

NOTE

"As of 8 August 2018 the SCA recommendations contained in this report are considered final"

GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (GANHRI)

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

Geneva, 14-18 May 2018

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<p><u>4.1 Ecuador: Defensor del Pueblo de Ecuador (DPE)</u> Decision: The SCA decides to initiate a Special Review of the DPE at its second session of 2018.</p>
<p><u>4.2 Chile: Instituto Nacional de Derechos Humanos (INDH)</u> Decision: The SCA decides to initiate a Special Review of the INDH at its second session of 2018.</p>

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

4.1 Azerbaijan : The Human Rights Commissioner of Azerbaijan (HRCA)

Recommendation: The SCA recommends that the HRCA be re-accredited with **B** status

Report, Recommendations, and Decision of the Session of the SCA, 14-18 May 2018

1. BACKGROUND

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

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

At its February 2018 session, the GANHRI General Assembly adopted the amendments to the GANHRI Statute.

1.2 In accordance with the SCA Rules of Procedure, the SCA is composed of NHRI representatives from each region: France for Europe (Chair), Morocco for Africa, Philippines for Asia-Pacific and Canada for the Americas.

1.3 The SCA convened from 14 to 18 May 2018. OHCHR participated as a permanent observer and in its capacity as GANHRI Secretariat. In accordance with established procedures, regional networks of NHRIs were invited to attend as observers. The SCA welcomed the participation of representatives from the Secretariats of the Asia-Pacific Forum (APF), European Network of National Human Rights Institutions (ENNHRI), and Network of African National Human Rights Institutions (NANHRI). The SCA also welcomed the participation of a representative from the GANHRI Head Office.

1.4 Pursuant to article 10 of the Statute, the SCA considered the applications for accreditation from the institutions of Belgium and the Democratic Republic of Congo.

1.5 Pursuant to article 15 of the Statute, the SCA considered applications for re-accreditation from the NHRIs of Algeria, Egypt, Guatemala, Moldova, Nicaragua, Spain, Sri Lanka and Uganda.

1.6 Pursuant to article 16.2 of the Statute, the SCA reviewed certain issues regarding the NHRIs of Ecuador and Chile.

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

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

A: Compliance with the Paris Principles;

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

1.9 In the interests of clarity and as a good practice, where the SCA has recommended that an NHRI be accredited with other than A status, it has divided its recommendations between those that it “notes with concern” and those that it “notes”. The issues that have been noted

“with concern” constitute the primary reasons for which the NHRI has not been accredited with A status.

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

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

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

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

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

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

material related to the challenge. GANHRI Bureau members will be provided with twenty (20) days in which to determine whether or not to support this challenge;

- v) Any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the Chair of the SCA and the GANHRI Secretariat of this support. If the challenge does not receive the support of at least one (1) Bureau member within twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;
- vi) If at least one (1) member of the GANHRI Bureau supports the challenge of the applicant NHRI within these twenty (20) days, the GANHRI Secretariat will notify members of the Bureau as soon as practicable of this support and will provide any additional relevant information;
- vii) Once provided with this notification and any additional relevant material, any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the GANHRI Chairperson and GANHRI Secretariat of this support. If the challenge does not receive the support of at least four (4) Bureau members in total coming from not less than two (2) regions within the twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;
- viii) If the challenge receives the support of at least four (4) Bureau members in total coming from not less than two (2) regions, the recommendation of the SCA shall be referred to the following GANHRI Bureau meeting for a decision.

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

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

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

1.17 Pursuant to Article 16.3 of the Statute, any review of the accreditation classification of a NHRI must be finalized within 18 months.

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

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

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

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

1. The GANHRI Statute:
<http://nhri.ohchr.org/EN/AboutUs/Governance/Pages/Statute.aspx>
2. The Paris Principles and General Observations:
<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>
3. The Practice Notes:
<http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%20202/Forms/Default%20View.aspx>

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

2.1 Belgium: The Interfederal Centre for Equal Opportunity and the fight against racism and discrimination (UNIA)

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

The SCA welcomes the establishment of UNIA. It notes with appreciation the work undertaken by the NHRI in a complex political and institutional context.

The SCA recognises that UNIA operates in a federal state with a unique structure. The SCA notes that UNIA is established by an inter-federal agreement, and not by an explicit law.

The SCA acknowledges that UNIA has indicated that an inter-federal agreement has the status of law in Belgium, as it has been adopted on the basis of legislative enactments by the eight (8) parliamentary assemblies that make up Belgium. The SCA further notes that UNIA indicates that this structure was chosen in order to promote the accessibility of the institution for all people in Belgium, and guarantees its independence and full geographic coverage.

Under these circumstances, and given the thorough explanations provided by UNIA, the SCA accepts the view that the inter-federal agreement is not an instrument of the Executive, but rather is equivalent to a legislative enactment in this context.

The SCA notes that the inter-federal agreement provides for a three (3) year periodic tacit renewal, and that any of the parliamentary assemblies could withdraw unilaterally. The SCA expresses its concern that this could impact the functioning and jurisdiction of UNIA. However, the SCA acknowledges and accepts that UNIA indicates that a change to this provision would not be feasible in the context of the Belgian federal structure.

The SCA encourages UNIA to continue to advocate for the establishment of an NHRI that is in full compliance with the Paris Principles.

The SCA notes with concern:

1. Human rights mandate

The SCA notes that the mandate provided to UNIA by the inter-federal agreement is limited and does not cover the full range of human rights. Rather, it is limited to activities to combat racism and discrimination, and activities undertaken as the National Monitoring Mechanism under the *Convention on the Rights of Persons with Disabilities*.

The SCA notes that, in practice, UNIA interprets its mandate broadly and undertakes a range of activities to promote and protect human rights, both on their own and in cooperation with other human rights bodies.

However, the SCA is of the view that a NHRI should be legislatively mandated with specific functions to both promote and protect all human rights. An NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights

The SCA encourages UNIA to advocate for appropriate amendments to its enabling law to vest it with the mandate to promote and protect all human rights.

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

The SCA further notes:

2. Interaction with the international human rights system

The SCA acknowledges that UNIA is active in various regional human rights organizations and has engaged with the international human rights system. However, there is no specific legal provision that mandates UNIA to engage with these systems, nor is UNIA explicitly mandated to encourage ratification or accession to international human rights instruments.

The SCA further notes that UNIA has not submitted reports to all United Nations treaty bodies during periodic review of Belgium. The SCA acknowledges that this is due, in part, to UNIA’s limited mandate.

The Paris Principles recognize that monitoring and engaging with the international human rights system, can be an effective tool for NHRIs in the promotion and protection of human rights domestically. Depending on existing domestic priorities and resources, effective engagement with the international human rights system may include:

- submitting parallel or shadow reports to the UPR, Special Procedures mechanisms and Treaty Bodies;
- making statements during debates before review bodies and the Human Rights Council; and
- monitoring and promoting the implementation of relevant recommendations emanating from United Nations and regional human rights mechanisms.

The SCA encourages UNIA to strengthen its engagement with the international human rights system, and to advocate for changes to its enabling law to mandate it with explicit responsibility to encourage ratification or accession to international instruments.

