

**INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR  
THE PROMOTION AND PROTECTION OF HUMAN RIGHTS**

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

**Geneva, 16-20 March 2015**

## SUMMARY OF RECOMMENDATIONS

<b><u>2. Accreditation (Art. 10 of the ICC Statute)</u></b>
<b><u>2.1 Iraq: High Commission for Human Rights (HCHR)</u></b> <b>Recommendation:</b> The SCA recommends that the HCHR be accredited with <b>B</b> status.
<b><u>2.2 Latvia: Ombudsman of the Republic of Latvia (OORL)</u></b> <b>Recommendation:</b> The SCA recommends that the OORL be accredited with <b>A</b> status.
<b><u>3. Re-Accreditation (Art. 15 of the ICC Statute)</u></b>
<b><u>3.1 Bangladesh: National Human Rights Commission (NHRC)</u></b> <b>Recommendation:</b> The SCA recommends that the NHRC be re-accredited with <b>B</b> status.
<b><u>3.2 Ecuador: Defensoría del Pueblo de Ecuador (DPE)</u></b> <b>Recommendation:</b> The SCA recommends that the DPE be re-accredited with <b>A</b> status.
<b><u>3.3 Scotland: Scottish Human Rights Commission (SHRC)</u></b> <b>Recommendation:</b> The SCA recommends that SHRC be re-accredited with <b>A</b> status.
<b><u>3.4 Serbia: Protector of Citizens (PCRS)</u></b> <b>Recommendation:</b> The SCA recommends that the PCRS be re-accredited with <b>A</b> status.
<b><u>4. Review (Article 16.2 of the ICC Statute)</u></b>
<b><u>4.1 Venezuela: Defensoria del Pueblo (DPV)</u></b> <b>Recommendation:</b> The SCA recommends that the DPV be downgraded to <b>B</b> status.

## SUMMARY OF DECISIONS

<b><u>5. Accreditation (Art. 10 of the ICC Statute)</u></b>
<b><u>5.1 Uruguay: National Human Rights and Ombudsman Institution of Uruguay (NHROI)</u></b> <b>Decision:</b> The SCA <b>defers</b> the accreditation of the NHROI to its second session of 2015.

**6. Re-Accreditation (Art. 15 of the ICC Statute)**

**6.1 Greece: Greek National Commission for Human Rights (GNCHR)**

**Decision:** The SCA **defers** consideration of the re-accreditation of the GNCHR to the first session of 2016.

**6.2 Cameroon: National Commission on Human Rights and Freedoms (NCHRF)**

**Decision:** The SCA **defers** the re-accreditation of the NCHRF to the first session of 2016.

**6.3 Germany: German Institute for Human Rights (GIHR)**

**Decision:** The SCA **defers** the re-accreditation of the GIHR to the second session of 2015.

**6.4 Malawi: Malawi Human Rights Commission (MHRC)**

**Decision:** The SCA **defers** the re-accreditation of the MHRC to the first session of 2016.

**6.5 Republic of Korea: National Human Rights Commission of Korea (NHRCK)**

**Decision:** The SCA **defers** consideration of the re-accreditation of the NHRCK to the first session of 2016.

**6.6 Ireland: Irish Human Rights and Equality Commission (IHREC)**

**Decision:** The SCA invites the IHREC to apply for accreditation at the next session, and to provide a report on its activities during its first year of operation at that time.

**Report, Recommendations, and Decisions of the Session of the SCA on 16-20 March 2015**

**1. BACKGROUND**

- 1.1. In accordance with the Statute (Annex I) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), 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 ICC Secretariat, and to make recommendations to the ICC 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.
- 1.2. In accordance with the SCA Rules of Procedure, the SCA is composed of NHRI representatives from each region: Canada for the Americas (Chair), Mauritania for Africa, Palestine for Asia-Pacific and France for Europe.
- 1.3. The SCA convened from 16-20 March. OHCHR participated as a permanent observer and in its capacity as ICC Secretariat. In accordance with established procedures, regional coordinating committees of NHRIs were invited to attend as observers. The SCA welcomed the participation of representatives from the Secretariat of the Asia Pacific Forum of NHRIs, the European Group of NHRIs and the Network of NHRIs of the Americas.
- 1.4. Pursuant to article 10 of the Statute, the SCA considered the applications for accreditation from the NHRIs of Iraq, Latvia and Uruguay.
- 1.5. Pursuant to article 15 of the Statute, the SCA also considered applications for re-accreditation from the NHRIs of Bangladesh, Ecuador, Greece, Cameroon, Scotland, Serbia, Germany, Malawi and Republic of Korea. The SCA also received an application from Ireland.
- 1.6. Pursuant to article 16.2 of the Statute, the SCA reviewed certain issues regarding the NHRI of Venezuela.
- 1.7. In accordance with the Paris Principles and the ICC 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;
  - C:** No status – Not in compliance with the Paris Principles.
- 1.8. The General Observations (Annex III), as interpretative tools of the Paris Principles, may be used to:
  - a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;

- b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;
  - c) Guide the SCA in its determination of new accreditation applications, re-accreditation applications or other review:
    - i) If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.
    - ii) If the SCA has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, or offered no reasonable explanation why no efforts had been made, it would be open to the SCA to interpret such lack of progress as non-compliance with the Paris Principles.
- 1.9.** The SCA notes that when specific issues are raised in its report in relation to accreditation, re-accreditation, or special reviews, NHRIs are required to address these issues in any subsequent application or other review.
- 1.10.** Pursuant to Article 12 of the Statute, where the SCA comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose final decision is subject to the following process:
- i) The recommendation of the SCA shall first be forwarded to the applicant;
  - ii) An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt.
  - iii) Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau;
  - iv) Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the SCA and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;
  - v) If at least four members coming from two or more regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;
  - vi) The decision of the ICC Bureau on accreditation is final.

- 1.11.** At each session the SCA conducts a teleconference with every NHRI. It may also consult with and seek further information from NHRIs where necessary. In addition, OHCHR desk officers and, as appropriate, OHCHR field officers were available to provide further information, as needed.
- 1.12.** Pursuant to Article 16.1 of the Statute, all accredited NHRIs are required to inform the ICC Bureau at the first available opportunity about any change in the circumstances that could affect its compliance with the Paris Principles, whether negatively or positively.
- 1.13.** Pursuant to Article 16.2 of the Statute, “[w]here, in the opinion of the Chairperson of the ICC or of any member of the Sub-Committee on Accreditation, it appears that the circumstances of any NHRI that has been accredited with an ‘A’ status under the former Rules of Procedure may have changed in a way which affects its compliance with the Paris Principles, the Chairperson or the Sub-Committee may initiate a review of that NHRI’s accreditation status”.
- 1.14.** At any time, the SCA may receive information that raises concern that the circumstances of a NHRI have changed in a way that affects its compliance with the Paris Principles, and the SCA may then initiate a special review of that NHRI’s accreditation status. When considering whether or not to initiate a special review, the SCA has adopted a new procedure whereby, in addition to written submissions made by the NHRI, civil society and any other stakeholder, the NHRI is afforded the opportunity to make an oral statement to the SCA during the session.
- 1.15.** Pursuant to Article 16(3), any review must be completed within 18 months.
- 1.16.** The SCA acknowledges the high degree of support and professionalism of the staff of the ICC Secretariat (OHCHR National Institutions and Regional Mechanisms Section).
- 1.17.** The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and gave one 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 ICC Bureau, the report of the SCA is placed on the ICC website (<http://nhri.ohchr.org/>).
- 1.18.** The SCA considered information received from civil society. The SCA shared that information with the concerned NHRIs and considered their responses.
- 1.19. Notes:** The ICC statute, the Paris Principles and the General Observations referred to above can be downloaded in Arabic, English, French and Spanish from the following links:
1. The ICC 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>

