existence of such a conflict.

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

The SCA encourages the NIHR to advocate for the development of further binding guidance with respect to what constitutes a conflict of interest and the process by which a determination would be made about the existence of such a conflict.

The SCA refers to Paris Principles B.2.

3. Adequate funding

The NIHR reported that the budget of the Institute is at the minimum necessary to carry out its mandate and that, accordingly, it is required to prioritize a limited number of issues.

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. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the NHRI's operations and the fulfilment of its mandate, including the allocation of a sufficient amount of resources for mandated activities.

The SCA encourages the NIHR to continue to advocate for adequate funding necessary to allow it to address a broader range of priorities, including, for example, the rights of migrants and of the LGBTI community.

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

3. DECISION (Art 14.1 of the GANHRI Statute)

3.1 Thailand: The National Human Rights Commission of Thailand (NHRCT)

Decision: The SCA decides that further consideration of the re-accreditation application of the NHRCT will be **deferred** for 18 months (or three sessions).

The SCA notes the passage of the new Organic Law on the NHRCT in 2017. It welcomes the efforts made by the NHRCT to address the previous recommendations made both through its advocacy in relation to the new Law and in its activities in the period since its last review.

The SCA acknowledges the challenging context in which the NHRCT operates. It encourages the NHRCT to continue its efforts to promote and protect all human rights, and to continue to strengthen its institutional framework and effectiveness in line with the recommendations below.

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

The SCA notes with concern:

1. Independence

Section 26(4) of the Organic Act and Section 247(4) of the 2017 Constitution empower the NHRCT to ‘report correct facts without delay in case where there is an incorrect or unfair report on the human rights situation in Thailand’.

From the information before it, the SCA understands that the NHRCT has exercised this function on a number of occasions in response to reports from foreign governments and international civil society organizations that were critical of the Government of Thailand. The SCA is concerned that this function compromises the actual or perceived independence of the NHRCT.

It acknowledges that the NHRCT has taken up this matter with the National Assembly and encourages the NHRCT to continue to advocate for the removal of this provision, to avoid any actual or perceived impact on its independence.

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

2. Selection and appointment

The SCA acknowledges the amendments to the selection and appointment process which have been included in the new Organic Law to provide for a clear, transparent and participatory process.

However, since the entry into force of the Law, the SCA understands that the appointment of a new Commission has still not been completed. The SCA further understands that this resulted in a short period in which the NHRCT was unable to make decisions with respect to complaints due to an insufficient number of Commissioners, which resulted in a lack of quorum.

The SCA encourages the NHRCT to advocate for the conclusion of the appointment process in a timely manner through a transparent and participatory process as outlined in the 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’.

3. Recommendations by NHRIs

The SCA had previously raised concerns about the NHRCT’s effectiveness in addressing all human rights issues in a timely manner. It acknowledges information received from the NHRCT in relation to its activities and efforts to promote a range of human rights, by producing reports and statements, and making recommendations to relevant authorities. This includes issuing press statements in relation to the demonstrations in Thailand in 2020.

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.

An NHRI 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 civil and political rights, as well as economic, social and cultural rights. 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.

The SCA encourages the NHRCT to expand upon its activities in relation to all human rights issues, in particular monitoring the respect for the right to peaceful assembly and the protection of human rights defenders in that context. It should ensure that it is utilising the full breadth of its mandate to deal with these issues, including the formulation of recommendations that are in line with international human rights standards. All statements and reports should be made publicly available, as this will contribute to the credibility and independence of the institution, as well as promote its accessibility to all people in Thailand.

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.

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

The SCA encourages the NHRCT to conduct rigorous follow-up activities to ensure that public authorities are aware of its recommendations, to encourage their implementation, and to monitor and report on the extent to which they have been implemented.

Paris Principles A.1, A.2 and A.3, and to its General Observation and 1.6 on 'Recommendations by NHRIs'.

4. Quasi-judicial functions

The SCA has received information that there have been some significant delays in the NHRCT's handling of complaints.

The SCA acknowledges that the NHRCT reports that it has been taking steps to address this issue. It encourages the institution to continue these efforts.

Where an NHRI has been provided with a mandate to receive and consider complaints alleging violations of human rights, an NHRI should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, an NHRI should:

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

Further, the NHRCT reports that it has been advocating for the expansion of its complaints handling mandate to include the power to mediate disputes. The SCA notes that the recommendations contained in the 2019 report of the Working Group on human rights on transnational corporations and other business enterprises included this recommendation (A/HRC/41/43/Add.1). The NHRCT reports that it would welcome such an amendment to its enabling legislation.

In fulfilling its complaint-handling mandate, it should be provided with the necessary functions and powers to adequately fulfil this mandate. This may include the ability to seek an amicable and confidential settlement of the complaint through an alternative redress process.

The SCA encourages the NHRCT to continue to advocate for the expansion of its complaint-handling mandate to include the function to seek an amicable settlement to disputes through conciliation.

The SCA refers to the Paris Principles' 'Additional principles concerning the status of commissions with quasi-judicial competence' and to its General Observation 2.9 on 'The quasi-judicial competence of NHRIs (complaints handling)'.