In considering its engagement with the international and regional human rights system, UNIA is encouraged to actively engage with OHCHR, GANHRI, ENNHRI, and other NHRIs, as well as international and national NGOs and civil society organisations.

The SCA refers to Paris Principle A.3 and to its General Observations 1.3 on ‘Encouraging ratification or accession to international human rights instruments’ and 1.4 on ‘Interaction with the international human rights system’.

3. Selection and appointment

In accordance with Article 8 of the Inter-Federal Agreement, the twenty-one (21) members of the Inter-Federal Board are designated by six (6) parliamentary assemblies. The SCA notes that each parliamentary assembly designates members according to its own internal procedures.

The SCA acknowledges that UNIA reports that, in practice, vacancies are advertised.

The SCA is of the view that the selection and appointment process contained in the law is not sufficiently broad and transparent. In particular, it does not:

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

Further, the SCA is of the view that providing for the different parliamentary assemblies to select members according to their own rules of procedure may result in them using different processes for selection, and that a consistent, transparent, and broadly consultative selection process should be used across all of the parliamentary assemblies.

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 UNIA to advocate for the formalization 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; assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- d) 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'.

4. Full-time members of an NHRI

No members of the Board serve on a full-time basis.

The SCA acknowledges that UNIA reports that its day-to-day management is overseen by two directors who work on a full-time basis, and that this is sufficient for their purposes.

However, the SCA is of the view that the enabling law of an NHRI should provide that members of its decision-making body include full-time remunerated members.

This assists in ensuring:

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

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

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

5. Protection from criminal and civil liability for official actions and decisions undertaken in good faith

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

External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a member of the decision-making body or a staff member of the NHRI. For this reason, members and staff of an NHRI should be protected from both criminal and civil liability for acts undertaken in good faith in their official capacity. Such protections serve to enhance the NHRI's ability to engage in critical analysis and commentary on human rights issues, safeguard the independence of senior leadership, and promote public confidence in the NHRI.

While the SCA considers it preferable for these protections to be explicitly entrenched in NHRI legislation or another applicable law of general application, it acknowledges that such protection may also exist by virtue of the specific legal context in which the NHRI operates. In such exceptional circumstances, the NHRI under review should provide sufficient information to explain why this is the case given its particular national context. This information will be reviewed in line with other guarantees provided at the national level to ensure independence, security of tenure, and the ability to engage in critical analysis on human rights issues.

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

The SCA acknowledges that UNIA is of the view that such risk does not exist in the Belgian context. However, the SCA is of the view that it would be preferable for such protections to be explicitly enshrined in the law. It therefore encourages UNIA to advocate for amendments to its enabling law to explicitly provide protections for Board members and staff from civil and criminal liability for official actions undertaken 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.'

2.2 Democratic Republic of Congo: The National Human Rights Commission (CNDH)

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

The SCA welcomes the establishment of the CNDH. It commends the efforts of the CNDH to promote and protect human rights and acknowledges that it operates in very challenging context.

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

The SCA notes:

1. Adequate funding

The CNDH reports that it does not receive adequate funding from the State to affectively carry out its mandate. This impacts on its ability to recruit staff, have autonomous premises, open and operationalize all provincial offices, and organize capacity building activities for its staff.

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.

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

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

Government funding should be regularly released and in a manner that does not impact adversely on the NHRI's functions, day-to-day management and retention of staff.

The SCA acknowledges that the CNDH reports that it has sought, and received, donor funding in an effort to improve its budgetary situation.

However, the SCA emphasizes that funding from external sources, such as from international development partners, should not compose the core funding of the NHRI, as this is the responsibility of the State. However, the SCA recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support an NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases, an NHRI should not be required to obtain approval from the state for external sources of funding, as this requirement may detract from its independence. Such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the NHRI.

The SCA encourages the CNDH to continue to advocate for an appropriate level of funding to effectively carry out its mandate including ensuring the operationalization of its provincial offices.

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

2. Selection and appointment process

In accordance with Article 16 of the Law, members of the CNDH are elected by the National Assembly based on the proposals of various entities.

The SCA is of the view that the selection and appointment process provided in the law is not sufficiently broad and transparent. In particular, it does not:

- require the advertisement of vacancies; and
- establish clear and uniform criteria upon which all parties assess the merit of eligible applicants.

Further, the SCA is of the view that providing for the different entities to select members according to their rules of procedure may result in them using different processes for selection, and that 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'.

3. Interaction with the international human rights system

The SCA notes that the CNDH has not submitted parallel reports to treaty bodies since its establishment in 2015, namely to the Human Rights Committee and the Committee on the Rights of the Child during periodic review of the Democratic Republic of Congo.

The SCA notes that the CNDH is preparing a parallel report as part of the third cycle of the UPR.

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 UPR, 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.

In considering their engagement with the international human rights system, the CNDH is encouraged to actively engage with the OHCHR, GANHRI, NANHRI and other NHRIs, as well as international and national NGOs and civil society organizations.

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

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

3.1 Algeria: The National Human Rights Council of Algeria (CNDH)

Recommendation: The SCA recommends that the CNDH be reaccredited with **B status**.

The SCA appreciates efforts undertaken by the CNDH in advocating for the adoption of a new enabling law to address issues of concern previously noted by the SCA. The SCA also welcomes with appreciation the work carried out by the CNDH given the difficult situation in which it operates.

The SCA is of the view that a number of issues still need to be addressed in order to ensure the CNDH's full compliance with the requirements of the Paris Principles and the General Observations.

The SCA notes with concern:

1. Selection and appointment

In accordance with Article 10 of the Law, members of the CNDH are selected by their respective organisations.

Article 11 of the Law provides for the establishment of a selection committee comprised of the First President of the Supreme Court, the President of the Council of State, the President of the Court of Auditors, and the President of the National Economic and Social Council. Article 9 requires that the selection committee is to ensure that the composition of the CNDH is based on criteria of competency, probity, societal and institutional pluralism, as well as representation of women. In accordance with Article 12, members are appointed by presidential decree.

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

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

The SCA is also of the view that providing for different stakeholders to select members according to their rules of operation may result in different entities using different processes for selection, and that a consistent, transparent, merit-based and broadly consultative selection process should be used across all appointing entities.

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

The SCA encourages the CNDH to continue 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. Political representatives on NHRIs

In accordance with Article 10 of the Law, membership of the CNDH includes two (2) parliamentarians from each chamber of the Parliament. These individuals have voting rights.

In accordance with Article 13 of the Law, the position of the President of the CNDH is incompatible with elected office. There is no reference to such incompatibility for other members of the CNDH.

The SCA acknowledges that the CNDH reports to have submitted to the Prime Minister a draft amendment to its enabling law which would provide that both government representatives and members of the parliament participate without voting rights.

The SCA emphasises that the Paris Principles require an NHRI to be independent from government in its structure, composition, decision-making and method of operation. It must be constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights priorities in the country, free from political interference.