## **2. SPECIFIC RECOMMENDATIONS – ACCREDITATION APPLICATIONS (Art. 10 of the ICC Statute)**

### **2.1 Iraq: High Commission for Human Rights (HCHR)**

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

The SCA welcomes the establishment of the HCHR. It commends the HCHR for its continuing efforts to promote and protect human rights despite the hostile security situation in which it operates. The SCA appreciates the ongoing efforts of the HCHR to maintain its independence, and emphasizes the importance of continuing these efforts.

The SCA further commends the efforts of the HCHR to engage with the international human rights system.

The SCA notes with appreciation the efforts the HCHR has been making to work cooperatively with and seek guidance from various stakeholders, including UNAMI and the APF. It encourages the HCHR to continue these efforts in order to strengthen its legislative base and its effectiveness.

The SCA notes:

#### **1. Mandate**

The SCA notes that the range of promotional activities undertaken by the HCHR to date has been limited.

While acknowledging the financial constraints faced by the HCHR, the SCA encourages the HCHR to undertake a wider range of promotional functions to create a society where human rights are more broadly understood and respected. Such functions may include education training, advising, public outreach and advocacy.

The SCA refers to Paris Principle A.3 and to its General Observation 1.2 on 'Human right mandate'.

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

Article 8(3) of the Law on the HCHR indicates that the Chairperson and Deputy Chairperson of the HCHR are elected by a majority of the members of the HCHR. The SCA notes that, to date, the HCHR has not elected a Chairperson and Deputy Chairperson. The SCA encourages the HCHR to ensure that this situation is rectified as soon as possible.

In accordance with article 7 of the Law, a selection committee comprised of not more than 15 experts representing the Council of Representatives, the Council of Ministers, the High Judicial Council, civil society, and the UN Office for Human Rights in Iraq select individuals to be recommended to the Council of Representatives for appointment. The Law does not specify how many members from each segment of society are to be included in the committee. This leaves open the possibility that this committee will be comprised predominantly of government representatives. The SCA notes that, during the last selection process, only two representatives of civil society were present on the selection committee.

It is critically important to continue efforts to ensure the formalization of a clear, transparent and participatory selection and appointment process for the 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.

While recognizing the difficulties in securing amendments, the SCA encourages the HCHR to advocate for amendments to the Law to ensure the process includes requirements for broad consultation and / or participation in the screening and selection process.

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

### **3. Conflicts of interest**

The Law does not include a provision to address a situation where members have actual or perceived conflicts of interest.

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

The SCA encourages the HCHR to advocate for the inclusion in the Law, regulations or binding administrative guidelines of provisions that protect against real or perceived conflicts of interest.

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

The HCHR reports that its funding from government is not sufficient to effectively carry out its mandate. The SCA also notes with concern reports that the HCHR was required to operate without funding for the first half of 2013.

Additionally, while recognizing that the HCHR is authorized under the Law to open regional offices, the SCA notes that, to date, it has been unable to do so. The SCA notes that this may be a concern in the context of Iraq, where vulnerable persons are often located in geographically remote parts of the country.

Finally, the SCA notes that, in accordance with article 14 of the Law, the HCHR requires the absolute majority approval of the Council of Representatives in order to accept donor funding.

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 fulfillment of its mandate.

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

- a) The allocation of funds for premises which are accessible to the 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 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 to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases NHRIs should not be required to obtain approval from the state for external sources of funding, which may otherwise 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 HCHR to advocate for an appropriate level of funding to effectively carry out its mandate. It further encourages the HCHR to advocate for amendments to its enabling law to allow it to receive donor funding without prior government approval.

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

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

The SCA wishes to highlight that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfill their mandates.

NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including civil society and non-governmental organizations.

The SCA encourages the HCHR to maintain and strengthen these relationships and refers to Paris Principle C (g) and to its General Observation 1.5 on 'Cooperation with other human rights institutions'.

### **2.2 Latvia: Ombudsman of the Republic of Latvia (OORL)**

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

The SCA welcomes the application for accreditation from the Ombudsman of the Republic of Latvia. The SCA notes that amendments to the Ombudsman Law entered into force in January 2015, for which the unofficial translation has been shared with the SCA members in March 2015.

The SCA notes:

### **1. Administrative sanction**

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

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

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

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

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

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

### **2. Tenure**

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

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

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

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

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

The SCA 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 OORL reports that its staff complement has been reduced by 25% since 2008 as a result of the economic crisis. The SCA further notes that the OORL saw its budget reduced by almost half in 2010, though it has increased again since that time. However, the budget allocated to the Ombudsman remained unchanged in 2014 and 2015 despite the NHRI's growing mandate.

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 fulfillment of its mandate.

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

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

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

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

### **3. SPECIFIC RECOMMENDATIONS - RE-ACCREDITATION APPLICATIONS (Art. 15 of the ICC Statute)**

#### **3.1 Bangladesh: National Human Rights Commission (NHRC)**

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

The SCA acknowledges that the NHRC is currently operating in particularly difficult circumstances and commends its ongoing efforts to promote and protect human rights in Bangladesh.

Amongst other things, the SCA also commends the NHRC’s efforts to:

- progressively build institutional capacity, including through the current process to develop its strategic plan;
- pursue amendments to the NHRC Act;
- establish a parliamentary committee on human rights;
- engage regularly with the international human rights system.

However, the SCA notes that a range of concerns expressed in 2011 remain. These include:

#### **1. Mandate**

In accordance with section 18 of the Act, the NHRC is not empowered to directly investigate allegations of human rights violations against the disciplined forces or any of its members. Rather, it must request that the Government provide it with a report on the matter. The NHRC advised that it has requested that the government amend this provision, and that in the interim, it undertakes indirect inquiries.

The SCA notes that in times of international or internal armed conflict the actions of the military are subject to international humanitarian law. However, in all other circumstances, the activities of the armed and security forces should be subject to relevant domestic laws.

