

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

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

**Geneva, 14-18 October 2019**

**SUMMARY OF RECOMMENDATIONS**

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| <b><u>1. Re-Accreditation (Art. 15 of the GANHRI Statute)</u></b>   |
| <b><u>1.1 Afghanistan: Afghanistan Independent Human Rights Commission (AIHRC)</u></b><br><b>Recommendation:</b> The SCA recommends that the AIHRC be re-accredited with <b>A</b> status.           |
| <b><u>1.2 Finland: Finnish National Human Rights Institution (FNHRI)</u></b><br><b>Recommendation:</b> The SCA recommends that the FNHRI be re-accredited with <b>A</b> status.                     |
| <b><u>1.3 Honduras: Comisionado Nacional de los Derechos Humanos de Honduras (CONADEH)</u></b><br><b>Recommendation:</b> The SCA recommends that the CONADEH be re-accredited with <b>A</b> status. |
| <b><u>1.4 Kenya: Kenya National Commission on Human Rights (KNCHR)</u></b><br><b>Recommendation:</b> The SCA recommends that the KNCHR be re-accredited with <b>A</b> status.                       |
| <b><u>1.5 Togo: La Commission Nationale Des Droits De L’homme Du Togo (CNDH)</u></b><br><b>Recommendation:</b> The SCA recommends that the CNDH be re-accredited with <b>A</b> status.              |
| <b><u>1.6 Ukraine: Ukrainian Parliament Commissioner for Human Rights (UPCHR)</u></b><br><b>Recommendation:</b> The SCA recommends that the UPCHR be re-accredited with <b>A</b> status.            |
| <b><u>2. Decision (Art. 14.1 of the GANHRI Statute)</u></b>   |
| <b><u>2.1 Argentina: The Defensor del Pueblo de la Nación Argentina (DPNA)</u></b><br><b>Decision:</b> The SCA decides to defer the review of the DPNA.   |
| <b><u>2.2 Hungary: Commissioner for Fundamental Rights of Hungary (CFR):</u></b><br><b>Decision:</b> The SCA decides to defer the review of the CFR to its second session of 2020.                  |
| <b><u>2.3 Russia: High Commissioner for Human Rights in the Russian Federation (OCHR)</u></b><br><b>Decision:</b> The SCA decides to defer the review of OCHR to its second session of 2020         |
| <b><u>3. Review (Art. 16.2 of the GANHRI Statute)</u></b>   |
| <b><u>3.1 Ecuador: Defensoría del Pueblo de Ecuador (DPE):</u></b> The SCA recommends that the accreditation status of the DPE be <b>maintained</b> .   |
| <b><u>3.2 Panamá: Defensoría del Pueblo de Panamá (DPP):</u></b> The SCA decides to initiate a <b>Special Review</b> of the DPP at its first session of 2020  |

## **Report, Recommendations, and Decision of the Session of the SCA, 11-15 March 2019**

### **1. BACKGROUND**

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

At its March 2019 session, the Bureau adopted amendments to the SCA Rules of Procedure and the General Observations.

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

**1.2** In accordance with the SCA Rules of Procedure, the SCA is composed of NHRI representatives from each region: France for Europe (Chair), Morocco for Africa, Philippines for Asia-Pacific and Canada for the Americas. In accordance with section 3.1 of the SCA's Rules of Procedure, the NHRI of Guatemala participated as alternate member for the Americas to learn about the procedures in practice, in advance of serving on the SCA at its second session of 2020, as the representative of the Americas.

**1.3** The SCA convened from 14 to 18 October- 2019. 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 14.1 of the Statute, the SCA took a decision regarding the re-accreditation of the NHRIs of Argentina, Hungary and Russia

**1.5** Pursuant to article 15 of the Statute, the SCA considered applications for re-accreditation from the NHRIs of Afghanistan, Finland, Honduras, Hungary, Kenya, Russia, Togo and Ukraine

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

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

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

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

**1.8** 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.

**1.9** 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.

**1.10** 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.

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

**1.12** 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.

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

- 1.14** 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.
- 1.15** 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.
- 1.16** Pursuant to Article 16.4 of the Statute, any review of the accreditation classification of a NHRI must be finalized within 18 months.
- 1.17** The SCA acknowledges the high degree of support and professionalism of the GANHRI Secretariat (OHCHR-NIRMS).
- 1.18** The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and gave one (1) week to provide any comments on them. The summaries are only prepared in English, due to financial constraints.
- 1.19** Once the recommendations of the SCA are adopted by the GANHRI Bureau, the report of the SCA is placed on the GANHRI website (<http://nhri.ohchr.org/>).
- 1.20** The SCA considered information received from civil society. The SCA shared that information with the concerned NHRIs and considered their responses.
- 1.21 Notes:** The GANHRI Statute, the Paris Principles, the General Observations and the Practice Notes referred to above can be downloaded in Arabic, English, French and Spanish from the following links:
1. The GANHRI Statute:  
<http://nhri.ohchr.org/EN/AboutUs/Governance/Pages/Statute.aspx>
  2. The Paris Principles and General Observations:  
<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>
  3. The Practice Notes:  
<http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%202/Forms/Default%20View.aspx>

