

NOTE

Pursuant to Article 12 1. e) of the Statute of the Global Alliance of National Human Rights Institutions, all recommendations made in the Report and Recommendations of the May 2016 Session of the Sub-Committee on Accreditation, with the exception of recommendations 3.3 (Greece: National Commission for Human Rights) and 4.2 (Venezuela: Defensoria del Pueblo of the Bolivarian Republic of Venezuela), became final decisions as of the 17th day of July, 2016.

Pursuant to Articles 12 1. d) and f) of the Statute of the Global Alliance of National Human Rights Institutions, recommendations 3.3 (Greece: National Commission for Human Rights) and 4.2 (Venezuela: Defensoria del Pueblo of the Bolivarian Republic of Venezuela), became final decisions as of the 14th day of October, 2016.

As per the Record of Decisions of the Bureau of the Global Alliance of National Human Rights Institutions on the National Commission for Human Rights of Greece, “the Bureau *decided* to request the SCA to consider the situation of the NHRI concerned in light of new developments that have taken place, and *requested* the SCA to demonstrate in its report following the review of the Greek NHRI to what extent the SCA has taken into account the particular economic context in which that NHRI is operating.”

As per the Record of Decisions of the Bureau of the Global Alliance of National Human Rights Institutions on the Defensoria del Pueblo of the Bolivarian Republic of Venezuela, “the Bureau decided to endorse the recommendations of the SCA relating to the NHRI of Venezuela, both with regard to the status of accreditation and to the recommendations.”

**GLOBAL ALLIANCE 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, 9-13 MAY 2016

SUMMARY OF RECOMMENDATIONS

<p><u>2. Accreditation (Art. 10 of the GANHRI Statute)</u></p>
<p><u>2.1 Bahrain: National Institution for Human Rights (NIHRB)</u> Recommendation: The SCA recommends that the NIHRB be accredited with B status.</p>
<p><u>2.2 Cote d'Ivoire: La Commission Nationale des Droits de l'Homme de Côte d'Ivoire (CNDHCI)</u> Recommendation: The SCA recommends that the CNDHCI be accredited with B status.</p>
<p><u>2.3 Montenegro: Protector of Human Rights and Freedoms (PHRF)</u> Recommendation: The SCA recommends that the PHRF be accredited with B status.</p>
<p><u>2.4 Samoa: Office of the Ombudsman (Ombudsman)</u> Recommendation: The SCA recommends that the Ombudsman be accredited with A status.</p>
<p><u>2.5 Uruguay: Institución Nacional de Derechos Humanos Defensoría del Pueblo (NHROI)</u> Recommendation: The SCA recommends that the NHROI be accredited with A status.</p>
<p><u>2.6 Zimbabwe: Human Rights Commission (ZHRC)</u> Recommendation: The SCA recommends that the ZHRC be accredited with A status.</p>
<p><u>3. Re-Accreditation (Art. 15 of the GANHRI Statute)</u></p>
<p><u>3.1 Canada: Canadian Human Rights Commission (CHRC)</u> Recommendation: The SCA recommends that the CHRC be re-accredited with A status.</p>
<p><u>3.2 Cameroon: Commission nationale des droits de l'homme et des libertés (NCHRF)</u> Decision: The SCA decides to defer the re-accreditation of NCHRF to its second session of 2016.</p>
<p><u>3.3 Greece: Greek National Commission for Human Rights (GNCHR)</u> Recommendation: The SCA recommends that the GNCHR be downgraded to B status.</p>
<p><u>3.4 Honduras: National Commissioner for Human Rights (CONADEH)</u> Recommendation: The SCA recommends that the CONADEH be re-accredited with B status.</p>
<p><u>3.5 Korea: National Human Rights Commission (NHRCK)</u> Recommendation: The SCA recommends that the NHRCK be re-accredited with A status.</p>
<p><u>3.6 Malawi: Malawi Human Rights Commission (MHRC)</u> Decision: The SCA decides to defer the re-accreditation of the MHRC to its second</p>

session of 2016.

3.7 New Zealand: Human Rights commission (NZHRC)

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

3.8 Northern Ireland (UK): Northern Ireland Human Rights Commission (NIHRC)

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

3.9 Sierra Leone: Human Rights Commission (HRCSL)

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

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

4.1 Burundi: Commission nationale indépendante des droits de l'homme (CNIDH)

Decision: The SCA decides to initiate a Special Review at its second session of 2016.

4.3 Venezuela: Defensoría del Pueblo of the Bolivarian Republic of Venezuela (DPV)

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

Report, Recommendations, and Decisions of the Session of the SCA on 9-13 May 2016

1. BACKGROUND

- 1.1** In accordance with the Statute (Annex I) of the Global Alliance of National Institutions for the Promotion and Protection of Human Rights (GANHRI), the SCA has the mandate to consider and review applications for accreditation, reaccreditation and special or other reviews received by the National Institutions, Regional Mechanisms and Civil Society Section (NRCS) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its capacity as the GANHRI Secretariat, and to make recommendations to the GANHRI Bureau members with regard to the compliance of applicant institutions with the Paris Principles (Annex II). The SCA assesses compliance with the Paris Principles in law and in practice.
- 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, Jordan for Asia-Pacific and France for Europe.
- 1.3** The SCA convened from 9 to 13 May 2016. OHCHR participated as a permanent observer and in its capacity as GANHRI 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 APF, ENNHRI and NANHRI.
- 1.4** Pursuant to article 10 of the Statute, the SCA considered the applications for accreditation from the NHRIs of Bahrain, Cote d'Ivoire, Montenegro, Samoa, Uruguay and Zimbabwe.
- 1.5** Pursuant to article 15 of the Statute, the SCA also considered applications for reaccreditation from the NHRIs of Canada, Cameroon, Greece, Honduras, Korea, Malawi, New Zealand, Northern Ireland and Sierra Leone.
- 1.6** Pursuant to article 16.2 of the Statute, the SCA reviewed certain issues regarding the NHRI of Burundi.
- 1.7** Pursuant to article 18.1 of the Statute, the SCA reviewed the NHRI of Venezuela.
- 1.8** In accordance with the Paris Principles and the GANHRI SCA Rules of Procedure, the classifications for accreditation used by the SCA are:
 - A:** Fully in compliance with the Paris Principles;
 - B:** Not fully in compliance with the Paris Principles or insufficient information provided to make a determination.
- 1.9** 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.
- 1.10** The SCA notes that when specific issues are raised in its report in relation to accreditation, re-accreditation, or special reviews, NHRIs are required to address these issues in any subsequent application or other review.
- 1.11** Pursuant to Article 12 of the Statute, where the SCA comes to an accreditation recommendation, it shall forward that recommendation to the GANHRI 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 GANHRI Chairperson, through the GANHRI Secretariat, within twenty eight (28) days of receipt;
 - iii) Thereafter the recommendation will be forwarded to the members of the GANHRI 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 GANHRI Bureau;
 - iv) Any member of the GANHRI Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the SCA and the GANHRI Secretariat. The GANHRI Secretariat will promptly notify all GANHRI 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 GANHRI Bureau coming from not less than two regional groups notify the GANHRI Secretariat that they hold a similar objection, the recommendation shall be referred to the next GANHRI 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 GANHRI Bureau;
 - vi) The decision of the GANHRI Bureau on accreditation is final.
- 1.12** 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.