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

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

Where government representatives or members of parliament, or representatives of government agencies, are included in the decision-making body, the NHRI's legislation should clearly indicate that such persons participate only in an advisory capacity. In order to further promote independence in decision-making, and avoid conflicts of interest, an NHRI's rules of procedure should establish practices to ensure that such persons are unable to inappropriately influence decision-making by, for example, excluding them from attending parts of meetings where final deliberations and strategic decisions are made.

The participation of government representatives or members of parliament, or representatives of government agencies, should be restricted to those whose roles and functions are of direct relevance to the mandate and functions of the NHRI, and whose advice and cooperation may assist the NHRI in fulfilling its mandate. In addition, the number of such representatives should be limited and should not exceed the number of other members of the NHRI's governing body.

The SCA encourages the CNDH to continue to advocate for passage of the proposed amendments.

The SCA refers to Paris Principles B.3 and to its General Observation 1.9 on 'Political representatives on NHRIs'.

3. Addressing serious human rights concerns

During the session, the SCA asked the CNDH to provide information about the actions it has taken in relation to torture, enforced disappearances and the expulsion of migrants. While the SCA acknowledges that the CNDH did provide some information, the SCA was concerned that the actions described were limited and did not demonstrate that the CNDH was taking adequate steps to address these human rights violations. The SCA encourages the CNDH to undertake actions to address all human rights violations, including those noted above.

The SCA also considered a press release published on 6 March 2018 by *Algérie Presse Service*, according to which: "La présidente du Conseil national des droits de l'Homme (CNDH), Fafa Ben Zerrouki, a affirmé, mardi, que le dernier rapport d'Amnesty International sur la situation des droits de l'Homme dans le monde, s'était basé, dans le volet réservé à l'Algérie, sur "des déclarations fallacieuses", dénuées de tout fondement". [English translation: The Chairperson of the National Council for Human Rights, Fafa Ben Zerrouki, claimed that Amnesty International's last report on the situation of human rights in the world is based on misleading and unfounded declarations when it comes to Algeria. <http://www.aps.dz/algerie/70792-le-rapport-d-ai-sur-les-droits-de-l-homme-en-algerie-s-appuie-sur-des-declarations-fallacieuses>].

The SCA acknowledges that the CNDH has indicated that the comments of the Chairperson, which were originally given in Arabic, were distorted when translated into French. However, the SCA has consulted the Arabic version¹ as well, and notes that the substance of the quote is the same in both versions. The SCA is accordingly not satisfied with the response provided by the CNDH.

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

¹ <https://www.ennaharonline.com/%D9%81%D8%A7%D9%81%D8%A7-%D8%A8%D9%86-%D8%B2%D8%B1%D9%88%D9%82%D9%8A-%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D8%A3%D9%85%D9%86%D8%B3%D8%AA%D9%8A-%D8%A8%D9%8F%D9%86%D9%8A%D8%AA-%D8%B9/>

أكدت رئيسة المجلس الوطني لحقوق الإنسان، أن التقرير الأخير لمنظمة العفو الدولية حول حقوق الإنسان بالجزائر "بني على تصريحات مغلوطة".

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.

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

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

The SCA further notes:

4. Interaction with the international human rights system

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

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.

While it is appropriate for governments to consult with NHRIs in the preparation of a state's reports to human rights mechanisms, NHRIs should neither prepare the country report nor should they report on behalf of the government. NHRIs must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right. NHRIs should not participate as part of a government delegation during the Universal Periodic Review, during periodic reviews before the Treaty Bodies, or in other international mechanisms where independent participation rights for NHRIs exist. Where independent participation rights for NHRIs do not exist in a particular fora and an NHRI chooses to participate in proceedings as part of a state delegation, the manner of their participation must clearly distinguish them as an independent NHRI.

In considering its engagement with the international human rights system, the CNDH is encouraged to actively engage with the OHCHR, GANHRI, NANHRI, and other NHRIs, as well as international and national NGOs and civil society organizations.

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

5. Dismissal

In accordance with Article 16 of the Law, membership in the CNDH can be terminated by: a) the expiry of the term of the member; b) resignation; c) unjustified absence at three consecutive plenary assembly meetings; d) loss of membership under which he/she was elected; e) conviction for crime or voluntary offence; f) death; and g) serious and repeated act or behaviour inconsistent with his/her obligations. For cases covered by c), e) and g), the dismissal is decided by the absolute majority of the CNDH plenary assembly.

The SCA is of the view that the dismissal process currently enshrined in the Law is not sufficiently independent, as it is at the sole discretion of the plenary assembly and is not decided by an independent authority.

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

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

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

The SCA encourages the CNDH to advocate for amendments to the law to ensure an independent and objective dismissal process.

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

6. Term of office

Article 12 of the Law states that members are appointed by presidential decree for a four (4) year term, renewable. The Law is silent on the number of times that a member, other than the Chairperson, can be re-appointed.

As a good practice, the SCA considers it preferable that the enabling law of an NHRI limits the possibility of renewal to one additional term. The SCA encourages the CNDH to advocate for amendment to the law to provide for such a limitation.

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

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

7. Accessibility (website)

The SCA notes that the website of the CNDH is available in French only.

The SCA acknowledges that the CNDH reported its content will also be made available in Arabic and Amazigh. It encourages the CNDH to continue these efforts to ensure that its website is accessible to all groups in society by ensuring that material is available in all the national languages of the country.

3.2 Egypt: The National Council for Human Rights (NCHR)

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

The SCA welcomes the adoption of the amendments to the enabling law, which address several of the SCA's previously-stated concerns.

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

The SCA notes:

1. Addressing human rights violations

The SCA received information which raises concerns regarding the effectiveness of the NCHR in dealing with serious human rights issues, including torture, enforced disappearances and the protection of human rights defenders. The SCA notes that the NCHR reports to undertake various actions to address serious human rights issues in Egypt, including with respect to enforced disappearances and the closure of media outlets.

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

With respect to the NCHR position on the death penalty, the SCA encourages it to promote the abolition of death penalty in line with the requirements of the Second Optional Protocol to the *International Covenant on Civil and Political Rights*. The SCA further encourages the NCHR to advocate for the ratification of the Second Optional Protocol.

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

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

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

2. Selection and appointment

Article 2 of the Law provides that members should be selected from among public figures well known for their experience, the independence of their opinion, and distinguished performance in the field of human rights. Article 2(bis) provides that the General Committee of the House of Representatives examines the candidates and submits a list to the House of Representatives for election taking into consideration the adequate representation of all forces of the society. The House of Representatives, with the approval of the majority of its members, elects the President, the Vice-President, and the members of the Council. Subsequently, the President of the Republic issues a decree regarding the composition of the Council.

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

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

The SCA is also of the view that providing for different stakeholders to select members according to their rules of operation may result in different entities using different processes for selection, and that a consistent, transparent, merit-based and broadly consultative selection process should be used across all appointing entities.

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

The SCA encourages the NCHR to advocate for 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; and
- d) Assess applicants on the basis of pre-determined, objective and publicly available criteria.

The SCA notes that the mandates of the current members have expired and that new members will need to be appointed. It encourages the NCHR to advocate for this to happen as soon as possible, using a consistent, transparent and participatory process.