## **SPECIFIC RECOMMENDATIONS**

### **1. RE- ACCREDITATION (Art. 15 of the GANHRI Statute)**

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

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

The SCA commends the efforts undertaken by the AIHRC to promote and protect human rights in the challenging context in which it operates, including by taking public stands on sensitive issues. The SCA encourages the AIHRC to continue to address human rights issues in an active manner. The SCA recommends that the AIHRC should seek to be granted an active role in the peace process.

The SCA notes that the AIHRC has not advocated for the abolition of death penalty but has advocated for its limitation, as well as rights to a free and fair trial. The SCA takes note of the AIHRC's advocacy, and encourages it to take such actions as necessary to ensure respect for all human rights, democratic principles and the strengthening of the rule of law in all circumstances, and without exception.

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

**The SCA notes:**

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

The SCA acknowledges the ongoing efforts of the AIHRC to ensure that it is able to access all places of detention without prior notification. The SCA notes that the AIHRC reports that it is now able to do so, with the exception of centres operated by the Directorate of National Security, where it has been required to give prior notice. The SCA further notes that the AIHRC has indicated that this situation has improved, and it encourages the AIHRC to continue its efforts to fully resolve this issue.

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 able 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 AIHRC to continue to access all places of deprivation of liberty to effectively monitor, investigate and report on the human rights' situation.

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

## 2. Adequate funding

The AIHRC is funded by both the State and international donors, and the proportion of state funding has been increasing in recent years. The SCA encourages the AIHRC to continue to pursue a sustainable funding model that will ensure it can continue to discharge effectively 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. 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.

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

## 3. Term of office

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

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

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

### 1.2 Finland: Finnish National Human Rights Institution (FNHRI)

**Recommendation:** It is recommended that the FNHRI be re-accredited with **A** status.

The SCA notes with appreciation the efforts undertaken by the FNHRI to address the recommendations made in 2014. It further notes the FNHRI’s activities to promote and protect human rights, including by monitoring places of detention, and encourages it to continue to expand this work, including in the area of business and human rights.



The SCA takes note of the particular structure of the Finnish National Human Rights Institution as an umbrella structure composed of the Parliamentary Ombudsman (Ombudsman), the Human Rights Centre (HRC) and the Human Rights Delegation (HRD). While the SCA understands that the government bill establishing these three components as the NHRI is a source of law in Finland, it encourages the FNHRI to continue to advocate for legislative amendments that clearly stipulate the existence of the FNHRI as one NHRI in compliance with the Paris Principles with three distinct structures.

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

### **1. Selection and Appointment**

Given that the HRC forms part of the FNHRI, the SCA is of the view that the selection process for the Director should conform with the Paris Principles applicable to the selection of members of an NHRI's decision-making body.

In accordance with Section 19(c) of the Parliamentary Ombudsman Act, the Ombudsman, after having received the Constitutional Law Committee's opinion, appoints the Director of the HRC for a period of four (4) years.

The SCA notes that this process is not sufficiently broad and transparent. In particular, it does not

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

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 FNHRI to advocate for the formalization and application of a selection process for the Director of the HRC 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. Adequate funding**

The SCA notes the increase of FNHRI funding in the recent years. However, the SCA recommends that adequate funding be made available to the FNHRI to perform its functions as NPM under the OPCAT and the NMM under CRPD, as well as for the HRC to work on business and human rights.

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

The SCA encourages the FNHRI 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.’

## **3. Annual report**

In accordance with Section 12 of the Parliamentary Ombudsman Act, the annual report of the Ombudsman is tabled in Parliament and is discussed in the presence of the Ombudsman. The report of the HRC is presented to the Constitutional Law Committee, to other Committees depending upon the content of the report, and to the Parliament. However, it is neither tabled nor discussed in Parliament.

The SCA is of the view that, as a result of this difference in procedure, Parliament is not provided with a complete account of the work of the FNHRI. The SCA considers it preferable for the HRC to also have the ability to table its reports in Parliament for discussion. It encourages the FNHRI to continue to advocate for this competence.