3.2 Serbia: Protector of Citizens of Serbia (PCRS)

Decision: The SCA decides to **defer** the review of the PCRS to its second session of 2021.

The SCA acknowledges the work the PCRS has undertaken to promote and protect a range of human rights. However, the SCA notes that it requires additional information from the PCRS about the specific issues below.

The PCRS reports that draft amendments to its enabling law are supposed to be adopted in March 2021, which may address in whole or in part some of the issues of concern outlined below.

On these specific issues, during the telephone interview, the SCA asked the PCRS to respond to concerns relating to the following areas:

- Information received from civil society organizations indicating that the 2017 selection and appointment process for the Protector of Citizens lacked transparency and the involvement of civil society;
- Information received from civil society organizations that the number of individual complaints received by the PCRS has declined in recent years and that there have been delays in processing individual complaints;
- The PCRS's activities in relation to economic, social and cultural rights and information received from civil society indicating that national authorities are less responsive to recommendations concerning socio-economic rights;
- The PCRS's approach to dealing with allegations of abuse by police authorities and information received from civil society organizations that the number of visits carried out by the PCRS to police stations has declined significantly in recent years; and
- The PCRS's engagement and cooperation with civil society.

While the SCA acknowledges that the PCRS provided some information in relation to the above-mentioned issues, it considers the responses insufficient. Therefore, the SCA encourages the PCRS to take further action and provide documentation to demonstrate steps taken to address these issues.

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

The SCA decided to defer consideration of the PCRS on the following grounds. Accordingly, the SCA encourages the PCRS to take the actions necessary to address these issues and to provide further information and documentation, as required.

1. Selection and Appointment

Article 4 of the PCRS Law provides that the Protector of Citizens is appointed by the National Assembly by a majority of votes following the final proposal submitted by the Committee for Constitutional Issues of the National Assembly. Also, in accordance with the Law, each parliamentary group in the National Assembly has the right to propose its candidate (or a joint candidate) to the Committee. The Committee can decide to hold a session for all candidates to explain the way they would discharge the mandate if appointed.

The SCA reiterates its 2015 concern that the process currently enshrined in the law is not sufficiently participatory and transparent. In particular, it does not:

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

Further, and as noted above, the SCA received information from civil society organizations indicating that the 2017 selection and appointment process for the Protector of Citizens lacked transparency and the involvement of civil society. In response, the PCRS reported that during the last selection process, parliamentary groups proposed four candidates to the Committee, and that these candidates had the opportunity to present themselves to the Committee. The PCRS also reported that civil society organizations did propose and support a candidate.

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

The SCA notes that the PCRS has proposed amendments to its enabling law with respect to selection and appointment.

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

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

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

2. Addressing human rights violations

As noted above, the SCA provided an opportunity for the PCRS to respond to specific issues of concern. It acknowledges that the PCRS did provide some information as follows:

- With respect to socio-economic rights, the PCRS provided information that most of the individual complaints received are in this area. The PCRS indicated that more socio-economic experts are needed, as well as better relations with local authorities and more field visits. The PCRS reported that there is a general increase and high rate of recommendations accepted by authorities relating to its expedited control investigations, including those of the NPM.
- With respect to police violence, including allegations of excessive use of force or maltreatment of detainees, the PCRS responded that it has carried out work in relation to the high percentage of use of narcotics in prisons, which in the PCRS' view impacts on the conduct of prisoners and incites corruption in places of detention, resulting in police officers being prosecuted for corruption. The PCRS did not provide information about its work in relation to allegations of excessive use of force by the police.
- With respect to the decline in the number of visits carried out to police stations by the PCRS, the PCRS reported that the information provided by third parties to the SCA was not accurate.

The SCA is of the view that the information provided by the PCRS is insufficient to establish that it effectively addresses all human rights issues.

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

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

3. Cooperation with civil society and other human rights bodies

The SCA notes that the PCRS law is silent on cooperation with civil society organizations. However, the SCA acknowledges that the PCRS has provided information regarding its cooperation with civil society organizations in practice. The SCA is of the view that this cooperation could be further improved.

The SCA further notes that the PCRS reports that its level of cooperation with some public and local authorities could be improved.

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

The SCA encourages the PRCS to develop, enhance and formalize relationships and cooperation with other domestic human rights stakeholders, including civil society organizations and human rights defenders.

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

4. Quasi-judicial mandate

The PCRS' statistics indicate a significant decrease in the number of complaints received since 2017.

The SCA acknowledges the explanation provided by the PCRS which indicated that public confidence in the institution's complaint handling process decreased for a period of time but that recent survey indicated that the PCRS currently enjoys a high level of public trust.

The SCA encourages the PCRS to continue to take steps to improve public confidence in its complaint-handling process.

Further, and as noted above, the SCA received information that there have been some significant delays in the processing of complaints. The PCRS acknowledged that this has been the case, but that they are taking steps to address the issue. The SCA encourages the institution to continue these efforts.