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

3. Protection from criminal and civil liability for official actions and decisions undertaken in good faith

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

External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a member of the decision making body or a staff member of the NHRI. For this reason, members and staff of an NHRI should be protected from both criminal and civil liability for acts undertaken in good faith in their official capacity. Such protections serve to enhance the NHRI's ability to engage in critical analysis and commentary on human rights issues, safeguard the independence of senior leadership, and promote public confidence in the NHRI.

While the SCA considers it preferable for these protections to be explicitly entrenched in NHRI legislation or another applicable law of general application, it acknowledges that such protection may also exist by virtue of the specific legal context in which the NHRI operates. In such exceptional circumstances, the NHRI under review should provide sufficient information to explain why this is the case given its particular national context. This information will be reviewed in line with other guarantees provided at the national level to ensure independence, security of tenure, and the ability to engage in critical analysis on human rights issues.

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

The SCA acknowledges that the NCHR is of the view that Article 2.14 of the Constitution, which guarantees the independence of the NCHR, is sufficient to provide functional immunity. However, the SCA is of the view that it would be preferable for such protections to be explicitly enshrined in the law. It therefore encourages the NCHR to advocate for amendments to its enabling law to explicitly provide protections from civil and criminal liability for official actions undertaken 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.'

4. Visits to places of detention

Article 3(16) of the Law mandates the NCHR to visit prisons and all places of detention and interview inmates, as well as to submit its reports to Public Prosecutor and House of Representatives. The law is silent on whether or not prior notice is required in conducting these visits. The NCHR confirmed that such prior notice is necessary.

While the SCA notes that, in some circumstances, it may be necessary to provide notice for security reasons, it considers 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 the view of the NCHR that the requirement of prior notice does not impact its ability to effectively carry out its mandate to monitor places of detention. However, for the reasons stated above, the SCA considers it preferable NCHR to be mandated to conduct unannounced visits to places of detention. The SCA therefore encourages the NCHR to advocate for the explicit mandate to conduct unannounced visit to all places of detention.

In the interim, the SCA encourages the NCHR 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 NCHR to undertake systematic follow-up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those detained.

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

5. Encouraging ratification or accession to international human rights instruments

The Law does not explicitly provide the NCHR with a mandate to encourage ratification or accession to international human rights instruments.

The SCA is of the view that encouraging ratification of, or accession to, international human rights instruments is a key function of an NHRI. While the SCA acknowledges that the NCHR reports to undertake this role in practice, it encourages the NCHR to advocate for amendments to the enabling law to provide it with an explicit mandate to encourage ratification or accession to international human rights instruments.

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'.

The SCA encourages the NCHR to cooperate with OHCHR, GANHRI, NANHRI and other NHRIs, as well as with international and national NGOs and civil society organizations.

3.3 Guatemala: The Procurador de Derechos Humanos of Guatemala (PDH)

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

The SCA commends the efforts of the PDH in discharging its mandate effectively despite the very challenging political context in which it operates. The SCA further expresses its appreciation to the current Procurador, Jordán Rodas Andrade, for his continued commitment and persistent work in fulfilling his mandate.

The SCA is concerned about the threats faced by the Procurador, which required him to seek precautionary measures from the Inter-American Commission on Human Rights. The SCA reiterates the GA Resolution on NHRIs A/RES/72/181, which stresses that members and staff of NHRIs should not face any form of reprisal or intimidation, including political pressure, physical intimidation, harassment or unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates, including when taking up individual cases or when reporting on serious or systematic violations in their countries.²

The SCA welcomes that the PDH is a strong and independent NHRI. The SCA expresses its full support to the PDH as the institution continues to perform its functions with rigour despite the challenges that it faces.

The SCA encourages the PDH to continue its engagement with OHCHR, GANHRI, the network of NHRIs of the Americas, and other NHRIs.

The SCA notes:

² UN General Assembly, Resolution on national institutions for the promotion and protection of human rights, A/RES/72/181, 2018, para. 11.

1. Selection and appointment

In accordance with Articles 273 of the Constitution and 10 of the Law, the Procurador is elected by a two-thirds (2/3) majority vote of Congress from amongst three candidates proposed by the Commission on Human Rights of Congress.

The SCA is of the view that the selection and appointment process contained in the Law is not sufficiently broad and transparent in that it does not:

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

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

The SCA encourages PDH 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.

With respect to the involvement of civil society in the parliamentary process for selecting the Procurador, the SCA is of the view that this involvement should be direct rather than through members of parliament. This could be achieved, for example by:

- directly soliciting proposals from civil society; or
- allowing civil society to directly participate in the evaluation process.

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

2. Pluralism and diversity

The law is silent on the requirement for pluralism and diversity within the PDH.

The SCA acknowledges that the PDH membership and staff are reflective of the principles of pluralism and diversity.

As a good practice, the SCA is of the view that the enabling law of an NHRI should include a requirement to ensure pluralism and diversity, as this facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI for all people in Guatemala.

The SCA encourages the PDH to advocate for the inclusion in its enabling law of a requirement to ensure that its staff is broadly reflective of all of the segments of Guatemalan society.

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

3. Adequate funding

The PDH reports that while, in general, it is allocated with adequate funds, it requires additional resources, particularly on departmental level, to effectively fulfil its mandate.

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

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

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

4. Visiting places of detention

The law provides that PDH needs to obtain prior authorization from a judge in order to access premises where human rights violations are alleged to have occurred or to be occurring.

While the SCA notes that, in some circumstances, it may be necessary to provide notice for security reasons, 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 encourages the PDH to advocate for the explicit mandate to conduct unannounced visits to all places of detention.

In the interim, the SCA encourages the PDH 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 PDH to undertake systematic follow-up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those detained.

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

3.4 Moldova: The Office of the People's Advocate of Moldova (OPA)

Recommendation: The SCA recommends that the OPA be re-accredited with **A** Status.

The SCA commends the efforts of the OPA and acknowledges the challenging political and economic context in which it operates.

The SCA welcomes the efforts of the OPA to both address the SCA's 2009 recommendations, and to increase its capacity to promote and protect human rights in collaboration with civil society organisations. The SCA further welcomes the adoption of *Law 52*, the enabling law of the OPA.

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

effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

The SCA notes:

1. Selection and appointment

In accordance with Article 59¹ 3 of the Constitution, the People's Advocate is appointed by Parliament by a simple majority vote of the elected members of Parliament.

The SCA acknowledges that the OPA reports that, in practice, its selection and appointment process is transparent and participatory, and that civil society can participate in the process both by submitting names of candidates and by offering comments to the Special Parliamentary Commission regarding candidates.

The SCA notes that the OPA is advocating for amendments to its enabling law to include a provision stating that the OPA shall be appointed by the Parliament with an absolute majority vote based on a transparent and participatory selection process.

The SCA encourages the OPA to continue to advocate for passage of this amendment.

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. Pluralism and diversity

The Law is silent on the requirement for pluralism and diversity in the composition of the OPA.