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

### **1.3 Honduras: Comisionado Nacional de los Derechos Humanos (CONADEH)**

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

The SCA commends the CONADEH for its continuing efforts to promote and protect human rights, especially with regards to migration and refugees, despite the challenging context in which it operates.

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

The SCA notes:

### **1. Mandate**

In accordance with article 16 of the Law, the CONADEH has a mandate to investigate complaints of alleged human rights violations committed by the public administration or by private entities that undertake public functions. The SCA notes that the CONADEH reports to interpret its mandate broadly, and that in practice, it undertakes actions in relation to human rights violations committed by private entities. However, its mandate to do so in all cases is not explicit

The SCA notes that an NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote progressive definition of human rights, which includes all human rights set out in international, regional and domestic instruments, including economic, social and cultural rights. Such mandate should extend to the acts and omissions of both the public and private sectors.

The SCA encourages the CONADEH to continue to interpret its mandate in a broad and purposive manner to address issues related to business and human rights, violence and insecurity. It further encourages the CONADEH to advocate for such amendments to its enabling law as may be necessary to explicitly extend its mandate to all acts and omissions by the private sector.

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

### **2. Interaction with the international and regional human rights systems**

The SCA notes the enhanced cooperation of the CONADEH with the international and regional human rights systems, and encourages it to continue to strengthen this cooperation.

The Paris Principles recognize that monitoring and engaging with the international and regional 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 and regional human rights system may include:

- submitting parallel or shadow reports to the UPR, Special Procedure 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 the CONADEH to work with and seek assistance as necessary from OHCHR, GANHRI and RINDHCA.

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

### **3. Cooperation with Civil Society**

The SCA notes the concerns raised by the Special Rapporteur on the situation of human rights defenders in his 2019 report that some civil society organizations indicated that they did not trust the institution, particularly in relation to its political independence. The report further noted that some civil society actors did not have access to the NHRI’s facilities in the country, and that some individuals had been turned away from regional offices.

The SCA notes that the CONADEH has taken some steps to respond to these concerns, including by establishing a network of human rights defenders.

The SCA emphasizes that regular and constructive engagement of all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates, and contribute to the accessibility of the institution for all, including those who are geographically, politically or socially remote NHRIs should develop, formalize and maintain working relationships as appropriate with other domestic institutions, as well as civil society and non-governmental organizations.

The SCA therefore encourages the CONADEH to continue to enhance and formalize its working relationships and cooperation with civil society organizations and human rights defenders.

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

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

In accordance with the current ‘Regulations for the Election of the National Commissioner for Human Rights,’ the Multiparty Committee of the National Congress, comprised of the President of the Congress and representatives of Parliamentary groups, carries out the selection process by evaluating candidates and issuing a short list to the Plenary of the National Congress for the final selection of the Commissioner of the CONADEH.

The SCA is of the view that the process currently enshrined in the Regulations 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 the CONADEH to advocate for the formalization and application of a process that includes requirements to:

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

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

## **5. Adequate Funding**

The SCA has previously noted concerns about the CONADEH’s budget. The SCA acknowledges that the CONADEH reports that its funding, although limited, is sufficient to carry out its mandated activities. However, the SCA encourages the CONADEH to continue to advocate for increases to its budget to ensure that it can effectively carry out its mandate and provide appropriate training to staff.

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

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

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

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

## **6. Dismissal**

Article 11 of the Law specifies the grounds on which the Commissioner's term shall expire. However, the Law is silent on the process for dismissal.

The SCA is of the view that, in order to address the Paris Principles requirement for a stable mandate, which is important in reinforcing independence, the enabling legislation of an NHRI must contain an independent and objective dismissal process. The dismissal must be made in conformity with all the substantive and procedural requirements prescribed by law.

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

The SCA encourages the CONADEH to advocate for amendments to its enabling law to provide for an objective and independent 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'.

## **7. Tenure**

In accordance with Article 4 of the Organic Law, the Commissioner of the CONADEH shall be elected for a six-year term, with the possibility of re-election. The Law is silent on the number of times a Commissioner can be re-elected, which leaves open the possibility of unlimited tenure. In order to promote institutional independence, the SCA is of the view that it would be preferable for the term of office to be limited to one (1) re-election

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

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

## **8. Immunity**

The SCA acknowledges that the CONADEH explained the reasons why the provision on immunity for all public officials, including the Commissioner of the CONADEH, was repealed by Legislative Decree No. 105-2004. It further acknowledges that the CONADEH considers that immunity should not apply to any of its members in order to avoid undermining the fight against corruption and impunity that is currently taking place in Honduras. Finally, the SCA notes that the CONADEH reports that the Constitution has been modified to provide that the Supreme Court of Justice resolves all processes initiated against High Officials of the State, including the Commissioner of the CONADEH.