- 1.13** Pursuant to Article 18.1 of the statute, any decision that would serve to remove accredited “A” status from an applicant can only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the written evidence deemed necessary to establish its continued conformity to the Paris Principles.
- 1.14** 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 of the accreditation classification of a NHRI must be finalized within 18 months.
- 1.16** The SCA acknowledges the high degree of support and professionalism of the GANHRI Secretariat (OHCHR-NRCS).
- 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 GANHRI Bureau, the report of the SCA is placed on the GANHRI 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 GANHRI 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 GANHRI Statute:
<http://nhri.ohchr.org/EN/AboutUs/Governance/Pages/Statute.aspx>
 2. The Paris Principles and General Observations:
<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>

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

2.1 Bahrain: National Institution for Human Rights (NIHRB)

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

The SCA welcomes the establishment in law of the NIHRB and commends its efforts to promote and protect human rights in Bahrain.

The SCA notes:

1. Selection and appointment

In accordance with article 5 of the Law, members of the Council of Commissioners are appointed by Royal Decree in consultation with relevant civil society organizations and various other groups. While the NIHRB reports that it calls for an open meeting with civil society organizations in addition to conducting private consultations, the Law is otherwise silent on the process for selection and appointment of members of the Council of Commissioners.

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
- specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.

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

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

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

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

2. Political representatives on NHRIs

Four (4) members of the Council of Commissioners are sitting Parliamentarians. Two (2), including the Chairperson, are members of the Shura Council, whose members are directly appointed by the King.

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

For these reasons, General Observation 1.9 on 'Government representatives on NHRIs' provides that government representatives and members of parliament should not be members of, nor participate in, the decision-making organs of an NHRI. Their membership of, and participation in, the decision-making body of the NHRI has the potential to impact on the real and perceived independence of the NHRI.

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

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

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

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

3. Full-time members

The members of the Council of Commissioners formally serve in a part-time capacity, though it is noted that the NIHRB reported several members attend on a daily basis.

The enabling law of the NHRI should provide that members of its decision-making body include full-time remunerated members. This assists in ensuring:

- a) the independence of the NHRI free from actual or perceived conflicts of interest;
- b) a stable tenure for the members;
- c) regular and appropriate direction for staff; and
- d) the ongoing and effective fulfillment of the NHRI's functions.

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

4. Human rights mandate

Pursuant to Article 12 of the Law, the NIHRB enjoys a broad mandate to promote and protect human rights.

The SCA received allegations that raised concerns about the responsiveness of the NIHRB to complaints and its willingness to support and protect human rights defenders. In response, the NIHRB indicated that it receives and responds to all complaints.

The SCA is concerned about the effective application of the NIHRB’s protection mandate in certain circumstances. While the SCA noted that the NIHRB had conducted some inquiries and made some public statements, it notes that NHRIs are expected to promote and ensure respect for the human rights of all individuals in all circumstances and without exception. In this regard, an NHRIs actions may include monitoring, documenting, issuing public statements and releasing regular and detailed reports on human rights violations through the media, and that these should be provided in a timely manner. Furthermore, an NHRI should also undertake rigorous and systematic follow-up activities, and should advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those whose rights have been violated. These actions, in particular the release of public reports, serve to combat impunity for human rights violations.

The SCA encourages the NHRC to interpret its mandate in a broad and purposive manner, and to promote and protect human rights of all.

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

5. Monitoring places of deprivation of liberty

Article 12 of the Law provides for the NIHRB “to conduct field visits, in accordance with the applied rules in order to monitor human rights status in correction institutions, detention centres, labour gatherings, health and education centres, or any other public place in which it is suspected that human rights violations are committed”. While, the law is silent on unannounced visits, the NIHRB confirmed the need for prior notice to conduct these visits.

While the SCA notes that, in some circumstances, it may be necessary to provide notice for security reasons, it encourages the NIHRB to conduct ‘unannounced’ visits as this limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

The SCA encourages the NIHRB to access all places of deprivation of liberty to effectively monitor, investigate and report on the human rights situation in a timely manner, and to undertake systematic follow-up activities and advocate for the consideration and implementation of its finding and recommendations in order to ensure the protection of those detained.

The SCA also encourages the NIHRB to make its reports on monitoring detention facilities public, including its report on the visit to Drydock Detention Centre in August 2013.

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

6. Cooperation with other human rights bodies

The SCA acknowledges that Article 12 of the Law mandates the NIHRB to cooperate with national bodies working on the protection and promotion of human rights. However, the SCA notes that the Law does not formalize the relationship with civil society organizations specifically.

The SCA highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. In this regard it notes with appreciation that the NIHRB reports that:

- it strongly interacts with such bodies
- has signed Memoranda of Understanding with civil society organizations, to work on capacity building of such organizations; and
- has held consultancy meetings with human rights organizations and trade unions.

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

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

2.2 Cote d'Ivoire: La Commission Nationale des Droits de l'Homme de Côte d'Ivoire (CNDHCI)

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

The SCA welcomes the establishment of CNDHCI. It commends the CNDHCI for its continuing efforts to promote and protect human rights despite the challenging post-conflict context in which it operates.

The SCA notes:

1. Guarantee of tenure

Article 15 of the Law provides that a member may be dismissed for misusing one's prerogatives for other than discharging the CNDHCI's mandate, breach of confidentiality of deliberations, or inability to carry out one's function. The SCA is of the view that the grounds are not sufficiently clear and may not, therefore, provide sufficient protection against political interference.

The SCA emphasizes that, in order to address the requirement for a stable mandate, which is important in reinforcing independence, the enabling law of a 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 members to fulfil the institution's

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 conformity with all the substantive and procedural requirements as prescribed in the enabling law. It should not 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 a 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’.

2. Selection and appointment

In accordance with article 11 of the Law, members are appointed by the Ministry of Human Rights based on the list prepared by each nominating organization.

Further, pursuant to articles 5, 9 and 12 of the Law, the CNDHCI has Regional Commissions that may receive and investigate complaints whose members are appointed by the Ministry of Human Rights upon proposition by the government.

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

The SCA further notes that, because proposals are made according to the internal procedures of the nominating bodies, 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 CNDHCI 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 article 7 of the Law, two members of CNDHCI are members of Parliament, and six are representatives of government departments. The SCA notes that, while the representatives of government departments participate only in an advisory capacity, members of Parliament have full powers, 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, General Observation 1.9 on ‘Government representatives on NHRIs’ provides that 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 decisions are made, and should not be able to vote on these matters.

The SCA encourages CNDHCI to advocate for the necessary changes in its governance structure to ensure that members of Parliament 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. Adequate funding and financial autonomy

The SCA expresses concern that CNDHCI faced a drastic cut of its budget between 2013 and 2015 that may hamper its ability to fulfill its mandate.