The SCA acknowledges that the OPA reports that its composition is reflective of these principles. However, as a good practice, the SCA is of the view that the enabling law of an NHRI should include a requirement to ensure pluralism and diversity, as this facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI for all people in Republic of Moldova.

The SCA encourages the OPA to advocate for the inclusion in its enabling law of a requirement to ensure that its composition is broadly reflective of all of the segments of Moldovan society

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

3. Adequate funding

The OPA reports that its present budget is not sufficient to carry out its mandate, despite having received budgetary increases for the past three years. The SCA notes that, in addition to its mandate as an NHRI, the OPA has been designated as the NPM under OPCAT.

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 Institution's operations and the fulfilment of its mandate.

The SCA emphasizes that, where an NHRI has been mandated with additional responsibilities, such as designation as the NPM, it must be provided with the adequate funding to effectively fulfil these duties.

The SCA encourages the OPA to continue to advocate for adequate funding to effectively carry out its mandate, including that as the NPM.

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

4. Interaction with the international human rights system

The SCA acknowledges that the OPA has engaged with the international human rights system to a substantial degree, and that it is in the process of establishing a specialised unit to monitor the compliance by the State with its international human rights obligations.

The SCA encourages the OPA to continue its engagement with the international human rights system, and to strengthen its ability to do so by advocating for additional resources.

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 UPR, 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.

In considering its engagement with the international and regional human rights systems, the OPA is encouraged to actively engage with the OHCHR, GANHRI, ENNHRI, and other NHRIs, as well as international and national NGOs and civil society organizations.

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

5. Recommendations by NHRIs

The OPA reports to have developed a framework to independently monitor the implementation by government of the National Human Rights Action Plan in cooperation with other human rights bodies, including civil society. The SCA welcomes this initiative.

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 OPA to continue to monitor the implementation of the National Action Plan, as well as its other recommendations.

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

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

Recommendation: The SCA recommends that the PDDH 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 PDDH maintains A status pending a determination at the SCA's first session of 2019. This allows an opportunity for the PDDH to provide the documentary evidence necessary to establish its continued conformity with the Paris Principles.

During the SCA's sessions in November 2016 and November 2017, a number of issues were brought to the attention of the PDDH, including in relation to its independence and effectiveness. The SCA deferred the application of the PDDH on both occasions to provide it with an opportunity to respond these concerns.

In May 2018, the SCA reviewed the documentation submitted by the PDDH. It also conducted a telephone interview with the PDDH in which it provided an opportunity to respond to issues relating to: actions taken to address the previously-stated concerns of the SCA, actions taken to address the current human rights situation in Nicaragua, statements made or reports issues by the institution containing critical assessments of the human rights situation, and the accessibility of its website.

Based on all of the information that has been provided, the SCA is of the view that the PDDH is not prepared to adequately speak out in a manner that promotes respect for all human rights, including in response to credible allegations of serious human rights violations having been committed by government authorities. The failure to do so demonstrates a lack of sufficient independence. Therefore, the SCA is of the view that the PDDH is acting in a way that has seriously compromised its compliance with the Paris Principles.

The SCA notes that the following issues are of substantial concern and form the basis of the recommendation to downgrade:

1. Independence

In November 2017, the SCA noted the concerns expressed by the Committee on Migrant Workers regarding the independence and effectiveness of the PDDH, and encouraged the PDDH to provide its response to these concerns.

The SCA acknowledges that the PDDH replied that the Government respects and ensures that all migrant workers and their families enjoy the rights recognized by the *Convention on the Protection*

of the Rights of all Migrant Workers and Members of their Families. The PDDH further indicated that it has a mandate to investigate all matters related to migrants workers and outlined its various powers in its enabling law.

The SCA considers that the response given by the PDDH is insufficient as it does not address the substance of the concerns raised by the Committee in terms of effectiveness and independence.

Also in November 2017, the SCA encouraged the PDDH to provide:

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

The SCA acknowledges that the PDDH provided a list of 99 publications which describe its activities, public announcements and presentations to the National Assembly. The SCA notes that these postings relate to a variety of topics. However, there is insufficient evidence contained in these documents that the PDDH has engaged in critical assessments of the human rights situation in the country.

With respect to its interactions with the international and regional human rights system, the SCA acknowledges that the PDDH indicates that it maintains outstanding participation at the international level, noting its membership and participation in a variety of bodies. The SCA further acknowledges that the PDDH has provided a list of its submissions to the international human rights system since 2010.

With respect to the visit by the Inter-American Commission on Human Rights, the SCA acknowledges that the PDDH indicated in its submission that it had received no formal communication from the Commission referring to an intention to visit Nicaragua and that any such visit would need to be approved by the Executive. The PDDH further indicated that it was “pleased with the good working relationships between the government and the Inter-American system”.

The SCA is of the view that the response provided by the PDDH in its submission is insufficient, as it fails to acknowledge the role of an NHRI in advocating for the government to interact with the international and regional human rights systems.

The SCA acknowledges that it received information during the interview with the PDDH that the Executive has now approved the request of the Inter-American Commission to visit the country. It encourages the PDDH to actively participate in this visit.

With respect to information on activities the PDDH has taken to address cases related to violations of human rights, including that of Maria Luisa Acosta³, the SCA acknowledges that the PDDH indicates that it posted the ruling of the Inter-American Court of Human Rights relating to the case of Maria Luisa Acosta on its website.

The SCA is of the view that the response provided by the PDDH does not provide sufficient indication that it has taken adequate actions to address cases related to violations of human rights.

³ Case *Acosta y Otros vs. Nicaragua*: http://www.corteidh.or.cr/docs/casos/articulos/seriec_334_esp.pdf

With respect to this specific case of Maria Luisa Acosta, the SCA acknowledges that the decision of the Inter-American Court specifically required the PDDH to post the decision on its website. However, the SCA is of the view that posting a decision on its website without accompanying critical commentary is an inadequate response of an NHRI to a finding of gross violations of human rights. Further, the SCA notes that the website of the PDDH has been and continues to be shut down, and that the PDDH is unable to indicate when it can again be accessed.

In view of the above, the SCA is not satisfied that the PDDH has acted in a manner that adequately demonstrates its independence as 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. It must be constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights priorities in the country, free from political interference.

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

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

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

2. Addressing human rights violations

In November 2017, the SCA noted that the May 2014 Universal Periodic Review outcome report recommended that Nicaragua to guarantee a safe and enabling environment for journalists and human rights defenders, and ensure that all cases of attacks against them are investigated by independent and impartial bodies. The SCA noted at that time that the PDDH had indicated that it has not received any complaints about attacks against human rights defenders and other human rights violations.

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

The SCA acknowledges that the PDDH indicates that, “in Nicaragua, there is a secure and suitable environment for journalists and defenders of human rights (...) and that there have been no cases of harassment, persecution or assault due to their work against journalists, human rights defenders or anyone due to political, ideological or religious beliefs”. Further, the PDDH indicated that it has “an excellent and exemplary level of citizen security and an environment that enables the work of human rights defenders in Nicaragua, thanks to the accurate preventative police model (...) implemented by the national police”.