Despite this explanation, the SCA continues to be of the view that it would be preferable for immunity provisions to be included in the Law. Further, the SCA is of the view that such immunity should extend to former Commissioners of the CONADEH.

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

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

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

The SCA encourages the CONADEH to advocate for such amendments to the law as are necessary to provide functional immunity for the Commissioner and former Commissioners of CONADEH.

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

#### **1.4 Kenya: Kenya National Commission on Human Rights (KNCHR)**

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

The SCA acknowledges the important role of the KNCHR to promote and protect human rights in Kenya. The SCA notes that the KNCHR was designated in 2017 as the NMM under Article 33 (2) of the CPRD. The SCA encourages the KNCHR to continue its efforts to promote and protect human rights, including the rights of the child and the rights of vulnerable groups.

The SCA notes that the term of the current Commissioners will expire in March 2020. It further notes that the KNCHR reported in its telephone interview that there were delays during its last selection process. Accordingly, the SCA encourages the KNCHR to continue to advocate for a timely selection and appointment process that is carried out in conformity with the provisions in the Constitution and the enabling law.

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

## **1. Encouraging ratification or accession to international instruments**

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

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

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

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

## **2. Adequate funding**

The SCA notes that, due to austerity measures adopted by the government, the KNCHR continues to experience challenges in maintaining an adequate level of funding to fulfil its staffing needs and to perform the additional functions entrusted to it under the CRPD. The SCA acknowledges the steps taken by the KNCHR to address this issue by engaging with National Treasury and Planning Cabinet Secretary and the Parliament to ensure adequate funding.

The SCA emphasizes that, to function effectively and to fulfil its mandate, an NHRI must be provided with an appropriate level of funding in order to guarantee its ability to freely determine its priorities and activities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the NHRI’s operations and the fulfilment of its mandate. The SCA highlights that, where an NHRI has been mandated with additional responsibilities, it must be provided with the adequate funding to effectively fulfil these duties.

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

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



- d) the establishment of well-functioning communications systems including telephone and internet; and
- e) the allocation of a sufficient amount of resources for mandated activities. Where the NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

The SCA encourages the KNCHR to continue to advocate for a level of funding adequate to ensure that it can effectively carry out its mandate, including its additional functions, and to fulfill its staffing requirements.

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

### **1.5 Togo : Commission Nationale des Droits de l’Homme (CNDH)**

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

The SCA welcomes the CNDH’s efforts in advocating for the adoption of amendments to its enabling law and its recent appointment as the NPM under OPCAT.

The SCA commends the work of the CNDH on monitoring of places of deprivation of liberty including the recommendations made by the CNDH on the improvement of conditions of detention.

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

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

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

The SCA notes that the Organic Law does not provide the CNDH with an explicit mandate to encourage ratification of, or accession to, regional and international human rights instruments. However, the SCA acknowledges that the CNDH interprets its mandate broadly and carries out activities in this regard in practice.

The SCA is of the view that encouraging ratification of, or accession to, regional and international human rights instruments, and the monitoring of the effective implementation of those instruments to which the state is a party, is a key function of an NHRI. While acknowledging that the CNDH carries out such functions in practice, the SCA encourages it to continue interpreting its mandate in a broad manner and advocate for the appropriate amendments to its enabling law in order to have an explicit mandate to encourage ratification or accession to regional and international human rights instruments.

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

## **2. Selection and appointment**

In accordance with article 7 of the Law, CNDH members are elected by the National Assembly and appointed by decree issued by the Council of Ministers.

The CNDH reports that the call for application is widely publicised through a variety of media and, in practice, the election takes place during an open session of the National Assembly.

However, the SCA is of the view that the process currently enshrined in the Law does not clearly formalise the selection process and criteria upon which the National Assembly assesses the merit of eligible applicants. In addition, the selection process does not promote broad consultation and/or participation in the screening, selection and appointment process.

The SCA interprets the reference to an election or other like process, together with the reference to broad participation, as requiring a clear, transparent, merit-based and participatory selection and appointment process.

The SCA is of the view that the selection process outlined in the Law would be strengthened by explicitly requiring the advertisement of vacancies, and by describing the means by which broad consultation and/or participation of civil society in the process is to be achieved.

Such a process is fundamental in ensuring the independence and effectiveness of, and public confidence in, the NHRI.