The SCA emphasizes that a NHRI should be provided with a broad mandate to investigate all alleged human rights violations, including those involving the military, police and security forces, where these occur outside situations classified as international or internal armed conflicts. The SCA notes further that, while the scope of the mandate of an NHRI may be restricted for national security reasons, such restrictions should not be arbitrarily applied and should only be exercised in accordance with domestic law and international obligations.

The SCA refers to Paris Principle A.2 and to its General Observations 1.2 on ‘Human rights mandate’ and 2.7 on ‘Limitation of power of NHRIs due to national security’.

## **2. Selection and appointment**

In accordance with section 6(1) of the Act, the President, upon recommendation of the Selection Committee, appoints the Chairman and members of the NHRC.

Section 7(1) of the Act provides that the Selection Committee is comprised of: the Speaker of the Parliament; the Minister of the Ministry of Law, Justice and Parliamentary Affairs; the Minister of the Ministry of Home Affairs; the Chairman of the Law Commission; the Cabinet Secretary of the Cabinet Division; and two other Members of Parliament nominated by the Speaker of the Parliament, one of whom shall belong to the Treasury Bench and the other from the Opposition. Section 7(3) of the Act further provides that four members shall constitute a quorum.

In 2011, the SCA noted that the Selection Committee is primarily comprised of government appointees and that the quorum requirements would appear to allow nominations solely by those members. It highlighted the importance of having a clear, transparent and participatory selection process that promotes the independence of, and public confidence in, the senior leadership of the Commission, and called upon the NHRC to advocate for the formalisation of the selection process in relevant legislation, regulations or binding administrative guidelines as appropriate.

In response, the NHRC has proposed amendments to section 6(1) of the Act to increase membership on the Selection Committee to include: a Judge from the Appellate Division; a member of civil society nominated by the Speaker of the Parliament; the Chairperson of the Public Service Commission; and a Vice Chancellor of any public university nominated by the Vice Chancellor's Forum. It also proposed an amendment to section 7(3) of the Act to increase the quorum requirement from four to six.

The SCA encourages the NHRC to continue to pursue these amendments and to ensure that the new process addresses all of the following issues:

- 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. Staffing**

During the 2011 review, the SCA noted that the NHRC was operating with 22 staff, though its indicative staffing component was 87 staff members. The NHRC indicates that it is currently operating with 28 staff with an indicative staff component of 93. In addition it states that it is currently in the process of selecting an additional 20 staff and is working with the Government to fill the additional 45 positions.

The NHRC advised that while 8 of the existing 28 staff are currently engaged in substantive work, the proposed recruitment of additional staff outlined above would

increase significantly the number of officers available to undertake substantive human rights protection work.

During the 2011 review the SCA also expressed concerns about the secondment of senior staff. It noted that the Secretary-General and two senior officials were seconded from the Public Service. The NHRC's current statement indicates that the Secretary, two directors and one deputy director are secondees.

The NHRC advised that it has proposed amendment to the Recruitment Rules to limit the staffing of the positions of Secretary and director through secondment. The SCA notes however that the proposed amendment would still permit secondment should no suitable candidate be found in-house.

The SCA encourages the NHRC to continue to seek to fill outstanding positions, to advocate to changes to the legislation to provide for an open merit based selection process for staff, particularly its senior officials, and to advocate for sufficient staff to fulfil its legislative mandate.

A fundamental requirement of the Paris Principles is that a NHRI is, and is perceived to be, able to operate independent of government interference. Where a NHRI's staff members are seconded from the public service, and in particular where this includes those at the highest level in the NHRI, it brings into question the capacity of the NHRI to function independently.

NHRIs should be empowered to determine the staffing structure, the skills required to fulfil its mandate, set other appropriate criteria, and select its staff in accordance with national law.

The SCA is of the view that senior level posts should not be filled with secondees and that the number of secondees should not exceed 25% except in exceptional circumstances.

The SCA refers to Paris Principle B.2 and to its General Observations 2.4 on 'Recruitment and retention of NHRI staff' and 2.5 on 'Staffing of the NHRI by secondment'.

#### **4. Accessibility**

The NHRC has only one office, located in the capital Dhaka. The SCA notes that NHRC has acknowledged that this office is not easily accessible to the broader population.

The SCA underscores the importance of ensuring the NHRC is broadly accessible, including through premises that are accessible to the wider community, including persons with disabilities. Establishing a regional presence further enhances accessibility. With regard to the latter issue, the SCA notes that the NHRC intends to establish four regional / local offices in 2015, but that it is yet to do so.

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

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

The NHRC indicates that the Government provides 25%, and the development partners provide 75%, of funding for the NHRC, and that there are currently negotiations underway for a new funding agreement from October 2015.

The SCA emphasizes that, to function effectively, a 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 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 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 to ensure it receives adequate funding until such time when the State will be able to do so. NHRIs should not be required to obtain approval from the state for external sources of funding, which may otherwise 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 NHRC to advocate for an appropriate level of funding from government to carry out its mandate. In this regard it notes that section 24 of the Act establishes the Human Rights Commission Fund that, in accordance with sub-section 4, is comprised of an annual grant allocated by the Government and grants by the local authorities. The budget of the NHRC however is not provided through a separate budget line item.

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

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

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

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

The SCA notes that amendments have been proposed to the Organic Law to address concerns relating to selection and appointment, and tenure. It encourages the DPE to continue to advocate for their passage.

The SCA notes:

#### **1. Mandate**

The enabling law of the DPE contains a limited promotion mandate. However, the SCA notes that the DPE undertakes a wide range of promotional activities in practice.

The SCA is of the view that an NHRI should be legislatively mandated with specific functions to both promote and protect human rights. It encourages the DPE to advocate for appropriate amendments to its enabling law to make its promotional mandate explicit.

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. Pluralism**

In accordance with Article 216 of the Constitution, the Defensor must 1) hold a Doctorate of Law from a recognized university and 2) have at least 10 years' experience as a lawyer, a judge or a university professor of legal sciences. The SCA notes that the requirement that the Defensor hold a Doctorate may unduly limit the pool of candidates from which he or she can be chosen.

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

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

#### **3. Tenure**

In accordance with article 7 of the Law, the Defensor can be dismissed on the basis of a physical or mental incapacity declared by the Parliament. The SCA is of the view that such an assessment should only be made by a competent body with appropriate expertise.

The SCA acknowledges that the DPE has indicated that it has submitted an amendment to this provision such that the determination of mental or physical incapacity will be made by a medical or psychiatric examination. It encourages the DPE to continue to advocate for passage of this amendment.

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

The SCA notes that the Constitution provides for a term of office of 5 years, while the Organic Law provides for a term of office of 4 years.

The SCA acknowledges that the DPE reports that it has submitted an amendment to the Law to bring it in line with the provisions of the Constitution. It encourages the DPE to continue to advocate for the passage of this amendment.