The SCA acknowledges that the PDDH is currently operating in a complex and volatile context. However, the SCA is of the view that the response provided demonstrates an unwillingness to address fundamental human rights issues in a fulsome and independent way.

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.

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

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

The SCA further notes the following issues, which the PDDH should address in order to ensure its full compliance with the Paris Principles:

3. Selection and appointment

In November 2017, the SCA noted that according to Articles 138(9)(d) of the Constitution and 1(2) and 8 of the Law, the Ombudsperson and Deputy Ombudsperson are appointed by 60% majority vote of the Parliament. The enabling laws are otherwise silent on the selection process.

The SCA acknowledged that the PDDH reports that section 141 of Law No. 606 requires that, when a position becomes vacant, the Board of Directors requests that the plenary approve a resolution to call for an election, and that this call is published in a media publication with national circulation. The SCA further acknowledges that the PDDH indicates that its selection process is transparent and includes broad public consultation, including the full participation of civil society.

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

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

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

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

With respect to the involvement of civil society in the parliamentary process for selecting the Procurator, the SCA is of the view that this involvement should be direct rather than through members of Parliament. This could be achieved for example by:

- directly soliciting proposals from civil society;
- allowing civil society to directly participate in the evaluation 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’.

4. Term of office

In November 2017, the SCA noted that the Ombudsperson is elected for a five (5) year term, and that the Law is silent on the number of times that an individual can be re-elected.

As a good practice, the SCA considers it preferable that the enabling law of an NHRI limits the possibility of re-election to one additional term. The SCA encourages the PDDH to advocate for amendment to the law to provide for such a limitation.

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

The SCA refers to Paris Principle B.3.

5. Pluralism and diversity

In November 2017, the SCA noted that the law is silent on the requirement for pluralism and diversity in the composition of the PDDH.

The SCA acknowledges that the PDDH reports that its membership and staff complement are reflective of the principles of pluralism and diversity.

As a good practice, the SCA is of the view that the enabling law of an NHRI should include a requirement to ensure pluralism and diversity, as this facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI for all people in Nicaragua.

The SCA continues to encourage the PDDH to advocate for the inclusion in its enabling law of an explicit requirement to ensure that its composition is broadly reflective of all of the segments of society.

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

3.6 Spain: The Defensor del Pueblo of Spain (DPS)

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

The SCA welcomes the actions taken by the DPS to address the SCA’s previously-stated concerns with respect to issues relating to the rights of migrants. The SCA also notes with appreciation the work of the DPS, including as the NPM under OPCAT.

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

The SCA notes:

1. Selection and appointment

In accordance with the Law, Parliament appoints the Defensor.

The SCA acknowledges that the DPS reports that, in practice, its selection process is transparent and participatory, and that civil society organizations can participate in this process through members of parliament. Further, the DPS reports that, while vacancies are not formally advertised, the public is aware that the selection process will take place as a result of media attention surrounding the expiration of the term of the Defensor.

However, the SCA is of the view that the selection process currently enshrined in the existing Law is not sufficiently broad and transparent in that it does not:

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

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

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

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

With respect to the involvement of civil society in the parliamentary process for selecting the Defensor, the SCA is of the view that this involvement should be direct rather than through members of Parliament. This could be achieved, for example, by:

- directly soliciting proposals from civil society;
- allowing civil society to directly participate in the evaluation process.

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

2. Tenure

Article 36 of the Law establishes that Deputies and Advisors will automatically cease their functions as soon as a new Defensor is elected. In 2012, the DPS had advised the SCA that, in practice, all staff member positions ended when a new Defensor was elected. While this was of concern to the SCA at the time, it notes that the DPS reports that this is no longer the practice.

The SCA encourages the DPS to ensure the ongoing and effective fulfilment of its mandate by guaranteeing staff security of tenure. This could be achieved through an amendment to the law that explicitly provides for such security of tenure regardless of the election of the Defensor.

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

3. Term of office

In accordance with article 2.1 of the Law, the Defensor is appointed for a five (5) year term. The Law is silent on the number of times that an individual can be re-elected.

The SCA acknowledges that the DPS reports that, generally, the Defensor is not re-elected.

As a good practice, the SCA considers it preferable that the enabling law of an NHRI limits the possibility of re-election to one additional term. The SCA encourages the DPS to advocate for amendment to the law to provide for such a limitation.

The SCA refers to Paris Principle B.3.

4. Pluralism and diversity

The law is silent on the requirement for pluralism and diversity within the DPS.

The SCA acknowledges that the DPS membership and staff complement are reflective of the principles of pluralism and diversity.

As a good practice, the SCA is of the view that the enabling law of an NHRI should include a requirement to ensure pluralism and diversity, as this facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI for all people in Spain.

The SCA continues to encourage the DPS to advocate for the inclusion in its enabling law of a requirement to ensure that its composition is broadly reflective of all of the segments of Spanish society.

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

5. Interaction with the international human rights system

The SCA acknowledges that the DPS has engaged with the international human rights system to a substantial degree. It further acknowledges that the DPS reports that it is not able to fully participate in all periodic reviews of Spain as a result of resource limitations.

The Paris Principles recognize that engagement with the international human rights system, and in particular with the Human Rights Council and its mechanisms, can be an effective tool for NHRIs in the promotion and protection of human rights domestically.

The SCA encourages the DPS to continue this engagement, and to advocate for additional resources to ensure its ability to fully participate in and cooperate with the international human rights system.

In considering its engagement with the international and regional human rights systems, the SCA encourages the DPS to continue its cooperation with OHCHR, GANHRI, ENNHRI and others NHRIs, as well as international and national NGOs and civil society organizations.

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

6. Adequate funding

The DPS reports that it has not been allocated with sufficient funding to create new programs or strengthen existing ones and that, while it has received some increases in its budgetary allocation, these have not been sufficient to address the limitations faced by the institution.

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 Institution's operations and the fulfilment of its mandate.

The SCA emphasizes that, where an NHRI has been mandated with additional responsibilities, it must be provided with the adequate funding to effectively fulfil these duties.

The SCA encourages the DPS to continue to advocate for the provision of adequate funding.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding'. The SCA also refers to Paris Principle A.3 and its General Observation 2.8 on 'Assessing NHRIs as National Preventive and National Monitoring Mechanisms'.

3.7 Sri Lanka: The Human Rights Commission of Sri Lanka (SLHRC)

Recommendation: The SCA recommends that the SLHRC be re-accredited with **A** Status.

The SCA commends the work carried out and the improvements made by the SLHRC since its last accreditation, particularly given the difficult context in which it operates.

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

The SCA notes:

1. Independence

The SCA notes that neither the Constitution nor the Law explicitly provide for independence of the SLHRC.

The SCA notes that the SLHRC has advocated for amendments to the Constitution to explicitly entrench its independence. The SCA encourages the SLHRC to continue this advocacy.

The SCA refers to Paris Principle A.2 and to its General Observation 1.1 on 'Selection and appointment of the decision-making body of NHRIs'.