The SCA notes that CNDHCI has reported that the level of staff remuneration needs to be raised to allow the recruitment and retention of qualified staff.

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

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

- a) The allocation of funds for premises which are accessible to the wide community, including for persons 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.

While the SCA acknowledges that the CNDHCI reports that it has control over its budget, the budget adoption process requires the endorsement of the Ministry of Human Rights prior to its presentation to Parliament. Further, the CNDHCI reports that its spending is subject to oversight by an official of the Ministry of the Budget.

The SCA is concerned that the Ministry of the Budget has significant discretion over the allocation of funds to the CNDHCI, and that this has the potential to impact on its effectiveness and independence.

Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for their use of public funds, the application of such rules is not considered inappropriate provided that they do not compromise the NHRIs ability to perform its role independently and effectively. The administrative requirements on a NHRI must be clearly defined and should be no more onerous than those applicable to other independent State agencies.

The SCA encourages CNDHCI to continue to advocate for an appropriate level of funding to carry out its mandate and to advocate for its full financial autonomy.

The SCA refers to Paris Principle B.2 and to its General Observations 1.10 on 'Adequate funding' and 2.8 on 'Administrative regulation'.

5. Staffing

The SCA notes that staff recruitment is conducted through the Integrated System of Civil Servants and State Agents Management Authority of the Ministry of Public Services. While the CNDHCI reports that it has the power to evaluate candidates and request their release from their entity of origin, the SCA expresses concern about the high percentage of civil servants employed on the basis of secondment among its staff, including officials at the most senior levels such as the Secretary General, the Director of the Cabinet, the heads of departments, and various other senior managers.

Further, in accordance with article 42, administrative, financial and technical staff are provided to the CNDHCI by the government through secondment.

Overall, the CNDHCI reports that 19 of its 43 staff, or 44%, are seconded.

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 questions its capacity 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.

NHRIs should be legislatively empowered to determine the staffing structure, the skills required to fulfill the NHRI's mandate, set other appropriate criteria (such as diversity), and select their staff in accordance with national law.

Staff should be recruited according to an open, transparent and merit-based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfill the NHRI's mandate. Such a process promotes the independence and effectiveness of, and public confidence in, the NHRI.

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.'

6. Annual report

In accordance with article 3 of the Law, the annual report of CNDHCI is submitted to the President of the Republic. The SCA notes that, in practice, the report is shared with the President of the National Assembly, the President of the Senate and the President of the Constitutional Council.

The SCA considers it important that the enabling laws of an NHRI establish a process whereby its reports are required to be widely circulated, discussed and considered by the legislature. It encourages the CNDHCI to advocate for changes to its enabling law to provide the explicit power to table all 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'.

7. Pluralism and representation of women

The SCA notes that women are not sufficiently represented in the CNDHCI's different bodies. For example, in the Executive Bureau 7 of 22 members and 13 of 43 staff are women.

Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity and minority status. This includes ensuring the equitable participation of women in the NHRI.

The SCA notes there are diverse models for ensuring the requirement of pluralism in the composition of the NHRI as set out in the Paris Principles. For example:

- a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow

and restrict the diversity and plurality of the composition of the NHRI's membership should be avoided;

- b) Pluralism through the appointment procedures of the governing body of the NHRIs, for example, where diverse societal groups suggest or recommend candidates;
- c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
- d) Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member Institutions, such as an Ombudsperson.

The SCA encourages CNDHCI to ensure pluralism, including appropriate gender balance, within the NHRI.

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

8. Investigations on violence against women and post-conflict violence

The SCA acknowledges the activities undertaken by CNDHCI in investigating violations of human rights and visiting places of detention in the country. It encourages CNDHCI to investigate violations against women and post-conflict violence and to make appropriate recommendations.

The SCA notes that an NHRI should also undertake rigorous and systematic follow-up activities, and should advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those whose rights have been violated. These actions, in particular the release of public reports, serve to combat impunity for human rights violations.

The SCA encourages CNDHCI to interpret its mandate in a broad and purposive manner, and to promote and protect human rights of all, including the rights of women, child soldiers and other groups of victims.

The SCA refers to Paris Principles A.3(a)(ii)-(iv), and to its General Observations 1.2 and 1.6 on 'Human rights mandate' and 'Recommendations by NHRIs'.

9. Conflict of interest

Article 24 of the Law specifies the means by which conflicts of interest are avoided for members of the Executive Bureau of the CNDHCI. However, the Law is silent on the means by which such conflicts are to be avoided for other members, such as Regional Commissioners.

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 CNDHCI 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 for all its members.

2.3 Montenegro: The Protector of Human Rights and Freedoms (PHRF)

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

The SCA welcomes the establishment of the PHRF. It notes with appreciation the extensive work undertaken by the NHRI.

The SCA notes:

1. Mandate

The enabling law of the PHRF provides for a limited promotion mandate. However, the SCA notes that in practice the PHRF undertakes some promotional activities despite the financial constraints it faces.

The SCA is of the view that a NHRI should be legislatively mandated with specific functions to both promote and protect human rights. It understands 'promotion' to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy.

The SCA encourages the PHRF to advocate for appropriate amendments to its enabling law to make its promotional mandate explicit.

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 article 95 of the Constitution, the Ombudsman is elected by a majority vote of Parliament based on a proposal of the President. In accordance with article 7 of the Law, in proposing candidates for election as Ombudsman, the President shall undertake consultations with scientific and specialized institutions and NGOs whose core activities involve human rights and freedoms.

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
- specify the process for achieving broad consultation and / or participation in the application, screening, selection and appointment process.

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

The SCA encourages the NHRI 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;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and

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

3. Adequate funding and financial autonomy

The SCA notes that the mandate of the PHRF has expanded in recent years to include responsibility as the NPM under OPCAT and to provide for an anti-discrimination mandate. While the PHRF has some additional funding for these mandates, the SCA is concerned that the budgetary resources allocated to the PHRF are insufficient for it to effectively carry out its mandate.

While the PHRF reports that it has management and control of its budget, the public procurement process requires the approval of the Ministry of Finance each year. The SCA is concerned that this may restrict the ability of the NHRI to direct its budget to those areas it has determined are most important.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive 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 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.

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.

Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for their use of public funds, the application of such rules is not considered inappropriate provided that they do not compromise the NHRIs ability to perform its role independently and effectively. The administrative requirements on a NHRI must be clearly defined and should be no more onerous than those applicable to other independent State agencies.

The SCA refers to Paris Principle B.2 and to its General Observations 1.10 on 'Adequate funding' and 2.8 on 'Administrative regulation'.

4. Staffing

The SCA notes that the PHRF has not recruited its full staff complement of 33, and that the NHRI has plans to recruit more staff in 2017. The recruitment is conducted by the Human Resources Management Authority, including the advertising of vacancies and the evaluation of candidates. The Protector has indicated that these requirements undermine its autonomy and independence.