### **3.3 Scotland: Scottish Human Rights Commission (SHRC)**

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

The SCA notes:

#### **1. Mandate**

Section 2(2) of the SCHR Act defines human rights as (a) the Convention rights within the meaning of section 1 of the Human Rights Act 1998 (c.42), (that is the rights in articles 2-12 and 14 of the European Convention on Human Rights as well as articles 1 to 3 of the First Protocol and articles 1 and 2 of the sixth Protocol), and (b) other human rights contained in any international convention, treaty or other International instrument ratified by the United Kingdom. The definition of human rights is therefore restricted to conventions ratified by the UK.

The SCA acknowledges that the SHRC interprets its mandate more broadly than the formal reading of this provision. It encourages the SHRC to continue to interpret its mandate 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 recommends that the SHRC advocate for appropriate amendments to its enabling law to include a more expansive definition of 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'.

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

In accordance with paragraph 1(2) of Schedule 1 of the Act, the Chair of the SHRC is appointed by Her Majesty on the nomination of the Scottish Parliament. In accordance with Rule 3.11 of the Standing Orders of the Scottish Parliament, a selection panel consisting of the convener of the most relevant Committee of the Scottish Parliament and between four and seven other Members of Parliament makes a recommendation on the appointment.

Further, in accordance with paragraph 1(3) of Schedule 1 of the Act, the other members of the SHRC are appointed by the Scottish Parliamentary Corporate Body, which is chaired by the Presiding Officer of the Scottish Parliament and consist of four other Members of Parliament drawn from government and the opposition parties.

While acknowledging that, in practice, the selection and appointment processes for the Chair and Members are conducted in an open and transparent manner, the SCA is of the view that these processes, as provided for in the enabling law, are not sufficiently broad and transparent. In particular, they do not:

- require the advertisement of vacancies;

- establish clear and uniform criteria;
- ensure that such criteria are uniformly used to assess the merit of all eligible applicants; and
- promote broad 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 the 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 SHRC to advocate for amendments to its enabling law to ensure 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;
- 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. Tenure**

In accordance with paragraph 5 of Schedule 1 of the Act, the Chair or Members may be dismissed if Parliament decides by a 2/3 vote that 1) the Chair or relevant Member has breached the terms of appointment, or 2) that the Parliament has lost confidence in the member's willingness, suitability or ability to perform the member's functions. The SCA notes that these requirements may be open to misuse.

The SCA is of the view that in order to address the Paris Principles requirement for a stable mandate, which is necessary to ensure independence, the enabling legislation of a NHRI must have an independent and objective dismissal process.

The SCA emphasizes, in particular, that 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 its mandate. The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law and, 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 SCA refers to Paris Principle B.3 and to its General Observation 2.1 on 'Guarantee of tenure for members of the NHRI decision-making body'.

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

Section 15 of the Act indicates that the SHRC is required to comply with any directions given by the Parliament as to the form and content of the report. The SCA notes that this provision could allow undue influence by Parliament in the reporting process.

Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a means by which a NHRI can make recommendations to, and monitor respect for human rights, by government. It is important that an NHRI be able to freely determine the form and content of such reports, absent government direction.

The SCA encourages the SHRC to advocate for amendments to its enabling law to ensure that it can freely determine the form and content of all of its reports, including the annual report.

The SCA refers to Paris Principle A.3 and to its General Observation 1.11 on 'Annual reports of National Human Rights Institutions'.

#### **5. Adequate funding**

During its 2010 review, the SCA noted that the SHRC faced limitations in terms of its staffing and resources. The SCA notes that the SHRC continues to employ the same number of staff at present as it did in 2010 and has experienced a 15% reduction in its budget over the last 3 years.

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 fulfillment of its mandate.

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

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

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

In addition, the SCA notes the possible devolution of further powers to Scotland. Should this occur, the SCA encourages the SHRC to advocate for the appropriate additional funding necessary to effectively fulfill this expanded mandate.

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

### **3.4 Serbia: Protector of Citizens (PCRS)**

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

The SCA commends the PCRS for continuing to be an effective NHRI, carrying out a broad range of activities to promote and protect human rights, despite the challenging political environment in which it operates. It notes in particular that the PCRS has spoken out consistently on a variety of controversial human rights issues. The SCA further commends the PCRS for its cooperation with civil society.

The SCA notes:

#### **1. Functional immunity**

In accordance with article 10 of the Law, the Protector and his or her Deputies enjoy immunity. However, the SCA notes that the National Assembly can lift this immunity by majority vote.

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

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

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

The SCA encourages the PCRS to advocate for the inclusion of language in the enabling law to clarify the circumstances under which the National Assembly can lift the immunity of the Protector and his or her Deputies.

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

## **2. Adequate funding**

During its 2010 review, the SCA noted that, should the PCRS be designated as the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture, adequate resources should be provided by the State to carry out this role. The PCRS reports that the NPM is currently understaffed, but that it anticipates this situation will be resolved with the adoption of the new Rulebook on Internal Organization and Job Classification in the Secretariat of the PCRS, currently before the National Assembly.

During its 2010 review, the SCA expressed its concern for adequate resources to permit the employment and retention of staff with the requisite qualifications and experience to fulfill its mandate. The PCRS reports that PCRS staff members are underpaid compared to other independent entities in the country.

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

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

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

The SCA encourages the PCRS to advocate for an appropriate level of funding to ensure that it can effectively carry out its mandated activities, including those undertaken as NPM.

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

## **3. Staffing**

The PCRS reports that, in accordance with amendments to the Law on the Budget System, it is now required to obtain the approval of the committee in charge of administrative and budgetary issues before hiring or employing a new person, even where the position being staffed is included in the human resource plan of the PCRS and the funds for the position are secured in the budget. The SCA is concerned that this requirement may compromise the independence of the PCRS.

The SCA emphasizes that a NHRI should be legislatively empowered to determine its own staffing structure, the skills required to fulfill its mandate, set other appropriate criteria, and select its staff in accordance with national law.

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

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

In accordance with article 4 of the Law on the Protector of Citizens, the Protector is appointed by a majority vote of the National Assembly following the proposal of the National Assembly Committee for Constitutional Issues. Also, in accordance with article 4 of the Law, each parliamentary group in the National Assembly has the right to propose to the Committee its candidate for the Protector, and several parliamentary groups may propose a joint candidate.

In accordance with article 6 of the Law, the four Deputies of the Protector are appointed by majority vote of the National Assembly following the recommendation of the Protector.

While noting that the session of the Committee for Constitutional Issues is open to the public and media, the SCA emphasizes the requirement for a clear, transparent and participatory selection and appointment process that promotes merit-based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of an NHRI.

Such a process would include requirements to:

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

In order to ensure its application in practice, the selection process should be formalized in relevant laws, regulations or binding administrative guidelines.

The SCA encourages the PCRS to advocate for the adoption of a transparent and participatory selection and appointment process, for its formalization, and for its subsequent application in practice.

The SCA refers to Paris Principle B.1 and to its General Observations 1.7 on 'Ensuring pluralism of the NHRI' and 1.8 on 'Selection and appointment of the decision-making body of NHRIs'.