2. Selection and appointment

Article 41 B of the Constitution and Section 3 (2) of the law provide that the Commissioners shall be appointed by the President, on the recommendation of the Constitutional Council. The Constitutional Council is a ten (10) member body comprised of the Prime Minister, the speaker of Parliament, the leader of the opposition in Parliament, one member of Parliament appointed by the President, five (5) persons appointed by the President upon nomination by both the Prime Minister and the leader of the opposition (two (2) of whom must be members of Parliament) and one (1) member of Parliament nominated by agreement of the majority of the members of Parliament who do not belong to the party of the Prime Minister or of the leader of the opposition.

The SCA is of the view that the selection and appointment process as enshrined in the law is not sufficiently broad and transparent. In particular, it does not:

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

The SCA acknowledges that the SLHRC reports, that, in practice, announcements of vacancies are made online and in national newspapers. However, the SCA considers it preferable that this be an explicit requirement of the law.

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.

The SCA encourages SLHRC 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 notes that the 2017 report of the Special Rapporteur on the independence of judges and lawyers recommended that:

- “the composition of the Constitutional Council should balance the number of active politicians with representation from civil society, the Bar Association and academia so as to avoid the politicization of the appointment processes”; and
- “the Constitutional Council should set out and publish its rules of procedure, including the criteria used to evaluate candidates’ suitability for a given position, which should be scrupulously and consistently applied”.⁴

⁴ Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Sri Lanka, A/HRC/35/31/Add.1, 2017, para. 103 and 104, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/074/80/PDF/G1707480.pdf?OpenElement>.

The SCA encourages the SLHRC to advocate for the implementation of the Special Rapporteur's recommendations.

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. Human rights mandate

The definition of human rights contained in Section 33 of the law refers to both civil and political and economic, social, and cultural rights. However, the effect of section 10 (a) of the law is that the SLHRC is mandated to inquire into and investigate complaints relating only to fundamental rights, as opposed to human rights. Chapter 3 of the Constitution is entitled "fundamental rights" and guarantees only a limited set of civil and political rights.

An NHRI's mandate should be interpreted in a broad, liberal 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 acknowledges that the SLHRC interprets its mandate broadly and conducts some activities relating to economic, social, and cultural rights. It further acknowledges that the SLHRC has advocated for the explicit addition of economic, social, and cultural rights in forthcoming amendments to the Constitution, and that the Parliamentary Subcommittee on Fundamental Rights has drafted a Bill of Rights which includes economic, social and cultural rights.

The SCA encourages the SLHRC to continue to interpret its mandate broadly, and to continue its advocacy in favour of the constitutional amendment.

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

4. Formalization of the role as NPM

The SCA notes that the SLHRC has recently been designated as the NPM under OPCAT, but that it has not been provided with an explicit legislative mandate in this regard.

The SCA acknowledges that the enabling law mandates the SLHRC to access all places of detention, and that the SLHRC has indicated that it considers this sufficient to facilitate its role as NPM.

However, the SCA is of the view that a specific legislative mandate assists in ensuring the NHRI is able to undertake its role effectively and free from interference. The SCA, therefore, encourages the SLHRC to advocate for formalization of its NPM status in legislation.

The SCA refers to Paris Principle A.3 and to its General Observation 2.8 on 'Assessing NHRIs as National Preventive and National Monitoring Mechanisms'.

5. Pluralism and diversity

The law is silent on the requirement for pluralism and diversity within the SLHRC.

The SCA acknowledges that the SLHRC membership and staff are reflective of the principles of pluralism and diversity.

As a good practice, the SCA is of the view that the enabling law of an NHRI should include a requirement to ensure pluralism and diversity, as this facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI for all people in Sri Lanka.

The SCA encourages the SLHRC to advocate for the inclusion in its enabling law of a requirement to ensure that its composition is broadly reflective of all of the segments of Sri Lankan society.

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

6. Adequate funding

The SLHRC reports that the funds allocated for its work have gradually increased since 2015 and that it is able to use these funds freely, according to its own priorities. It also reports receiving additional funds from external donor sources.

The SCA notes that the SLHRC has requested additional funds given its recent designation as the NPM.

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

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

7. Annual report

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

The SCA notes that the SLHRC submits quarterly activity reports to Parliament, and that it indicates that these quarterly reports together make up its annual report. The SCA further notes that the SLHRC has indicated that it plans to prepare and table a supplement that includes an analysis of the human rights situation in Sri Lanka along with this report. The SCA encourages the SLHRC to do so.

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

3.8 Uganda: The Uganda Human Rights Commission (UHRC)

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

The SCA notes with appreciation the activities undertaken by the UHRC to promote and protect human rights. It further acknowledges and welcomes the active participation of the UHRC in regional and international activities.

The SCA notes that the UHRC intends to propose amendments to its law to address its outstanding concerns.

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

The SCA notes:

1. Selection and appointment

In accordance with section 2(1) of the Act, the Chairperson and the Commissioners are appointed by the President with the approval of Parliament.

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

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

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

The SCA encourages the UHRC 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;
- 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.

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 Article 56 of the Constitution, a member of the UHRC can be dismissed in the same manner as a judge of the High Court "with the necessary modifications". The SCA notes that the meaning of this clause is not defined in the law.

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.

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfill their mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law.

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

The SCA encourages the UHRC to continue to advocate for appropriate amendments to its enabling law to clarify the dismissal process.

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

3. Adequate funding

The UHRC reports that, while it has received some increases in its budgetary allocation, these have not been sufficient to effectively fulfil its mandate.

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

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 acknowledges that the UHRC has sought and received donor funding in order to improve its budgetary situation.

Funding from external sources, such as from international development partners, should not compose the core funding of the NHRI, as this is the responsibility of the State. However, the SCA recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support an NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases, an NHRI should not be required to obtain approval from the state for external sources of funding, as this requirement may detract from its independence. Such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the NHRI

The SCA encourages the UHRC to continue to advocate for an appropriate level of funding to be provided by the State in order to allow it to effectively carry out its mandate, including by opening additional regional offices.

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 Ecuador: Defensor del Pueblo de Ecuador (DPE)

Decision: The SCA decides to initiate a **Special Review** of the DPE at its second session of 2018.

The SCA received a letter from the GANHRI Chair alerting it to the following information:

- On 2 May 2018, the head of the DPE, Dr. Ramiro Rivadeneira, has been dismissed by decision of the Consejo de Participación Ciudadana y Control Social Transitorio (CPCCS-T). Dr Rivadeneira’s dismissal followed his refusal to cooperate with the CPSSC-T as being incompatible with the Constitution of Ecuador.
- On 3 May 2018, the CPCCS-T appointed Dr. Gina Benavides as acting Defensora;
- The CPCCS-T was set up as a transitional body following a referendum held on 4 February 2018. It has the power to evaluate how public bodies have fulfilled their mandate, and can dismiss mandate holders if it immediately starts the selection process for a replacement. The Constitutional Court of Ecuador, which has to decide on the constitutionality of such referenda, did not take a decision before the referendum was called. The members of the CPCCS-T were elected by the national parliament, upon proposal by the President of Ecuador;

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

The SCA acknowledges that it has received a response to these allegations from the DPE. This response indicates that the actions outlined above were undertaken as a result of a national referendum that provided a mandate to the Government. The response further indicated that the DPE is currently engaged in a process of institutional reform.