Further, the PHRF reports that it may only staff positions after obtaining a certificate from the Ministry of Finance certifying that funds are available for salaries, despite the fact that the necessary funds have been approved in the budget.

NHRIs should be legislatively empowered to determine the staffing structure, the skills required to fulfill the NHRI's mandate, set other appropriate criteria (such as diversity), and select their staff in accordance with national law.

Staff should be recruited according to an open, transparent and merit-based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfill the NHRI's mandate. Such a process promotes the independence and effectiveness of, and public confidence in, the NHRI.

The classification of an NHRI as an independent State agency has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting. Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for their use of public funds, the application of such rules or regulations on an NHRI is not considered inappropriate provided they do not compromise the NHRI's ability to perform its role independently and effectively. The 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 Observations 2.4 and 2.8 on 'Recruitment and retention of NHRI staff' and 'Administrative regulation of NHRIs.'

5. Interaction with the international human rights system

The SCA acknowledges the PHRF is a member of various regional human rights organizations and has engaged with the international human rights system. However, there is no specific legal provision for the PHRF to engage with these systems, or to encourage ratification or accession to international human rights instruments.

The Paris Principles recognize that monitoring and engaging with the international human rights system, can be an effective tool for NHRIs in the promotion and protection of human

rights domestically. Depending on existing domestic priorities and resources, effective engagement with the international human rights system may include:

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

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

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

The SCA encourages the PHRF to seek assistance and advice as needed from ENNHRI, GANHRI and OHCHR.

2.4 Samoa: Office of the Ombudsman (the Ombudsman)

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

The SCA notes:

1. Human rights mandate

In accordance with Section 2 of the Act, the definition of 'human rights' includes those rights contained in the Constitution, other laws, customary international law and international human rights treaties listed in Schedule 1 of the Act, which does not include the Covenant of Economic, Social and Cultural Rights.

The SCA acknowledges that the Ombudsman interprets its mandate broadly to encompass all human rights and encourages the Ombudsman to continue to do so, including in relation to economic, social and cultural rights.

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

2. Selection and appointment

Section 7 and 8 of the Act provide that the Head of State may appoint a person recommended by the Legislative Assembly as the Ombudsman.

The process is set out in Schedule 3 of the Act is as follows:

- the Government is responsible to advertise the position in a newspaper having wide circulation in Samoa when the position of Ombudsman becomes vacant;

- an independent Screening Committee, comprising the Chairperson of the Public Service Commission, a retired judge/lawyer and a representative of civil society groups is established to review applicants;
- the Screening Committee considers applications based on a detailed set of specific and general criteria set out in the law and prepares a short list;
- the Committee sends a report to the Legislative Assembly including the Committee's opinion on suitable candidates;
- the Legislative Assembly considers the report and makes a recommendation to the Head of State.

The SCA notes that the process provided by the Act has not yet been implemented in practice as the current Ombudsman was appointed before the enactment of the Act. It encourages the full application of these provisions when future vacancies arise.

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. Monitoring places of deprivation of liberty

In accordance with section 33(e) the Ombudsman may visit all public places of places of voluntary and involuntary confinement or detention without notice.

In addition, in accordance with section 48(1)(b), the Ombudsman may, with the consent of the occupier, enter private places of voluntary and involuntary confinement,. In accordance with section 48(3), where consent is not given, or in the opinion of the Ombudsman consent will not be given, the Ombudsman may apply to a judge of the District Court for a warrant to enter the private premises.

The SCA encourages the Ombudsman to continue to access all places of deprivation of liberty, to effectively monitor, investigate and report on the human rights situation in a timely manner, to undertake systematic follow-up activities and to advocate for the consideration as well as implementation of its findings and recommendations in order to ensure the protection of those detained.

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

4. Annual report

Section 40 of the Act requires the Ombudsman to prepare its annual report on the human rights situation in the country before 30 June of each year.

The SCA notes that the Ombudsman's first State Human Rights Report for 2015 was presented to the Parliament in June 2015 and made publicly available. The SCA encourages the Ombudsman to advocate for its discussion by the Parliament.

The SCA considers it important that the enabling law of a NHRI establish a process whereby the Institution's reports are discussed and considered by the legislature, 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'.

2.5 Uruguay: Institución Nacional de Derechos Humanos Defensoría del Pueblo (NHROI)

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

1. Adequate funding

The SCA commends the NHROI for its advocacy to address the SCA's previous concerns regarding adequate funding. The SCA notes that NHROI's budget slightly increased in 2015.

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 NHROI 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'.

2.6 Zimbabwe: Human Rights Commission (ZHRC)

Recommendation: The SCA recommends the ZHRC be accredited **A** status.

The SCA welcomes the establishment of the ZHRC. It commends its continuing efforts to promote and protect human rights despite the challenging context in which it operates.

The SCA notes that the ZHRC is in the process of amending its enabling law to bring it into conformity with the provisions of the 2013 Constitution. It encourages the ZHRC to strengthen its legislative framework by advocating for further amendments to the law to address the concerns outlined below.

The SCA notes:

1. Selection and appointment

Under section 237(1) of the Constitution, members are appointed by the President through open and transparent process. In accordance with article 242(1) of the Constitution, the Chairperson of the ZHRC is appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders.

The SCA acknowledges that the ZHRC reports that the process followed for the selection of the Chairperson in practice requires the advertisement of vacancies, consultation with civil society, interviews and the short-listing of candidates. However, the SCA is of the view that the process as 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 eligible applicants are assessed; or
- promote broad consultation and / or participation in the application, screening, selection and appointment process.

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

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

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

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

2. Adequate funding and financial autonomy

The ZHRC reports that its funding from the government is not sufficient to effectively carry out its mandate. The SCA notes that the ZHRC has experienced a significant decrease in its budget in 2015, due to critical financial problems affecting Zimbabwe. It further notes the delays experienced by the ZHRC in receiving its allocated budget, and that the resultant salary delays have affected its ability to retain staff.

The SCA notes that section 17(1)(c) of the Act requires the approval of the Minister for ZHRC to obtain external funding. While acknowledging that the ZHRC reports that it has not encountered difficulty in securing such approval, the SCA is concerned that this provision has the potential to impact on the ZHRC's ability to ensure it has sufficient 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 NHRI 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 ZHRC to advocate for amendments of the section 17(1)(c) of the Act to enable it receive donor funding without prior government approval and to advocate for an appropriate level of funding 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'.

3. Limitations on mandate

In accordance with section 9(4)(a) of the Act, the Commission is prevented from investigating complaints related to an action or omission that occurred prior to 13 February 2009.

The SCA is of the view that an NHRI's mandate should authorize the full investigation of all alleged human rights violations and should not be unreasonably limited.

The SCA refers to Paris Principles A.1, A.2 and A.3 and to its General Observation 1.2 and 2.7 on 'Human rights mandate.'

4. Dismissal process

In accordance with section 20 of the Act, a Commissioner can be removed from office by the President for inability to discharge the functions of the office whether arising from infirmity of body or mind or any other cause, or for misbehaviour.