## **5. Pluralism**

The Law does not require pluralism in the membership of the PCRS. However, the SCA notes that, at present, two of the four current Deputies of the Protector of Citizens are women and one is from a national minority.

Diversity in the membership and staff of a NHRI facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI for all citizens. While the SCA notes that the PCRS indicated that its membership reflects the diversity of Serbian society, the SCA encourages the PCRS to advocate for the inclusion of provisions in its enabling law to ensure diversity in its membership and staff.

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

## **6. Interaction with the international human rights system**

During its 2010 review, the SCA noted that the enabling law does not explicitly mandate the PCRS to interact with the international human rights system.

The SCA emphasizes that 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.

While appreciating the enhanced cooperation of the PCRS with the international human rights system, the SCA notes that the PCRS did not submit a parallel report during the 2013 UPR of Serbia.

The Paris Principles recognize that monitoring and engaging 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.

While it is appropriate for NHRIs to provide information to the government in the preparation of the State report, NHRIs must maintain their independence and where they have the capacity to provide information to human rights mechanisms should do so in their own right.

The SCA encourages the PCRS to continue its engagement with the international human rights system and to advocate for an amendment to its Law to explicitly include this function in its mandate.

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’.

#### **4. SPECIFIC RECOMMENDATIONS - Review under Article 16.2 of the ICC Statute**

##### **4.1 Venezuela: Defensoria del Pueblo (DPV)**

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

In accordance with Article 18.1 of the ICC statute, a recommendation to downgrade does not take effect for a period of one year. The SCA notes that the DPV maintains A status until the SCA's first session of 2016. This allows an opportunity for the DPV to provide the documentary evidence necessary to establish its continued conformity with the Paris Principles.

The SCA received information subsequent to the re-accreditation of the DPV in May 2013, which raised concerns that the DPV may no longer be operating in full compliance with the Paris Principles.

In March 2014, the SCA decided to undertake a Special Review of the accreditation of the DPV at its second session in October 2014. The issues raised in March 2014 included:

- Actions taken or not taken, and statements made or not made by the DPV during the current volatile situation and protests in Venezuela; and
- Tweets made from both the DPV's and the Defensora's personal Twitter accounts.

The SCA further decided in March 2014 that it would consider only events and issues that have arisen since the reaccreditation of the DPV in May 2013. The SCA informed the DPV that should it receive further information, the information would be shared with the DPV.

The Special Review of the DPV was scheduled for the October 2014 session. However, based on correspondence received from the ICC Chair, the SCA recommended the deferral of the Special Review to its first session in March 2015.

In regard of the Special Review, the SCA asked the DPV about actions taken or not taken, statements made or not made during the volatiles situation and protests in Venezuela as well as tweets made from both the DPV's and Defensora's personal Twitter accounts.

The mentioned tweets include the following:

- on 27 July 2013, the Defensora said on her Twitter account that the DPV is "daughter of Commander Chavez";
- in August 2013, the Defensora attended the presentation of Venezuela's Report to the Committee on the Elimination of Racial Discrimination as part of the Government delegation and commented on her Twitter account "Our delegation to present the Report on Discrimination to the United Nations chaired by the Minister Hector Rodriguez" and "Also involved is UN Deputy Minister of Interior and Justice and Foreign Affairs. Strong government delegation!";
- on 9 October 2013, the Defensora tweeted "Our Human Rights Institution supports the defense undertaking Nicolas Maduro of our conquests".

The following actions were also considered by the SCA:

- in an interview conducted in September 2013, the Defensora was asked “Are you Chavista?”, she answered: “Yes I, perhaps, would be in a university teaching, if I had not heard President Chavez making that call to transform society, summon us to a new Charter [Constitution] (...). I consider myself part of this people, and this people loved that leader who came to change the order of things, who came to lecture us with facts, with his example, with his behaviour”; in the same interview, after referring to her feelings following the death of the President and his teachings, she concluded: “For this reason, I say I am Chavista!”;
- during a 8 March 2014 interview which was widely reported on by news outlets including El Nacional and El Universal, the Defensora provided a definition of torture, stating that torture was used for the sole purpose of obtaining information;
- the representative of the DPV in Guarico state, referring to a civilian-military conference convened by the Governor of that state, said: “The governorship of the [Guarico] state has always been ready to cooperate on important events, such as those of a civic-military type, where the main beneficiary is the sovereign people, as Nicolás Maduro, Rodríguez Chacín (Governor of Guárico) and the Giant Hugo Chavez wanted”<sup>1</sup>.
- Following the statements of the United Nations Secretary General and High Commissioner for Human Rights, of February 2014, urging the Government of Venezuela to ensure respect for freedom of expression and peaceful assembly and guarantee that law enforcement officers act according to international standards, the DPV stated that “there are reasonable grounds for believing that the majority of those arrests were conducted in situations of violence and those arrested have been caught in flagrante delicto in the commission of crimes”.<sup>2</sup>
- in response to the concerns expressed by the European Parliament on freedom of expression and peaceful assembly in Venezuela, the DPV stated that such concerns were “not based on verified information and ...[t]he statement reflects an apparent misunderstanding of the situation in Venezuela”<sup>3</sup>.

The SCA also noted that the DPV was silent on critical domestic human rights issues, including:

- trials of civilians in military courts;
- criminal trials of trade union leaders for exercising their constitutional right to strike and protest;
- threats by President Nicolas Maduro to initiate criminal procedures against trade union leaders;
- the withdrawal of Venezuela from the American Convention on Human Rights;
- the non-compliance of protection measures ordered by the Inter-American Court on behalf of victims of human rights violations in Venezuela;
- the continued detention of Judge Maria Lourdes Afuini;
- the continued detention of Leopoldo Lopez and his allegations of being tortured;
- the statement of United Nations High Commissioner for Human Rights, of February 2014, urging the Government of Venezuela to ensure respect for freedom of expression and peaceful assembly and guarantee that law enforcement officers act according to international standards, in line with the statement of the Secretary General issued a few days before;

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<sup>1</sup> Accessed on 20 March 2015: [http://www.abrebrecha.com/328229\\_3.793-ciudadanos-fueron-atendidos-por-la-Defensor%C3%ADa-del-Pueblo-en-el-2013.html](http://www.abrebrecha.com/328229_3.793-ciudadanos-fueron-atendidos-por-la-Defensor%C3%ADa-del-Pueblo-en-el-2013.html)

<sup>2</sup> “February Report: A Blow to Peace”, English translation, page 95.

<sup>3</sup> “February Report: A Blow to Peace”, English translation, page 99.

- the concerns expressed by the current United Nations High Commissioner for Human Rights in October 2014 in respect of the detention of protestors including Leopoldo Lopez, whose detention was considered as arbitrary by the Working Group on Arbitrary Detention.