Where an NHRI has been provided with a mandate to receive and consider complaints alleging violations of human rights, an NHRI should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, an NHRI should:

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

The SCA notes that the PCRS has proposed amendments to its Law to provide for shorter timelines for the treatment of complaints. It encourages the PCRS to continue to advocate for the adoption of such timelines, and to ensure their application in practice.

The SCA refers to the Paris Principles A.1 and D: Additional principles concerning the status of commissions with quasi-judicial competence and its general observation 2.9 on “The quasi-judicial competency of NHRIs (complaints-handling)”.

The SCA notes the following additional issues, which were not grounds for deferral, but were considered relevant to accreditation.

1. Interaction with international human rights system

The SCA notes that the PCRS enabling law does not explicitly provide the PCRS with a mandate to interact with international human rights system. The SCA acknowledges that the PCRS is interpreting its mandate broadly and that it undertakes this role in practice, and it is encouraged to continue 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.

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 notes that the PCRS reports to have advocated for the amendment of its enabling law to explicitly provide for this function. It encourages the PCRS to continue this advocacy.

The SCA refers to Paris Principle A.3 and to its General Observation 1.4 on ‘interaction with the international human rights System’.

2. Staffing

The PCRS reports that it recruits staff in accordance with the procedure prescribed in the Law on Civil Servants. However, the PCRS has to obtain the approval of the committee of the National Assembly in charge of administrative and budgetary issues before recruiting new staff members. The SCA is concerned that this requirement may compromise the independence and financial autonomy of the PCRS.

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 PCRS 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'.

3. Adequate funding

The SCA notes that PCRS is satisfied with the level of its funding. The SCA notes that the PCRS reports that it expects to be mandated with additional responsibilities, including as National Rapporteur on human trafficking and in monitoring the implementation of CRPD.

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. 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 PCRS to continue to advocate for an adequate level of funding to allow it to effectively carry out the full breath of its mandate, including any new responsibilities. In this regard, the SCA notes that the PCRS reports that amendments to its act have been proposed to provide that its funding cannot be decreased unless such a decrease will be applied to all similarly-situated institutions. The SCA encourages the PCRS to continue to advocate for passage of this amendment.

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

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

4.1 Mexico: the Comisión Nacional de los Derechos Humanos of Mexico (CNDH)

Decision: The SCA decides to initiate a **Special Review** of the CNDH at its first session of 2021.

The SCA received correspondence from a group of civil society organizations regarding the appointment of the President of the CNDH in November 2019, and related concerns with respect to conflict of interest and effectiveness in dealing with all issues of human rights.

The SCA is of the view that this information raises concerns with respect to the continued compliance of the CNDH with the Paris Principles.

The SCA acknowledges that it received a response from the CNDH regarding these allegations. This response indicates that the selection process was undertaken in accordance with the requirements of the law, and that no conflict of interest existed.

The SCA is of the view that the response provided does not fully address all of the concerns raised. As a result, it decides to initiate a Special Review.

The SCA refers to Article 16.2 of the GANHRI Statute.

4.2 Panamá: Defensoría del Pueblo de Panamá (DPP)

Recommendation: The SCA recommends that the DPP 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 DPP maintains A status until the SCA's second session of 2021. This allows an opportunity for the DPP to provide the documentary evidence necessary to establish its continued conformity with the Paris Principles.

On 9 October 2019, the SCA received information about the dismissal of the Defensor by the National Assembly following allegations of sexual abuse and workplace harassment. The Inter-American Commission on Human Rights Commission (IACHR) expressed concerns and called upon the State to ensure that the dismissal process of the Defensor was conducted in conformity with the DPP law and due process. The IAHR also referred to several civil society organizations expressing serious concerns about the political affiliation of the Deputy Ombudsman, who was appointed as the acting Defensor following the then Defensor's dismissal.

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

- The process by which the Defensor was dismissed;
- Concerns expressed by civil society organizations and the Inter-American Commission on Human Rights that the process to appoint the Deputy Defensor who replaced the Defensor was not transparent and involved a conflict of interest; and
- The impact that multiple changes of Defensor in a short period of time has had on the DPP's ability to set priorities, effectively carry out its mandate, and retain staff.

While the SCA acknowledges that the DPP has provided some information in relation to the above-mentioned issues, it considers the responses insufficient to address the substance of its concerns.

In view of the information before it, the SCA is concerned that the actual and perceived independence of the DPP, and the institution's effectiveness, has not been sufficiently established contrary to the requirements of the Paris Principles.

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

The SCA notes with concern:

1. Independence

As noted above, the former Defensor was removed by the National Assembly on 9 October 2019 following allegations of sexual abuse and workplace harassment. This decision was based on Resolution 77 of 7 October 2019, by which the National Assembly adopted a special procedure for the Defensor, citing Article 11-B of the DPP's enabling law, which provides that the Defensor can be removed for "negligence in fulfilling their duty in office" by a 2/3 majority vote of the National Assembly.

The SCA notes that the IACHR¹ expressed concerns regarding the dismissal and called upon the State to ensure that the dismissal process was conducted in a manner that ensured the ongoing independence of the DPP and was undertaken in conformity with the law and due process rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- d) Assess applicants on the basis of pre-determined, objective and publicly available criteria.

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

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