Also in accordance with section 20 of the Act, the removal is subject to the decision of a tribunal composed of a Chairperson who is or has been a judge of the Supreme Court or the High Court, and two (2) other members, one of whom shall be a person who is and has been qualified to practice as a legal practitioner in Zimbabwe for not less than seven (7) years. The SCA notes that the members of the tribunal are appointed by the President.

The SCA notes that the lack of specificity in the grounds for dismissal coupled with the fact that the members of the tribunal are appointed by the President creates the possibility that the process may be subject to misuse.

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

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact on the capacity of the members to fulfil their mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. Dismissal should not be allowed solely on the discretion of the appointing authorities.

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. Annual report

In accordance with section 8(1) of the Act, the Commission submits an Annual report to the Minister, who is obliged to table it before the Parliament.

The SCA considers it important that the enabling law of an NHRI establish a process whereby its reports are required to be widely circulated, discussed and considered by the legislature. It encourages the ZHRC to advocate for changes to its enabling law to provide the explicit power to table all 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'.

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

3.1 Canada: Canadian Human Rights Commission (CHRC)

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

The SCA notes:

1. Mandate

The SCA notes that provisions in the Act provide the CHRC with a mandate to undertake activities in relation to human rights and freedoms.

The SCA acknowledges that the CHRC interprets its mandate broadly, and undertakes a wide range of promotion and protection activities. However, it is of the view that the Act should enumerate its mandate and functions more clearly, as was noted by the CHRC in relation to the encouraging ratification and implementation of international standards and engagement with the international human rights system.

An NHRI should be legislatively mandated with specific functions to both promote and protect human rights. Promotion activities are understood to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. Protection functions may be understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling.

The SCA notes that its previous recommendation from 2011 concerning the amendment of the law has not been implemented, therefore reiterates its recommendation to encourage the CHRC to advocate for amendments in order to clearly establish a broad mandate to promote and protect all human rights set out in international, regional and domestic instruments.

The SCA refers to Paris Principle A.3 and to its General Observation 1.2 on 'Human Rights mandate' and General Observation 1.3 on "Encouraging ratification or accession to international human rights instruments".

2. Selection and appointment

In accordance with section 26 of the Act, CHRC members are appointed by the Governor in Council. Section 1.1 of the Governor in Council Appointments Procedures Guide provides that appointments by the Governor in Council are made on recommendation of the Minister of Justice.

The SCA notes that in practice, the vacancy, job description, and selection criteria are prepared in coordination with the CHRC, the Director of Appointments and the Minister of Justice pursuant to section 9 of the Guide Book for Heads of Agencies, and that vacancies are advertised on the internet, and in the Canada *Gazette* with the related selection criteria.

The SCA reiterates its recommendation of 2011 that the process currently enshrined in the Act is not sufficiently broad and transparent. In particular, it does not:

- require the advertisement of vacancies;

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

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

The SCA recommends the CHRC advocate for the formalization and application of a process that includes requirements to:

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

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

3. Guarantee of tenure

Section 26(4) of the Act provides that CHRC members hold office during good behaviour but may be removed by the Governor in Council on address of the Senate and House of Commons. While 'good behaviour' is not defined in the Act, its meaning is circumscribed by other statutes, guidelines and judicial decisions.

The SCA emphasizes that, in order to address the requirement for a stable mandate, which is important in reinforcing independence, the enabling law of a 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 adversely impact on the capacity of the members to fulfil the institution's 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 a 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'.

4. Accessibility

The CHRC has a central office in Ottawa, three regional offices and a variety of staff operating out of other locations across Canada. The CHRC notes that its offices are accessible through a variety of means.

The SCA notes that measures introduced to provide security to the building have meant that individuals must request prior approval to access the Ottawa premises. The SCA encourages the CHRC to ensure that this security measure does not limit the accessibility of the Ottawa premises.

The SCA also notes that the CHRC has a separate website, but the CHRC indicated that the government has proposed that the CHRC website be integrated into a whole of government web portal. The SCA is of the view that this may impact on the public perception of the CHRC's independence and has the potential to dissuade individuals from filing human rights complaints against government or from accessing the website to obtain information on human rights.

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

5. Annual report

In accordance with section 61(1) of the Act, the CHRC shall prepare and submit an annual report to Parliament on its activities within three (3) months from 31 December.

The SCA considers it important that the enabling laws of a NHRI establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. The SCA encourages the NHRC to advocate for changes to the Act to provide the explicit power to table all 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. Access to CHRC's complaints process

Section 40(1) of the Act empowers the CHRC to receive and process complaints related to discrimination. However, the SCA notes that no complaint in relation to a discriminatory practice may be dealt with by the CHRC unless the act or omission that constitutes the practice occurred in Canada and the victim of the practice was at the time of the act or omission either lawfully present in Canada or, if temporarily absent from Canada, entitled to return to Canada.

The CHRC has noted that this restriction is inconsistent both with the principle that all human rights laws are universal and with the *Canadian Charter of Rights and Freedoms* which applies to anyone present in Canada regardless of the legality of that presence.

The SCA encourages the CHRC to advocate for changes to the Act to permit all individuals, regardless of their legal status, to access to its compliant process.

The SCA refers to Paris Principle D(c) and to its General Observation 2.10 on 'The quasi-judicial competence'.

3.2 Cameroon: Commission nationale des droits de l'homme et des libertés (NCHRF)

Decision: The SCA decides to **defer** the re-accreditation of NCHRF to its second session of 2016.

The SCA commends the work undertaken by NCHRF to address recommendations made by the SCA in 2015. The SCA notes that the proposed law would address the previously-stated concerns with respect to mandate, political representatives on NHRIs, tenure, conflict of interest, and ratification or accession to international human rights instruments.

The SCA acknowledges the draft law, which is scheduled to be presented to the Parliament in June 2016, and draws NCHRF's attention to the title, Art.1, Art.30 (1) and Art.31 of the draft, which explicitly refer to the creation of a new institution.

In March 2015, the SCA noted that:

"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'.

The SCA encourages the NCHRF to seek advice and assistance from OHCHR and NANHRI.

3.3 Greece: Greek National Commission for Human Rights (GNCHR)

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

In accordance with Article 18.1 of the GANHRI statute, a recommendation to downgrade does not take effect for a period of one year. This allows an opportunity for the GNCHR to provide the documentary evidence necessary to establish its continued conformity with the Paris Principles. The SCA notes that the GNCHR maintains A status during the one-year period.

The SCA commends the GNCHR for its continuing efforts to promote and protect human rights in Greece despite operating with limited resources.

The SCA commends GNCHR's efforts to address the concerns previously expressed by the SCA through amendments to Law no. 2667/1998, adopted in December 2015. However, the SCA notes that these amendments do not fully address the issues raised by the SCA in March 2015.

The SCA reiterates its concerns as follows:

1. Selection and appointment

In accordance with article 2(3) of the Law, the members of the GNCHR are appointed by a decision of the Prime Minister based on the nominations of various entities.