The SCA therefore encourages the CNDH to continue to advocate for the formalization in relevant legislation, regulations or binding administrative guidelines, as appropriate, of a process that includes requirements to:

- a. promote broad consultation and/or participation in the application, screening, selection, and appointment process.
- b. 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 National Human Rights Institutions’.

## **3. Adequate funding and financial autonomy**

The CNDH reports that, despite some budgetary increases since 2014, its budget remains insufficient, in particular in view of its new responsibilities as NPM under OPCAT. The SCA notes that the CNDH reports that it has prepared a draft budget for 2020 taking into consideration these new responsibilities, as well as the fact that its members now serve on a full-time basis.

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

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

Further, in accordance with article 47 the Law, the budget of the CNDH is allocated within the State annual budget. In practice, disbursement of funds takes place upon request by the CNDH to the Ministry of Economy and Finance.

The SCA is of the view that State funding should be regularly released and in a manner that does not impact adversely on its functions, day-to-day management and retention of staff.

The SCA encourages the CNDH to continue to advocate for a regular release of its budget, to effectively carry out the full extent of 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.’

#### **4. Annual report**

Pursuant to Article 18 of the Law, the CNDH submits its annual report to the President of the Republic, the President of the National Assembly and the Prime Minister. The annual report is broadly publicised during the first term of the following year.

The SCA considers it important that the enabling laws of an NHRI establishes a process whereby its reports are required to be discussed and considered by the legislature, to ensure that relevant public authorities properly consider its recommendations.

The SCA encourages the CNDH to advocate for the appropriate amendment to its enabling law to ensure that Parliament considers its annual and thematic reports.

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

#### **5. Term of office**

Article 10 of the Law states that members are appointed for a two-year period renewable twice.

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

The SCA encourages the CNDH to advocate for amendments to its enabling Law to address this issue.

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

## **6. Recruitment and retention of NHRI’s staff**

The CNDH reports that it currently has 12 seconded staff, some of whom are in senior positions. The CNDH informs that recourse to secondment has been due to lack of adequate funding and expertise. The SCA notes the progress made in reducing the number of secondees among its staff since the last review.

A fundamental requirement of the Paris Principles is that an NHRI is, and is perceived to be, able to operate independent of government interference. The SCA highlights that this requirement should not be seen to limit the capacity of an NHRI to hire a public servant with the requisite skills and experience. However, the recruitment process for such positions should always be open, clear, transparent, merit-based and at the sole discretion of the NHRI. Where an NHRI is required to accept staff assigned to it by the government, and in particular where this includes those at the highest levels in the NHRI, it brings into question its capacity to function independently.

NHRIs must be provided with sufficient resources to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the NHRI’s mandate. Such resources should allow for salary levels and terms and conditions of employment equivalent to those of other independent State agencies.

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

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

### **1.6 Ukraine: Ukrainian Parliament Commissioner for Human Rights (UPCHR)**

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

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

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

##### **1. Mandate**

Article 3(7) of the Law of Ukraine on the Ukrainian Parliament Commissioner for Human Rights (Law) mandates the UPCHR to engage in the “promotion of the legal awareness of the population...”. The

SCA acknowledges that the UPCHR interprets this mandate in a broad manner and that it carries out a wide variety of activities to promote human rights.

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

Further, the Law does not provide the UPCHR with an explicit mandate to encourage ratification of or accession to regional and international human rights instruments. The SCA again acknowledges that the UPCHR interprets its mandate in a broad manner and that in practice, it conducts such activities.

The SCA is of the view that encouraging ratification of, or accession to, regional and international human rights instruments, and the monitoring of the effective implementation of those instruments to which the state is a party, is a key function of an NHRI. While acknowledging that the UPCHR carries out such functions in practice, the SCA encourages it to advocate for appropriate amendments to its enabling law in order to have an explicit mandate to encourage ratification or accession to regional and international human rights instruments.

The SCA encourages the UPCHR to continue to interpret its mandate broadly, and to advocate for amendments to its enabling law to make these mandates explicit.

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

## **2. Selection and Appointment**

In accordance with article 5 of the Law, the Commissioner is appointed by the Parliament by a secret ballot. In accordance with article 6 of the Law, proposals for candidates for the position of Commissioner are made by the Chairman of the Parliament or by at least one-fourth (1/4) of the People’s Deputies.

The SCA acknowledges that the UPCHR reports that, in practice, representatives of public organizations, trade unions, academic, and journalists were provided with an opportunity to express their views on candidates at a meeting of the relevant Parliamentary Committee in 2017.