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

The SCA refers to Article 16.2 of the GANHRI Statute.

4.2 Chile: Instituto Nacional de Derechos Humanos (INDH)

Decision: The SCA decides to initiate a **Special Review** of the INDH at its second session of 2018.

The SCA received correspondence from a group of civil society organizations alerting it to the dismissal of the Director of the INDH, Branislav Marelic Rokov, and related concerns.

The SCA acknowledges that it has received a response from the INDH relating to these allegations.

However, the SCA is of the view that the response received is not adequate to address its concerns in light of the allegations made and the decision of the Court of Appeal of Santiago (Precautionary

Measure n. 10186 – 2018). According to the decision of the court, the process of dismissal of Mr. Branislav Marelic Rokov was unlawful, and consequently both the dismissal and the appointment of the new Director are of no legal effect. The SCA acknowledges that the INDH has appealed the decision and an outcome is pending.

In view of the information before it, the SCA decides to initiate a Special Review.

The SCA refers to Article 16.2 of the GANHRI Statute.

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

5.1 Azerbaijan : The Human Rights Commissioner of Azerbaijan (HRCA)

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

In March 2017, the SCA recommended that the HRCA be downgraded to B status. The SCA gave the HRCA the opportunity to provide, within one (1) year, the evidence deemed necessary to establish its continued compliance with the Paris Principles.

In May 2018, the SCA reviewed the documentation and additional material that the HRCA has sent, summarizing and reporting on all the activities it has carried out. During the session, the SCA conducted a telephone interview and gave the Commissioner the opportunity to provide her views on: the selection and appointment process of the new Ombudsperson; the absence of critical statements against the government; actions undertaken and recommendations made by the NPM; actions undertaken to protect freedom of expression and freedom of association; and the public position taken by the HRCA on the presidential elections held in April 2018.

In view of all the material provided, the SCA is not satisfied the HRCA has adequately addressed its concerns.

The SCA again notes with concern:

1. Addressing human rights violations

In March 2017, the SCA noted the following:

“The SCA has received information which raised concerns that the HRCA may no longer be operating in full compliance with the Paris Principles. The information related to actions taken and not taken, and statements made and not made, by the HRCA indicating 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 protection of human rights defenders.

In particular, the SCA considered the following information:

- *The 2015 Concluding Observations of the Committee against Torture in which it expressed concern that the HRCA, in its role as NPM, “has not been effective in addressing the main problematic issues related to the prevention of torture and human rights violations in places of deprivation of liberty”, as well as the Human Rights Committee in its 2016 Concluding Observations noted that it “is concerned about the mechanism’s effectiveness in preventing torture and ill-treatment and other violations in places of deprivation of liberty.”*

At the session, the SCA provided the HRCA with the opportunity to respond to these observations. The SCA acknowledges that it is the position of the HRCA that the concerns expressed represent the views of various NGOs rather than the Committee members themselves. However, the SCA was not satisfied with this response.

- *Various statements of the UN High Commissioner for Human Rights expressing concern about the reported crackdown in Azerbaijan on journalists and human rights defenders, including a September 2015 statement, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16393&LangID=E>.*

At the session, the SCA provided the HRCA with an opportunity to outline the actions taken by the institution in response to these concerns, with reference to the specific cases of Khadija Ismayilova, Lyal and Arif Yunus, Intigam Aliyev, Anar Mammadli and Rasul Jafarov.

The SCA acknowledges that the HRCA did provide some evidence about actions taken in relation to these concerns, including undertaking visits to the detained individuals and, in the case of Intigam Aliyev, making a request for the return of two books that had been seized. However, the SCA is of the view that the evidence provided does not establish that the HRCA has effectively responded to the concerns raised.

- *A report from civil society organizations presenting concerns relating to the independence and effectiveness of the HRCA, and asserting that it is not viewed as an effective institution by civil society organizations as a result of its failure to respond to gross human rights violations, including by remaining silent in relation to government crackdowns on civil society, the jailing of leading human rights defenders, the closure of human rights NGOs, and the adoption of repressive NGO laws limiting the ability of these organizations to operate effectively. The submission references the specific cases of Bayram Mammadov and Giyas Ibrahimov and alleges that the HRCA failed to promptly visit the youth activists in detention and, when they did, falsely reported that they had no complaints and had not been subject to torture.*

The SCA received and considered a written response from the HRCA. It acknowledges that the HRCA disputes the veracity of the NGO submission and that it has provided some evidence of activities it has taken in response to these issues and specific cases, including visiting the two individuals in detention. However, the SCA is of the view that the evidence provided does not establish that the HRCA has effectively responded to the concerns raised.

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

The SCA acknowledges that the HRCA reported that it has:

- Submitted more than 200 motions to the Government, among which 70% were accepted;
- Made several proposals to amend national legislations, which resulted in amendments to the Criminal Code, Criminal Procedure Code, Penal Code and Code on Administrative Offences;

- Submitted motions which resulted in an Executive Order of the President of Azerbaijan to improve the penitentiary system, humanize the State's criminal policy and expand alternative sentences;
- Regularly visited prisons and assessed detention conditions;
- Organized various awareness raising activities for police officers, judges, as well as for the penitentiary and medical services.

The SCA further acknowledges the work carried out by the HRCA in particular concerning migrants and IDPs, as well as its advocacy for the release of journalists and human rights defenders. The SCA also acknowledges the difficult political situation in which the HRCA operates.

Furthermore, the SCA took into consideration the 2017 report of the Working Group on Arbitrary Detention on its mission to Azerbaijan. The Working Group noted *“the absence of the requisite independent oversight in variety of detention places and is mindful that such independent oversight, which must be ensured as per the terms of the Optional Protocol, makes an important contribution towards both the detection and prevention of instances of arbitrary detention”*. The Working Group recommended to the Government to *“ensure that the National Preventive Mechanism is able to and in fact discharges its mandate independently and that the respective authorities engage with the Mechanism constructively on the implementation of its recommendations”*.

The SCA also notes that the HRCA has not provided contribution to the third cycle of Universal Periodic Review and to the 63rd session of the Committee Against Torture.

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

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

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

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

2. Selection and appointment

In March 2017, the SCA noted the following:

“In accordance with article 2(1) of the Law, the Ombudsperson is elected by an 83 votes majority of the Parliament from among three (3) candidates proposed by the President.

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

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

The SCA encourages the HRCA 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 notes that the term of the current Ombudsperson expired in early March 2017 and that no new selection and appointment process has been initiated. The SCA urges the HRCA to ensure that a transparent and participatory process is utilized in the selection and appointment of a new Ombudsperson.”

The SCA acknowledges that the HRCA indicates that it has conveyed the SCA recommendation to relevant State authorities.

However, the SCA notes that there have been no developments since March 2017.

The SCA encourages the HRCA to continue to advocate for the election of a new Ombudsperson at the earliest available opportunity.

The SCA further encourages the SCA to advocate for appropriate amendments to its enabling law to ensure that this selection and appointment process is sufficiently transparent and participatory.

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’.

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