The SCA notes that the legislative amendment specifies that members are "designated by" the various entities rather than being "representatives of" these entities. However, this does not address the concern of the SCA that having each body make nominations may result in different processes being employed by each entity.

The SCA continues to be of the view that all nominating bodies should utilize an open and transparent merit-based selection and appointment process.

A clear, transparent and participatory selection and appointment process for the selection of members 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 reiterates its March 2015 recommendations and encourages the GNCHR 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. Dismissal

The SCA notes that, according to the GNCHR’s internal regulation, each entity, body or authority may replace the member or alternate member that it has designated in accordance with its statute and internal procedures. The SCA acknowledges the GNCHR’s position that, as a result of the pluralistic nature of the institution, the dismissal process cannot be articulated in a general manner for all of its members.

However, the SCA is of the view 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’.

3. Political representatives on NHRIs

The membership of the GNCHR includes the President of the Special Parliamentary Committee on Institutions, representatives of recognized political parties 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.

The SCA notes that the legislative amendment would make the President of the Special Parliamentary Committee on Institutions and Transparency ineligible for election as President or Vice President of the GNCHR. However, the SCA is of the view that this amendment does not sufficiently address its stated concerns as, during the review, the GNCHR confirmed to have one representative from Parliament with 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, General Observation 1.9 on ‘Government representatives on NHRIs’ provides that 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 Law to ensure that representatives of political parties, including the President of the Special Parliamentary Committee, have no 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. Full-time members

The GNCHR has no full-time members. The SCA acknowledges the position of the GNCHR that it was never the intention that its members be full-time in order that they remain professionally active and up-to-date with current affairs and the everyday practices of those entities they represent.

However, the SCA remains of the view that the enabling law of the NHRI should provide that members of its governing 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 GNHRC 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’.

5. Functional immunity

The Law does not specify whether and how members of the GNCHR enjoy immunity from legal liability for actions taken in good faith in their official capacity. The SCA acknowledges the position of the GNCHR that this is not a requirement for the institution given its advisory role.

However, the SCA is of the view 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 views they have expressed or recommendations they have made. 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'.

6. Adequate funding

The budget of the GNCHR was considerably decreased in 2013 to approximately one-third of its 2009 budget. The SCA notes that GNCHR budget allocation increased in 2016. However, it remains concerned that the GNCHR may not have sufficient funds to effectively 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 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 GNCHR 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. 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.

The SCA acknowledges that the GNCHR reports that it has an annual meeting with the President of Parliament to present the annual report, and that the report is widely circulated, discussed and considered by all branches of the State. However, there is no requirement in the Law to either table or discuss the report in Parliament. The SCA considers it preferable for the NHRI to have the explicit power to table reports directly in the legislature 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’.

3.4 Honduras: Comisionado Nacional de los Derechos Humanos (CONADEH)

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

The SCA commends CONADEH for its continuing efforts to promote and protect human rights despite the challenging context in which it operates.

The SCA notes:

1. Selection and appointment

Article 2 of the Law provides that the Defensor shall be appointed by the National Congress by a majority of votes.

While recognizing that efforts have been made to improve the selection and appointment process, the SCA is of the view that the process as enshrined in the law is not sufficiently broad and transparent. In particular, it does not:

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

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

The Law formerly provided for functional immunity for the Defensor for actions undertaken in good faith in his official capacity. That provision was repealed by Legislative Decree No. 105-2004.

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

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

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

The SCA encourages CONADEH to advocate for the reinstatement of the provision in the Law relating to functional immunity.

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

3. Pluralism

There is no requirement in the Law that the staff of CONADEH be representative of diverse segments of society, although CONADEH has indicated that in the staff recruitment process, pluralism and diversity are taken into consideration.

The SCA emphasizes that 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.

Pluralism refers to the broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity or minority status. This includes, for example, ensuring the equitable participation of women, indigenous peoples, afro-descendants in the NHRI.

The SCA notes that there are diverse models for ensuring the requirement of pluralism in the composition of NHRIs as set out in the Paris Principles. In the case of single-member institutions such as CONADEH, pluralism can be achieved by ensuring staff are representative of the diverse segments of society.

The SCA encourages CONADEH to advocate for the inclusion in its enabling law of a requirement that its staff be reflective of the principle of pluralism.

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

4. Adequate funding

The budget of CONADEH is insufficient to fully and effectively carry out all its mandated activities.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive 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 that is 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.

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'.

5. Cooperation with other human rights bodies

The SCA highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. In this regard it notes with appreciation that CONADEH reported that it recognises the crucial role of civil society organisation in promoting and protecting human rights, and that it has intensified its engagement and cooperation with such organizations in various ways.

The SCA reiterates that NHRIs should 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 CONADEH to maintain and strengthen these relationships. It refers to Paris Principle C (g) and to its General Observation 1.5 on 'Cooperation with other human rights institutions'.

6. Interaction with the international human rights system

The SCA notes that, according to Article 9 (8) of the law, CONADEH shall cooperate with international and regional human rights organizations. In this regard, the SCA acknowledges that CONADEH cooperates with different UN agencies and programs, regional mechanisms and organizations, including sub-regional entities.

The SCA notes that CONADEH interacted with various UN human rights mechanisms, including with the Treaty bodies and through recent visits by Special Procedure mandate holders.

The SCA emphasizes 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.

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 recommends that CONADEH continue its engagement with the international human rights system, including UPR, Treaty bodies and special procedure as well as with regional and sub-regional mechanisms.

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

3.5 Korea: National Human Rights Commission (NHRCK)

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

The SCA commends the NHRCK for their efforts in:

- advocating for, and securing, amendments to their enabling law;

- developing internal rules on the selection and appointment process for Commissioners, and
- consulting with the appointing bodies to promote support for broad participation and consultation during the selection and appointment process.

The amendments to the enabling law explicitly provide functional immunity for members, establish eligibility criteria for membership, allow civil society organizations to recommend candidates, and explicitly require the appointing bodies to ensure a transparent selection process and pluralistic composition.

The SCA notes that these changes address many of its concerns but reiterates the following concern:

1. Selection and appointment

Article 5(2) of the enabling law provides that members of the NHRCK are selected separately as follows:

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

The SCA notes that this may result in different processes being employed by each entity. The SCA is of the view that, even with the amendments outlined above, the process could be improved by:

- requiring the advertisement of vacancies; and
- ensuring a consistent process is applied by a single independent selection committee.

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’.

3.6 Malawi: Malawi Human Rights Commission (MHRC)

Decision: The SCA decides to **defer** the re-accreditation of the MHRC to its second session of 2016.

The SCA commends the MHRC for its ongoing work and promoting and protecting human rights in Malawi. It notes that the MHRC continues to retain its “A” status during the re-accreditation process.

The SCA acknowledges the efforts of the MHRC in advocating for changes to its enabling law in order to address the concerns of the SCA. However, these amendments have been pending since 2013 and have not yet been passed.