In response to the SCA's concerns the DPV responded:

- In March 2014, the DPV released the report "February Report: A Blow to Peace", which described the human rights situation in the country, especially after the demonstrations of February 2014. According to the report, the DPV had:
  - o conducted around 600 interventions, including daily visits to health centres, detention centres, tribunals and institutions damaged by the riots;
  - o interviewed wounded persons;
  - o requested information from law enforcement agencies and the Public Ministry;
  - o accompanied family members of victims;
  - o made recommendations to the public powers (President of the Republic, judiciary power, public ministry, local authorities, security forces, civil society and media);
  - o followed up on the situation of arrested people;
  - o carried out 1,908 personal interviews with detainees in order to gather information about their situation; and
  - o implemented a program to monitor whether the actions of the security forces were conducted in line with the existing legal framework, in compliance with due process.
- The DPV considered the reports of NGOs and media releases to be exaggerated and motivated by political intentions against the President, the Government and also with the purpose of inciting hatred.

The SCA acknowledges that the actions taken and not taken, leading to its decision to undertake a Special Review, were as a result of actions and statements made and not made by the former Defensora. However, the SCA is of the view that the seriousness of those actions and inactions impacts on the actual or perceived impartiality and independence of the DPV as an institution. As a result, the SCA is of the view that the ability of the DPV to effectively carry out its mandate to promote and protect human rights, in line with the Paris Principles, has been compromised.

The SCA is further of the view that the actions and omissions of the DPV reflect an institutional culture that may affect the credibility of the Defensoría as well as the degree of public confidence, thus discouraging people to address the institution. Such culture may also undermine the trust of its own staff, and that as a result of the Defensoría's conduct, the institution may not be perceived as being independent from the President and the Government and as too tolerant in respect of human rights issues that have raised concerns from the United Nations Secretary General, High Commissioner for Human Rights as well as from the European Parliament.

The SCA acknowledges that a new Defensor was appointed in December 2014. However, the SCA is of the view that the DPV as an institution remains accountable for the actions and inactions of the former Defensora.

The SCA gave the new Defensor the opportunity to respond to the issues of concern that led to the decision to undertake the Special Review. In addition, the SCA invited the Defensor to provide his views, in his capacity as head of the DPV, regarding the following

issues: the content of Resolution 008610<sup>4</sup> (which regulates the actions of Bolivarian National Armed Forces for monitoring public order and social peace in public meetings and demonstrations); the continued detention of Judge Maria Lourdes Afiuni; the continued detention of Leopoldo Lopez and his allegations of being tortured; the detention of Mayor Ledezma; the killing of 14 year old Kluiver Roa; the TV show of the Parliamentary leader; and, the actions taken by the DPV to restore a positive and cooperative relationship with civil society.

The SCA acknowledges that the DPV has provided oral and written submissions throughout the current session, and that these reflect that some actions have been taken by the Defensor since his appointment. However, the information provided is not sufficient to satisfy the SCA's concerns relating to the impartiality and independence of the DPV and that the DPV is prepared to speak out on the major human rights issues in Venezuela.

The SCA notes that the current Defensor will have the opportunity, during the year ahead to demonstrate that the DPV is independent and prepared to speak out on the major human rights issues in Venezuela.

The SCA encourages the current Defensor to speak out on the human rights issues of Venezuela in a balanced, unbiased, objective and impartial way to demonstrate that the DPV is independent and concerned with the promotion and protection of human rights for all persons in Venezuela.

## **5. SPECIFIC DECISIONS – ACCREDITATION APPLICATIONS (Art. 10 of the ICC Statute)**

### **5.1 Uruguay: National Human Rights and Ombudsman Institution of Uruguay (NHROI)**

**Decision:** The SCA **defers** the accreditation of the NHROI to its second session of 2015.

The SCA commends the NHROI for the work it has been doing in promoting and protecting human rights. It further commends the engagement of the NHROI with the international human rights system.

The SCA requests that the NHROI provide an update at its next session in relation to the following two issues:

#### **1. Staffing**

The SCA notes that the NHROI has encountered significant difficulties in recruiting staff. It further notes that, as a result, 10 of the NHROI's 17 staff positions have been filled by secondment.

The SCA emphasizes that NHRIs should be legislatively empowered to determine the staffing structure the skills required to fulfill the Institution's mandate, set other appropriate criteria, and select their staff in accordance with national law.

Staff should be recruited according to an open, transparent and merit-based selection process that ensures pluralism and a staff composition that possesses the skills required

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<sup>4</sup> Resolution of Minister of Defense of 27 January 2015.

to fulfill the Institution's mandate. Such a process promotes the independence and effectiveness of, and public confidence in, the NHRI.

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

The SCA is of the view that: a) senior level positions should not be filled with secondees; and b) the number of secondees should not exceed 25% except in exceptional or relevant circumstances. The SCA further acknowledges that the NHROI reports that it will be regularizing the situation of those staff currently seconded such that they will become employees of the NHROI.

The SCA acknowledges that the NHROI reports that it has resolved the issues which previously prevented it from recruiting more staff and that it is in the process of recruiting 25 new staff. The SCA also notes that the public procedure for recruitment the 25 staff members has been initiated in October 2014 and, according to information provided by the NHROI, should be concluded within the next couple of months. However, the SCA expresses its concern that only civil servants may apply and that this circumstance may limit the pool for recruitment of professional staff members.

The SCA refers to Paris Principle B.2 and to its General Observations 2.4 and 2.5 on 'Recruitment and retention of NHRI staff' and 'Staffing of the NHRI by secondment'.

## **2. Adequate funding**

The SCA notes that, of its 17 staff positions, 7 are funded through donor contributions. Specifically, 5 have been funded through a UNICEF Contribution Agreement, 1 has been funded through an AECID Cooperation Agreement, and 1 has been funded through a German Cooperation Contribution. The SCA notes that the NHROI appears to be, at present, substantially reliant on donor funding to ensure an adequate level of resources to carry out its mandate.

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

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

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

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 received adequate funding until such time when the State will be able to do so. In such unique cases NHRIs should not be required to obtain approval from the State for external sources of funding, which may otherwise 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 NHROI to advocate for a level of funding sufficient to ensure it has adequate resources to 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'.

The SCA encourages the NHROI to seek assistance and advice as needed from the Network of NHRIs of the Americas and the OHCHR.

## **6. SPECIFIC DECISIONS - RE-ACCREDITATION APPLICATIONS (Art. 15 of the ICC Statute)**

### **6.1 Greece: Greek National Commission for Human Rights (GNCHR)**

**Decision:** The SCA **defers** consideration of the re-accreditation of the GNCHR to the first session of 2016.

The SCA notes:

#### **1. Independence**

Article 4(7) of Law No. 2667/1998 provides that the regulations for operation of the GNCHR are drawn up by a decision of the Prime Minister.

The classification of an NHRI as an independent State agency has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting. The SCA emphasizes that the administrative requirements imposed on an NHRI must be clearly defined and should be no more onerous than those applicable to other independent of State agencies.