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

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

The SCA notes that the UPCHR has proposed amendments to its enabling law with respect to selection and appointment. In particular, article 6 of the proposed law would also provide the Committee of Parliament with responsibility for the activities of the UPCHR, in consultation with representatives of public human rights institutions, with the ability to propose candidates. However, the SCA is not of the view that this amendment would sufficiently address its above-noted concerns.

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

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

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

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

### **3. Adequate funding**

During its previous review of the UPCHR, the SCA noted concern with respect to adequate funding. The SCA acknowledges that the budget of the UPCHR has increased significantly since the previous review. It notes, however, that the UPCHR reports a need for greater capacity to provide training to its staff.

The SCA reiterates 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 realization improvement of the NHRI's operations and the fulfilment of its mandate.

The SCA encourages the UPCHR to continue to advocate for adequate funding to effectively carry out the full extent of its mandate, and to provide necessary training for staff.

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

### **4. Term of Office**

In accordance with Article 5 of the Law, the term of office of the Commissioner is five (5) years. The Law is silent on the number of times a Commissioner can be re-appointed, which leaves open the possibility of unlimited tenure. In order to promote institutional independence, the SCA is of the view that it would be preferable for the term of office to be limited to one (1) re-appointment.

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

## **5. Cooperation with other human rights bodies**

Article 22 of the Law requires various State bodies and civil society organizations to cooperate with the UPCHR, and the SCA notes that the UPCHR reports it cooperates with civil society organizations in practice. However, the SCA received information that the extent of this cooperation could be further improved.

The SCA is of the view that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandate. NHRIs should develop, formalize and maintain working relationships with human rights defenders, as well as a wide range of civil society organizations.

The SCA encourages the UPCHR to continue and strengthen its cooperation with civil society organizations and human rights defenders.

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

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

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

**Decision:** The SCA decides to defer the re-accreditation of the DPNA.

The SCA is of the view that, in the absence of policy advice from the GANHRI Bureau, the application by the DPNA cannot be determined reasonably at this time, based on the facts that are available. Pursuant to Section 8.5 of the SCA Rules of Procedure, the SCA shall seek policy guidance from the GANHRI Bureau.

#### **2.2 Hungary: Commissioner for Fundamental Rights of Hungary (CFR)**

**Decision:** The SCA decides to **defer** the review of the CFR to its second session of 2020.

The SCA acknowledges the work that the CFR has done to promote and protect a range of human rights. However, the SCA was of the view that it required additional information from the CFR about specific issues.

On these specific issues, during the telephone interview, the SCA asked the CFR to respond to the following:

- Steps taken to implement the SCA’s October 2014 recommendation regarding selection and appointment;
- The concerns expressed by the UN Committee on the Elimination of Racial Discrimination in 2019 that it lacked information about the work of the CFR to prevent racial discrimination and xenophobia against vulnerable ethnic minorities including migrants, refugees and asylum seekers;

- The concerns expressed by the Special Rapporteur on the situation of human rights defenders in 2017 that amendments to the CFR enabling law and the lack of enforceability of its recommendations have weakened its protection mandate in relation to certain rights;
- The further concerns expressed by the Special Rapporteur on the situation of human rights defenders in 2017 that, despite its mandate, the CFR has been reluctant to refer complaints to the Constitutional Court for review in cases that it deems political or institutional;
- The concerns expressed by the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the UN Human Rights Committee and others regarding the “Foreign Funded Organizations Act”, and whether the CFR has taken any public position with respect to this law and what actions it has taken to promote and protect the rights of human rights defenders and civil society organizations.

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

The SCA was also aware that one of the CFR’s partner organisations had recently issued a public report on the operations of the CFR. As this was a public report, but had not been submitted to the SCA, the SCA provided the CFR with a copy and asked whether it would like to respond to its contents. The CFR acknowledged that the report could be a useful tool for improving its work, but declined to comment further, indicating it had not been aware of the public report until this time, and had not had sufficient time to consider its contents. Accordingly, and to ensure procedural fairness, the report was not considered by the SCA in undertaking this review.

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

### **1. Selection and Appointment**

Article 9(3)(j) of the Fundamental Law of Hungary provides that the President of Hungary nominates a candidate to Parliament for election as Commissioner.

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

- Require the advertisement of vacancies;
- Establish clear and uniform merit criteria on which candidates are assessed; and
- Specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.

The SCA notes that the CFR confirmed in the telephone interview that the most recent selection process for the Commissioner was undertaken in accordance with these provisions, and that it was unaware of any consultations that may have taken place.