The SCA acknowledges the letter received on 9 May 2016 from the Minister of Justice and Constitutional Affairs which indicates that the draft amendment Bill will be tabled for adoption during the next session of Parliament that begins in June 2016. The SCA notes that the letter indicates that the draft amendment Bill addresses the issue of removal of voting rights of the Law Commissioner and Ombudsman.

The SCA further notes that the letter indicates that Cabinet did not adopt the proposed amendment on immunity as Commissioners already enjoy that immunity for acts done in good faith in the course of employment. The SCA acknowledges that Section 2 of the Civil Procedure (Suits By or Against Government or Public Officers) Act provides that the Government is liable for all acts of public officers performed in their official capacity. However, the SCA encourages the MHRC to advocate for the express inclusion of this or a similar provision in its enabling law.

3.7 New Zealand: Human Rights Commission (NZHRC)

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

The SCA notes:

1. Selection and appointment

In accordance with section 28(1)(b) of the Crown Entity Act (CEA) Commissioners are appointed by the Governor General on the recommendation of the Minister.

The SCA acknowledges that the NZHRC reports that, in practice, positions are advertised, applications from interested parties and nominations from members of Parliament are sought, an independent panel interviews short-listed candidates, and advice is provided to the Minister of Justice.

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

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

It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the National Human Rights Institution'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 a National Institution. 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;
- 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 own individual capacity rather than on behalf of the organization they represent.

The SCA encourages the NZHRC to advocate for the formalisation of the selection process in the enabling legislation, regulations or binding administrative guidelines as appropriate. In addition, while noting that previous appointments have been made for periods of 5 years, the SCA notes that section 20F of the enabling legislation provides for appointments for “no

longer than 5 years". It also encourages the NZHRC to consider advocating for the inclusion of a minimum term of appointment for new Commissioners.

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

2. Dismissal

In accordance with section 39 of the CEA, the Governor General may, at any time for just cause, on the advice of the responsible Minister given after consultation with the Attorney-General, remove a member from office. In accordance with section 41, the responsible Minister may advise the removal of a member with as little formality and technicality, and as much expedition, as is permitted by the principles of natural justice, a proper consideration of the matter, and the different requirements of the Act in relation to the different types of statutory entity.

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

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact on the capacity of the members to fulfil their mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. Dismissal should not be allowed solely on the discretion of the appointing authorities.

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.'

3. Annual report

In accordance with section 150 of the CEA, the NZHRC submits an annual report as well as thematic reports for NPM to the Minister, who is obliged to present them to the House of Representatives.

The SCA considers it important that the enabling laws of a NHRI establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. It encourages the NZHRC to advocate for changes to its enabling law to provide 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'.

4. Limitation on mandate

In accordance with Section 392 of the Immigration Act 2009, the Commission is prevented from accepting complaints with respect to the contents or application of the Immigration Act, Regulations or any policy under that Act.

The SCA acknowledges that the NZHRC interprets its mandate in a broad manner and conducts some activities relating to human rights violation in the context of immigration. However, the SCA is of the view that the mandate of an NHRI should not be unreasonably limited. It encourages the NZHRC to advocate for the removal of this provision.

The SCA refers to Paris Principles A.1, A.2 and A.3 and to its General Observation 1.2 and 2.7 on 'Human rights mandate.'

3.8 Northern Ireland (UK): Northern Ireland Human Rights Commission (NIHRC)

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

The SCA notes:

1. Selection and appointment

In accordance with Section 68 of the Act, the Commission shall consist of a Chief Commissioner and other Commissioners appointed by the Secretary of State.

The SCA notes that the NIHRC reports that, in practice, the appointment process is subject to detailed guidance from the Office of the Commissioner for Public Appointments. and includes the advertising of vacancies, the use of a selection panel who make recommendations to the Secretary of State, and the ability to appeal the process for selection of the Chief Commissioner through the Employment Tribunal. However, this process is undertaken by the NIHRC's sponsor department, and is not set out in the legislation, in regulations, or in binding administrative guidelines.

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 the merit of eligible applicants is assessed; or
- promote broad consultation and / or participation in the application, screening, selection and appointment process.

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

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

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

- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

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

2. Full-time members

In accordance with Schedule 7 (2)(2) of the Act, the Chief Commissioner shall be appointed for a maximum of five (5) years and other Commissioners for not more than three (3) years. The SCA notes that the Act is silent on whether the members serve in a full-time or part-time capacity, though it notes that the NIHRC reports that the Chief Commissioner serves on a full;-time basis.

The SCA is of the view that the enabling law of the NHRI should provide that members of its governing 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.

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

The SCA encourages the NIHRC to advocate for amendments to enabling law to provide for full-time members with an appropriate term of office.

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

3. Annual report

In accordance with Schedule 7 (5) of the Act, the NIHRC submits its annual report to the Secretary of the State. Thereafter, the Secretary of State tables the NIHRC's report before Parliament.

The SCA acknowledges that the NIHRC has indicated that the Minister's role is limited to tabling the document before Parliament, and that he or she is not permitted to modify the report or require that modifications be made. However, the SCA considers it important that the enabling laws of a NHRI establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. It encourages the NIHRC to advocate for changes to its enabling law to provide 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’.

4. Adequate funding and financial independence

The NIHCR reports that its funding from the government is not sufficient to effectively carry out its mandate. The SCA notes that the NIHRC has experienced a significant cut in its budget since 2009 and acknowledges the NIHRC’s report that, in line with other non-departmental public bodies, it will continue to have budgetary cuts until 2019.

Further, in accordance with Schedule 7 (6) of the act, the Secretary of State may make grants to the NIHRC from the budget provided by the Parliament.

The SCA is concerned that the Secretary of State has significant discretion over the allocation of funds to the NIHRC, and that this has the potential to impact on its effectiveness and independence.

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 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 NIHRC to advocate for an appropriate level of funding to effectively carry out its mandate. It further encourages the NIHRC 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. Encouraging ratification or accession to international human rights instruments

The Act does not provide the NIHRC with an explicit mandate to encourage ratification or accession to international human rights instruments.

While acknowledging the activities the NIHRC has undertaken in this regard, the SCA encourages it to advocate for changes to its enabling law to mandate it with explicit responsibility to encourage ratification or accession to international human rights instruments.

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

6. Functional Immunity

The Act does not provide functional immunity for NIHRC members for actions undertaken in good faith in their official capacity.

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

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

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

The SCA again encourages the NIHRC to advocate for the inclusion in the Act of a provision providing for the functional immunity of members.

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

7. Visiting places of deprivation of liberty

In accordance with section 69(C) of the Justice and Security Act 2007, the NIHRC must be authorized to enter a specified place of detention.

While the SCA notes that, in some circumstances, it may be necessary to provide notice for security reasons, it encourages the NIHRC to conduct ‘unannounced’ visits as this limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

Reiterating its previous concern, the SCA encourages the NIHRC to continue to access all places of deprivation of liberty to effectively monitor, investigate and report on the human rights situation in a timely manner, and to undertake systematic follow-up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those detained.