The SCA refers to Paris Principle B.2 and to its General Observation 2.8 on 'Administrative regulation of NHRIs'.

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

In accordance with article 2 of the Law, the members of the GNHRC are appointed by a decision of the President based on the nominations of various entities. The SCA notes that each body makes nominations and this may result in different processes being employed by each entity.

The SCA is of the view that all nominating bodies should utilize an open and transparent merit-based 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 GNHRC to advocate for the formalization 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; 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'.

### **3. Political representatives on NHRIs**

The membership of the GNCHR includes the President of the Special Parliamentary Committee on Institutions, representatives of the political parties recognized in accordance with the Regulations of Parliament, and representatives of various Ministries. While Article 2(5) of the Law specifies that the representatives of the Ministries do not have voting rights, the President of the Special Parliamentary Committee and representatives of political parties do have voting rights. In addition, in accordance with Article 2(4) of the Law, the President of the Special Parliamentary Committee is eligible to be elected as President or Vice President of the GNCHR.

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

For these reasons, government representatives and members of parliament should not be members of, nor participate in the decision-making of organs of a 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, consult with government. However, this should not be achieved through the participation of government representatives in the decision-making body of the NHRI.

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

The SCA encourages the GNCHR to advocate for the necessary changes in its governance structure to ensure that the President of the Special Parliamentary Committee is ineligible for election to the position of President or Vice President of the GNCHR, and that neither the President nor representatives of political parties have the right to vote.

The SCA refers to Paris Principles B.1, B.3 and C(c) and to its General Observation 1.9 on 'Government representatives on NHRIs'.

#### **4. Dismissal**

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

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

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

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

#### **5. Full-time members**

The GNCHR has no full-time members. Its members, while entitled to an honorarium, have voluntarily agreed not to accept this payment. The SCA acknowledges that this situation is largely as a result of the significant financial constraints faced by the GNCHR.

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

The SCA encourages the GNCHR to advocate for amendments to its structure and enabling law to provide for full-time members.

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

## **6. Functional immunity and independence**

The Law does not specify whether and how members of the GNHRC enjoy immunity from legal liability for actions taken in good faith in their official capacity.

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

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

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

The SCA encourages the GNCHR to advocate for the inclusion in its Law of express provisions that clearly establish the functional immunity of its members.

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

## **7. Conflicts of interest**

The Law does not include a provision to address a situation where a member of the GNCHR has actual or perceived conflicts of interest.

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

The SCA encourages the GNCHR to advocate for the inclusion of express provisions in the enabling legislation, regulations or binding administrative guidelines to protect against real or perceived conflicts of interest.

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

The budget of the GNCHR was greatly decreased in 2013 to approximately one-third of its 2009 budget. Though the SCA notes that the budget allocation increased in 2014, it remains concerned that the GNCHR may not have sufficient funds to effectively carry out its duties.

Further, during its 2009 review, the SCA stressed the importance of the GNCHR having adequate funding and financial autonomy over the funds allocated to it. In accordance with article 1(2) of the Law, the budget of the GNCHR shall be incorporated into the budget of the General Secretariat of the Council of Ministers. The GNCHR reports that

the fact that it must seek approval for its expenses makes it difficult to plan its activities, to hire staff in a timely manner, and generally to function in a flexible and efficient manner. There is no separate line in the budget applicable to the GNCHR.

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; and
- 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 of the improvement of the Institution'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 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; and
- e) the allocation of a sufficient amount of resources for mandated activities. Where the NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

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

The SCA encourages the GNCHR to advocate for an independent budget line to safeguard the adequate funding for GNCHR to fulfil its mandate and freely determine its activities.

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

## **9. Annual report**

In accordance with article 5 of the Law, the annual report of the GNCHR is submitted to the Prime Minister, the President of Parliament, and the leaders of political parties that are represented in the national and European Parliament. However, there is no requirement to either table or discuss the report in Parliament.

The SCA considers it important that the enabling laws of a NHRI establish a process whereby the NHRI's reports are required to be widely circulated, discussed and considered by the legislature. It is preferable for an NHRI to have the explicit power to table reports directly in the legislature, rather than through the Executive, and in doing so to promote action on them.

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

## **6.2 Cameroon: National Commission on Human Rights and Freedoms (NCHRF)**

**Decision:** The SCA **defers** the re-accreditation of the NCHRF to the first session of 2016.

The SCA requests that the NCHRF provides further information at its first session of 2016 in relation to the following issues:

### **1. Mandate**

During its 2010 review, the SCA noted the recommendation of the CEDAW Committee to extend the mandate of the NCHRF to explicitly include gender equality. The SCA further notes of the recommendation of the CERD Committee that the NCHRF focus greater attention on the issue of racial discrimination.

Recognizing that an NHRI must determine its priorities and the allocation of its resources based on its assessment of the human rights situation in the country, the SCA encourages the NCHRF to consider the recommendations made by these bodies.

It further encourages the NCHRF to interpret its mandate 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 refers to Paris Principle A.3 and to its General Observation 1.2 on ‘Human rights mandate’.

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

In accordance with section 6 of Law No. 2004/16, the Chairperson and Vice Chairperson are appointed by decree of the President.

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

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

Also in accordance with section 6 of the Law, the Commissioners are appointed by decree of the President upon the proposal of the services, socio-professional associations or bodies to which they belong. The SCA notes that these proposals are made according to the internal procedures of the concerned bodies and, consequently, this may result in different processes being employed between institutions.

The SCA is of the view that all nominating bodies should utilize a uniform merit-based 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 NHRCF 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; 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'.

### **3. Political representatives on NHRIs**

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

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

For these reasons, government representatives and members of parliament should not be members of, nor participate in the decision-making 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, consult with government. However, this should not be achieved through the participation of government representatives in the decision-making body of the NHRI.

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

The SCA encourages the NCHRF to advocate for the necessary changes in its governance structure to ensure that Members of Parliament and representatives of the Senate do not have voting rights.

The SCA refers to Paris Principles B.1, B.3 and C(c) and to its General Observation 1.9 on ‘Government representatives on NHRIs’.

#### **4. Guarantee of tenure**

In accordance with section 8 of the Law, Commissioners can be dismissed on account of gross misconduct incompatible with the duties of Commissioners. The Law does not specify the procedure for dismissal.

Further, also in accordance with section 8 of the Law, the term of office of a Commissioner shall end following the loss of the status that justified their appointment. The SCA is concerned that this provision may allow the “recall” of a nominated member by the appointing authority for inappropriate reasons.

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

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

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

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

#### **5. Conflict of interest**

The Law does not include a provision to address a situation where members have an actual or perceived conflict of interest.

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

The SCA encourages the NCHRF to advocate for the inclusion of provisions in its enabling legislation, regulations or binding administrative guidelines that protect against real or perceived conflicts of interest.

#### **6. Adequate funding**

During its 2010 review, the SCA expressed concern that the NCHRF faced financial constraints that hampered its ability to fulfill its mandate. The SCA notes that the NCHRF has reported in its Statement of Compliance that its present budget and staff is insufficient to carry out 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 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 fulfillment of its mandate.