The SCA is of the view that 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 CFR to continue to advocate for the formalization and application of a process that includes requirements to:

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

In this regard, the SCA notes that Section 7(4) of Act CXI of 2011 on the Commissioner for Fundamental Rights provides that the Commissioner shall seek advice from the nationality self-governments before proposing the Deputy Commissioner responsible for the protection of the rights of national minorities. The SCA encourages the CFR to consider a similar amendment to the process of selection for the Commissioner, as well as such other amendments as may be required to address the issues outlined above.

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

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

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

- With respect to the issue of vulnerable ethnic minorities, the CFR provided information about its work with Roma communities, its visits to detention centres for migrants and asylum seekers. It further indicated that it intervened before the Constitutional Court on the relocation of asylum seekers across EU Member States;
- With respect to petitions to the Constitutional Court on cases deemed political and institutional, the CFR indicated that it has submitted 45 petitions between 2012 and 2019, some of which the CFR indicated were related to sensitive issues;
- With respect to the “Foreign Funded Organizations Act” and human rights defenders, the CFR reported that it made comments on the draft law, but that it has not taken public or legal action. The CFR further reported that it closely cooperates with civil society organizations, including those that are affected by the Act.

The SCA is of the view that the information provided by the CFR does not demonstrate adequate efforts in addressing all human rights issues, nor has it spoken out in a manner that promotes and protects all human rights.

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

Further, the SCA highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to fulfil their mandates effectively.

The SCA encourages the CFR to take the actions necessary to address these issues and to provide further information and documentation as required.

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

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

### **1 Adequate funding**

The CFR reported that salaries of its staff are much below the average salary of staff in comparable to institutions with constitutional status in Hungary.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the NHRI’s operations and the fulfilment of its mandate including salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent institutions of the State.

The SCA encourages the CFR to continue to advocate for adequate funding, including especially, to improve the salary situation of its staff.

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

### **2 Interaction with the international human rights system**

The SCA recognizes that CFR has engaged with international and regional human rights mechanisms but that it has made limited use of such mechanisms in relation to sensitive issues.

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 encourages the CFR to cooperate with and seek assistance, as necessary, from OHCHR, GANHRI and ENNHRI.

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’.

## **2.3 Russian Federation: Office of the Commissioner for Human Rights (OCHR)**

**Decision:** The SCA decides to **defer** the review of the OCHR to its second session of 2020.

The SCA commends the OCHR for its increased engagement with international and regional human rights systems, including GANHRI and ENNHRI, and it encourages the OCHR to continue this cooperation.

The SCA acknowledges the work the OCHR has undertaken to promote and protect a range of human rights in the challenging context in which it operates. However, the SCA is of the view that it requires additional information from the OCHR about specific issues.

On these specific issues, during the telephone interview, the SCA asked the OCHR to respond to the following:

- Information the OCHR provided in its 2017 parallel report to the UN Committee on Economic, Social and Cultural Rights, indicating that only 4% of the applications it received concerned civil and political rights;
- Information the OCHR provided in its 2018 parallel report to the UN Committee against Torture regarding the high number of allegations of torture and other cruel, inhuman or degrading treatment that the OCHR had found “unconfirmed”;
- Actions the OCHR had taken to promote and protect the rights of human rights defenders, as well as its position on, and activities related to, restrictions on civil society space, including the “Foreign Agents Law”;
- Information provided by the OCHR in its 2017 submission to the UN Committee on the Elimination of Racial Discrimination, indicating that there are “no tensions, national or religious conflicts” in the Russian Federation;
- How the OCHR is addressing issues of discrimination against Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) community, the Roma community, ethnic minorities and other vulnerable groups.

While the SCA acknowledges that OCHR provided some information in relation to the above-mentioned issues, it considers that it requires additional information on such activities and initiatives. Therefore, the SCA encourages the OCHR to provide additional documentation to demonstrate steps taken to address these issues.

**The SCA decided to defer consideration of the CFR on the following grounds. Accordingly, the SCA encourages the OCHR to provide further information and documentation as required:**

**1. Addressing human rights violations**

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

- With respect to the low number of complaints relating to civil and political rights, the OCHR indicated that this is due to the existence of other mechanisms in the Russian Federation to address complaints in this area such as the courts and the prosecutor’s office;
- With respect to allegations of torture received by the institution, the OCHR confirmed that it is correct that the majority of allegations of torture received are deemed unconfirmed. It also provided examples of other actions it had taken to address such cases, including cooperating with public monitoring commissions and regional ombudspersons, conducting visits to places of deprivation of liberty, providing alternative reports to the Committee against Torture, and advocating for the ratification of the OPCAT;
- With respect to the protection of human rights defenders, the OCHR reports that it advocated for the review of the “Foreign Agents Law”, and that it worked to reduce the number of civil

society organizations that are covered by the law. It further indicated that its Advisory Council includes representatives of associations impacted by this Law;

- With respect to the statement that there are “no tensions, national or religious conflicts” in the Russian Federation, the OCHR reported that, since the original report, it has received an increased number of applications in the area of freedom of religion; and
- With respect to discrimination against specific groups, including LGBTIQ communities, Roma, migrants and ethnic minorities, the OCHR reports it conducted special monitoring activities to assess the human rights situation of vulnerable groups, such as during the FIFA World Cup 2018, and that it receives applications for such groups, including from the LGBTI community.