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

8. Mandate

In accordance with Section 69B of the Justice and Security Act 2007, the NIHRC is prevented from using its formal investigative powers to inquire into matters relating to ‘national security’. The SCA notes that the NIHRC has expressed concern that this limitation is unnecessary and may impact on its ability to deal with certain violations of human rights involving policing, security and the intelligence services.

The SCA further notes that Section 20 of the 2007 Act prohibits the NIHRC from investigating matters prior to 1 August 2007. The SCA notes that the NIHRC has expressed concern with this limitation on its mandate.

It is the view of the SCA that an NHRI’s mandate should authorize the full investigation of all alleged human rights violations, including those involving the military, police and security officers. While limitations on the mandate of an NHRI relating to national security are not inherently contrary to the Paris Principles, it should not be unreasonably or arbitrarily applied and should only be exercised under due process.

The SCA refers to Paris Principles A.2 and A.3 and to its General Observations 1.2 and 2.7 on ‘Human rights mandate’ on ‘Limitation of power of NHRIs due to national security.’

3.9 Sierra Leone: Human Rights Commission (HRCSL)

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

The SCA commends HRCSL for its continuing efforts to promote and protect human rights despite the challenging context in which it operates.

The SCA notes:

1. Adequate funding and financial autonomy

The SCA welcomes the efforts of the HRCSL to seek adequate State resources to enable it to exercise its functions and implement its programs and activities in a satisfactory manner. It acknowledges the report of the HRCSL to have advocated for increased funding through engagement with the Attorney General and the Ministry of Finance and bringing the issue to the attention of the President. However, the HRCSL indicates that its budgetary allocation is inadequate. It further reports that it has faced situations of understaffing.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive 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.

Provision of adequate funding by the State should include the allocation of funds for mandate activities. Where the NHRI is designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of these functions.

Funding from external sources should not compose the core funding of the NHRI, as that 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 a NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases NHRIs should not be required to obtain approval from the state for external sources of funding, which may otherwise detract from its independence.

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

2. Recommendations by national human rights institutions

The SCA commends the HRCSL for continuing to produce reports and recommendations and for reporting to have developed a mechanism to ensure the implementation of its recommendations by competent ministries.

The SCA notes that, as part of their mandate to promote and protect human rights, NHRIs should monitor and publicize detailed information on responses to and implementation of its recommendations by public authorities. These authorities are encouraged to respond in a timely manner, and to provide detailed information on practical and systematic follow-up action, as appropriate.

The HRCSL reported having addressed important human rights issues, including female genital mutilation, through making recommendations to the Parliament and encouraging the

government to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, as well having made recommendation in relation to the unlawful detention of journalists and human rights defenders. The SCA also notes that a staff member of the HRCSL was arrested on criminal charges subsequent to a statement he had delivered on Ebola.

The SCA encourages the HRCSL to continue promoting and protecting human rights, trying to exert more efforts, to be vigilant in speaking out on human rights issues, and to continue advocating for the implementation of its recommendations.

The SCA refers to Paris Principle A.3 (a) and to its General Observation 1.6 on 'Recommendations by National Human Rights Institutions'.

3. Encouraging ratification or accession to international instruments

The SCA notes that the enabling law of the HRCSL does not provide for encouraging ratification or accession to international instruments.

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

The SCA encourages the HRCSL 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'.

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

4.1 Burundi: Commission nationale indépendante des droits de l'homme (CNIDH)

Decision: The SCA decides to initiate a **Special Review** of CNIDH at its second session of 2016.

The SCA received information which calls for it to initiate a special review to ensure that the CNIDH continues to operate in full compliance with the Paris Principles.

The SCA refers to Article 16.2 of the GANHRI Statute.

SPECIFIC RECOMMENDATIONS - Review under Article 16.2 of the GANHRI Statute

4. SPECIFIC RECOMMENDATIONS - Review under Article 18.1 of the GANHRI Statute

4.2 Venezuela: Defensoria del Pueblo (DPV)

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

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 volatile 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, Rodriguez Chacin (Governor of Guárico) and the Giant Hugo Chavez wanted"¹.*
- *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*

¹ 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

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”².

- *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”³.*

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;*
- *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.*

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

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

- *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 008610⁴ (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”.

⁴ Resolution of Minister of Defense of 27 January 2015.

The SCA gave the DPV the opportunity to provide, within one year, the evidence deemed necessary to establish its continued compliance with the Paris Principles.

In May 2016, the SCA reviewed the documentation and additional material that the DPV has sent during the year, summarizing and reporting on all the activities it has carried out.

The SCA acknowledges that the DPV is currently operating in a highly polarized context. It further acknowledges that steps have been taken to address some human rights issues in Venezuela.

However, the SCA is of the view that the DPV has failed to speak out on the most serious human rights issues.

In addition to the issues of concern outlined above, the SCA notes the following:

- The state of emergency situation and the deportation of Colombians at the Venezuela/Colombia border: The United Nations Office for the Coordination of Humanitarian Affairs, in its progress report of 15 October 2015, reports that 22,342 persons have returned from Venezuela to Colombia and that 1,925 have been deported. The Spokesperson for the United Nations High Commissioner for Human Rights publicly raised concern on 28 August 2015, about the situation at the border between Colombia and Venezuela and urged the Venezuelan authorities to ensure that the human rights of all affected individuals were fully respected, particularly in the context of any deportations. However, the DPV stated that it has not received information or specific allegations of human rights violations relating to the affected persons in the border region.
- The case of Lorent Saleh and Gabriel Valle: various credible sources of information described the conditions of detention at the prison known as “la Tumba” (“the Grave”), and that this includes being held in cells approximately 2 X 3 meters with no access to sunlight or proper ventilation, in violation of international standards. The SCA was informed that two students, Lorent Saleh and Gabriel Valle, have been held in pre-trial detention in these conditions for more than 20 months, and have made allegations that they have been tortured and subject to inhuman and degrading treatment. In relation to detainee Lorent Saleh, the SCA was informed that he has received inadequate medical attention. The SCA noted that, in response to questions about the action the DPV has taken in relation to these serious allegations, it stated in its comments on the report received from NGOs that “Lorent Saleh and Gabriel Valle asked through their relatives not being transferred to another detention centre, confirming that they were in good conditions of detention.” The SCA is concerned that this statement does not demonstrate that the DPV is taking appropriate action in relation to the allegations before it.
- Cooperation with civil society: While the DPV has indicated that it meets regularly with civil society organizations, the SCA has received a report from different credible civil society organizations that there has been little meaningful cooperation and that the DPV is not prepared to address their concerns.
- Attacks on human rights defenders: While the DPV has provided information on its activities in relation to the protection of human rights defenders, the SCA remains concerned that the DPV has not taken action in all cases to protect these defenders.

Based on these cases, and all of the information that has been provided, the SCA is of the view that the DPV is not prepared to speak out in a manner that promotes respect for human rights in response to credible allegations of serious human rights abuses having been committed by government authorities. The failure to do so demonstrates a lack of

independence. Therefore, the SCA is of the view that the DPV is not operating in full compliance with the Paris Principles.