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

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

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

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

## **7. Accessibility**

The head office of the NCHRF, located in the capital Yaoundé, is not easily accessible to persons with disabilities.

The SCA acknowledges the ongoing efforts of the NCHRF to construct a more appropriate building. It emphasizes the need for the NCHRF's facilities to be accessible to all.

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

During its 2010 review, the SCA noted that the Law did not provide the NCHRF with a mandate to encourage ratification or accession to international instruments. This has not changed.

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

The SCA acknowledges the activities the NCHRF has undertaken in this regard. However, the SCA encourages the NCHRF to advocate for changes to its enabling law to mandate it with explicit responsibility to encourage ratification or accession to international 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'.

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

During its 2010 review, the SCA encouraged the NCHRF to be more involved in the monitoring of places of deprivation of liberty and to carry out more visits.

The SCA again encourages the NCHRF to seek access to all places of deprivation of liberty to effectively monitor, investigate and report on the human rights situation in a timely manner. It should also 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 Principle A.3 and D(d) and to its General Observation 1.6 on 'Recommendations by NHRIs'.

### **10. Interaction with the international human rights system**

The SCA notes with concern that the NCHRF did not submit a parallel report during the 2013 UPR of Cameroon.

The Paris Principles recognize that monitoring and engaging 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.

While it is appropriate for NHRIs to provide information to the government in the preparation of the State report, NHRIs must maintain their independence and where they have the capacity to provide information to human rights mechanisms should do so in their own right.

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'.

### **11. Annual report**

In accordance with section 19(2) of the Law, the annual report of the NCHRF is submitted to the President, the President of the National Assembly and the President of the Senate. The SCA notes that this report is not directly tabled or discussed in Parliament.

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

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

### **6.3 Germany: German Institute for Human Rights (GIHR)**

**Decision:** The SCA **defers** the re-accreditation of the GIHR to the second session of 2015.

The SCA commends the efforts made by the GIHR to advocate for its establishment in primary legislation. It notes that the draft legislation has now been approved by the Federal Cabinet and will be submitted to Parliament.

The SCA encourages the GIHR to continue to advocate for the passage of legislation to ensure a legal basis for the NHRI.

### **6.4 Malawi: Malawi Human Rights Commission (MHRC)**

**Decision:** The SCA **defers** the re-accreditation of the MHRC to the first session of 2016.

The SCA commends the MHRC for its ongoing work in promoting and protecting human rights in Malawi, and notes that the MHRC continues to retain its A Status during the reaccreditation process.

The SCA acknowledges the February 24, 2015 meeting between the MHRC and the Parliament on the on-going accreditation on the MHRD and the areas that require the intervention of the Parliament.

The SCA notes with appreciation the confirmation of a proposal to amend article 131(b) of the HRCA to remove the voting rights of the Law Commissioner and Ombudsman, who are exofficio members of the MHRC. The SCA notes that the Ministry of Justice has submitted a draft Bill amending the HRCA to the Cabinet for its consideration. The draft Bill addresses issues of immunity for Commissioners and removal of voting rights of the Law Commissioners and Ombudsman.

The SCA encourages the MHRC to continue to advocate for passage of the draft Bill.

### **6.5 Republic of Korea: National Human Rights Commission of Korea (NHRCK)**

**Decision:** The SCA **defers** consideration of the re-accreditation of the NHRCK to the first session of 2016.

The SCA acknowledges receipt of a detailed report from the NHRCK on its cooperation with civil society. The NHRCK reports that it cooperated more than 160 times with civil society during 2014. The SCA accepts the report as satisfying the concern raised at its October 2014 session regarding cooperation with other human rights bodies.

The SCA commends the NHRCK on the steps that it has taken to address the SCA's concerns since its October 2014 session. This includes:

- proposing a second set of draft amendments to the NHRCK Act which includes provisions on the qualification standards for Commissioners, provide for broad consultation in the selection process and include a clause on immunity;
- enacting the Rules on Office Work of the NHRCK Regarding Selection / Appointment of Human Rights Commissioners;
- announcing vacancies for the position of Commissioners and seeking opinions from diverse civil forces;

- consulting with the three appointing institutions to solicit their support for broad participation and consultation during the selection and appointment process.

The SCA also notes with appreciation that, in response to the recommendations made by the NHRCK, both the ruling party and the opposition party posted an open call for nominations for the position of Commissioner.

However, the SCA notes that the NHRCK has advocated for the passage of the amendments. The SCA encourages the NHRCK to continue to advocate for passage of the amendments.

The SCA reiterates the following concerns:

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

Article 5(2) of the enabling law specifies very limited eligibility criteria and provides that members of the Commission are selected separately as follows:

- 4 persons by the National Assembly;
- 4 persons by the President; and
- 3 persons by the Chief Justice of the Supreme Court.

The SCA has previously expressed concern that this provision does not establish a sufficiently transparent and participatory selection and appointment process that promotes merit-based selection. In particular, it notes that the existing law does not:

- require the advertisement of vacancies for Commissioners;
- establish clear and uniform criteria;
- ensure that such criteria are uniformly used to assess the merit of all eligible applicants; and
- promote broad participation in the application, screening and selection process.

A clear, transparent and participatory selection and appointment process for the selection of Commissioners 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 an NHRI.

The SCA encourages the NHRCK to advocate for the formalization of a detailed process in its enabling law 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 and selection 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. Functional immunity**

There is no provision in the NHRCK Act to provide immunity for its members from legal liability for actions undertaken in good faith in their official capacity.

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

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

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

The SCA encourages the NHRCK to advocate for the inclusion in its enabling law of express provisions that clearly establish the functional immunity of its members.

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

### **The SCA notes:**

The term of the current Chair will end in August 2015 and the process for the selection of the new Chair will begin in May 2015. The SCA encourages the NHRCK to advocate for the formalization of a clear, transparent and participatory selection and appointment that promotes merit-based selection. Such a process should include requirements to:

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

## **6.6 Ireland: Irish Human Rights and Equality Commission (IHREC)**

The SCA considered whether the IHREC is a new institution or a continuation of its predecessor bodies, the Equality Authority and the Irish Human Rights Commission (IHRC), which was accredited with A status in 2004 and re-accredited in 2008.

The SCA considered article 43 of the *Irish Human Rights and Equality Commission Act* which states that the IHRC has been dissolved, as well as articles 44-51 which provide

for continuity between IHREC and its predecessor bodies. In the absence of clear rules or guidelines on such situations, the SCA took the view that the IHREC should be considered a new institution and is required to apply for accreditation under article 10 of the ICC Statute.

The SCA notes that the Act came into force on 1 November 2014 and that the IHREC will have been in operation for one year on 31 October 2015. The SCA invites the IHREC to apply for accreditation at its second session of 2015, and to provide a report on its activities during its first year of operation at that time.