The SCA is of the view that the information provided by the OCHR to date is insufficient to satisfy it that the OCHR has made adequate efforts in addressing all human rights issues, and that it has spoken out in a manner that promotes and protects all human rights.

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

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

The SCA encourages the OCHR to provide additional information and documentation about its activities in relation to the above-noted issues, and any other documentation that may be relevant.

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

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

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

In accordance with articles 2 and 8(1) of the Law on the Commissioner for Human rights in the Russian Federation (Law), the Commissioner is appointed by a qualified majority of the State Duma. In accordance with article 7(1) of the Law, proposals for candidates can be made by the President of the Russian Federation, the Council of the Federation of the Assembly, Deputies of the State Duma, or Deputies of associations in the State Duma.

The SCA acknowledges that the OCHR reports that, in practice, the State Duma publishes the announcement on the election of the Commissioner. The SCA also acknowledges that according to Chapter 19 of the Rules of Procedure of the State Duma, amended on the initiative of the OCHR, each candidate makes a public presentation and can be asked questions by duma representatives.

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 merit criteria on which candidates are assessed; and
- specify the process for achieving broad consultation and / or participation in the application, screening, selection and appointment process.

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

The SCA encourages the OCHR to advocate for the formalization of a process that includes requirements to:

- 1 Publicize vacancies broadly;
- 2 Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- 3 Promote broad consultation and / or participation in the application, screening, selection and appointment process; and
- 4 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. Mandate**

The OCHR does not have a mandate to address the acts or omissions of private entities.

An NHRIs' mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments. The SCA emphasizes that the mandate of an NHRI should extend to the acts and omissions of both the public and private sectors.

The SCA encourages the OCHR to advocate for a broader mandate that includes the ability to address human rights violations resulting from the acts and omissions of private individuals and entities.

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

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

### **3.1 Ecuador: The Defensoría del Pueblo de Ecuador (DPE).**

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

In its May 2018 session, the SCA decided to undertake a special review of the DPE based on information relating to the dismissal of the Head of the DPE, Dr. Ramiro Rivadeneira, by the Transitory Council on Citizen Participation and Social Control (CPCCS-T). The SCA was concerned that such a decision could adversely impact the actual and perceived institutional independence of the DPE.

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

### **3.2 Panama: Defensoria del Pueblo de Panama (DPP)**

**Decision:** The SCA decides to initiate a **Special Review** of the DPP at its first session of 2020.

The SCA received information about the recent dismissal of the Ombudsman by the National Assembly on 9 October 2019. The dismissal follows allegations of sexual abuse and workplace harassment.

The SCA understands that:

- Article 15 of the DPP's founding law states that only the Supreme Court, not the National Assembly, is mandated with authority to try the Ombudsperson or the Deputy Ombudsman for a criminal offence; and
- Article 11B provides the National Assembly with power to dismiss the Ombudsperson or the Deputy Ombudsman for negligence in fulfilling their duty in office.

The SCA notes that the Inter-American Human Rights Commission has expressed concerns and has called upon the State to ensure that the dismissal process ensures the ongoing independence of the DPP and is undertaken in conformity with the law and due process rights.

The SCA further notes that the Ombudsman has expressed concerns that the process adopted by the National Assembly did not ensure due process rights and the presumption of innocence.

Finally, the SCA notes that the Inter-American Human Rights Commission referred to concerns from several civil society organizations expressing serious concerns about the political affiliation of, political pressure applied during the recent appointment of the Deputy Ombudsman, who is now the acting Ombudsman.

The SCA is unable to determine whether the dismissal of the Ombudsman has been undertaken in a manner consistent with the DPP's enabling law and due process rights, and, if not, this raises serious concerns about the ongoing independence of the DPP and its compliance with the Paris Principles.

In view of the information before it, the SCA decides to initiate a Special Review in accordance with Article 16.2 of the GANHRI Statute in order to determine the DPP's ongoing compliance with the Paris Principles.