

**NOTE**

As of 29 November 2023, the SCA recommendations contained in this report are considered final with exception of those related to the Myanmar National Commission on Human Rights, which in accordance with Article 12.1(ii) of GANHRI statute challenged the recommendation.

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

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

**Online, 25-29 September 2023**

**Geneva, 23-27 October 2023**

## SUMMARY OF RECOMMENDATIONS

<b>1. <u>Re-Accreditation (Art. 15 of the GANHRI Statute)</u></b>
<b>1.1 Argentina: The Defensoría del Pueblo de la Nación Argentina (DPNA)</b> <b>Recommendation:</b> The SCA recommends that the DPNA be re-accredited with ‘A’ Status
<b>1.2 Australia: Australian Human Rights Commission (AHRC)</b> <b>Recommendation:</b> The SCA recommends that the AHRC be re-accredited with ‘A’ Status
<b>1.3 Germany: German Institute for Human Rights (GIHR)</b> <b>Recommendation:</b> The SCA recommends that the GIHR be re-accredited with ‘A’ Status
<b>1.4 Guatemala : Procuraduría de los Derechos Humanos (PDH)</b> <b>Recommendation:</b> The SCA recommends that the PDH be re-accredited with ‘A’ Status
<b>1.5 Liberia: Independent National Commission on Human Rights (INCHR)</b> <b>Recommendation:</b> The SCA recommends that the INCHR be re-accredited with ‘A’ Status
<b>1.6 Malawi: Malawi Human Rights Commission (MHRC)</b> <b>Recommendation:</b> The SCA recommends that the MHRC be re-accredited with ‘A’ Status
<b>1.7 Moldova: The Office of the People’s Advocate of Moldova (OPA)</b> <b>Recommendation:</b> The SCA recommends that the OPA be re-accredited with ‘A’ Status
<b>1.8 Nepal: National Human Rights Commission of Nepal (NHRCN)</b> <b>Recommendation:</b> The SCA recommends that the NHRCN be re-accredited with ‘A’ Status
<b>1.9 Nigeria: National Human Rights Commission (NHRC)</b> <b>Recommendation:</b> The SCA recommends that the NHRC be re-accredited with ‘A’ Status
<b>1.10 Northern Ireland: Human Rights Commission (NIHRC)</b> <b>Recommendation:</b> The SCA recommends that the NIHRC be re-accredited with ‘A’ Status
<b>2. <u>Decision (Art. 14.1 of the GANHRI Statute)</u></b>
<b>2.1 Bahrain: National Institution for Human Rights of Bahrain (NIHRB)</b> <b>Decision:</b> The SCA decides to defer the review of the NIHRB for 12 months (or two sessions)
<b>2.2 Egypt: National Council for Human Rights (NCHR)</b> <b>Decision:</b> The SCA decides to defer the review of the NCHR for 12 months (or two sessions)
<b>2.3 Uganda: Human Rights Commission (UHRC)</b> <b>Decision:</b> The SCA decides to defer the review of the UHRC for 18 months (or three sessions)
<b>3. <u>Special Review (Art. 16.2 of the GANHRI Statute)</u></b>
<b>3.1 Burundi : Commission Nationale Indépendante des Droits de l’Homme (CNIDH)</b> <b>Decision:</b> The SCA decides to initiate a Special Review of the CNIDH at its first session of 2024
<b>3.2 Great Britain: Equality and Human Rights Commission (EHRC)</b> <b>Decision:</b> The SCA decides to initiate a Special Review of the EHRC at its first session of 2024
<b>3.3 Myanmar: Myanmar National Human Rights Commission (MNHCR)</b>

**Recommendation:** The SCA recommends that the accreditation status of the MNHRC be removed

**3.4 Russian Federation: Commissioner for Human Rights in the Russian Federation (OCHR)**

**Recommendation:** The SCA recommends that the accreditation status of the OCHR be removed

**4. Suspension (Article 18.4 of the GANHRI Statute)**

**4.1 Niger: Commission Nationale des Droits Humains (CNDH)**

**Recommendation:** The SCA recommends that the accreditation status of the CNDH be immediately suspended

**Report, Recommendations, and Decision of the Session of the SCA,  
25-29 September; 23-27 October 2023**

## 1. BACKGROUND

**1.1** In accordance with the Statute<sup>1</sup> of the Global Alliance of National Human Rights Institutions (GANHRI), the Sub-Committee on Accreditation (SCA) has the mandate to consider and review applications for accreditation, re-accreditation and special or other reviews received by the National Institutions and Regional Mechanisms Section (NIRMS) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its capacity as the GANHRI Secretariat, and to make recommendations to the GANHRI Bureau with regard to the compliance of applicant institutions with the Paris Principles<sup>2</sup>. The SCA assesses compliance with the Paris Principles in law and in practice.

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

On 15 March 2023, the GANHRI General Assembly adopted amendments to the GANHRI Statute.

**1.2** In accordance with the RoP, the SCA is composed of one NHRI representative from each region. The current SCA members are Palestine for Asia-Pacific (Chair), South Africa for Africa, Greece as the acting member for Europe, and Honduras for the Americas.

The NHRI of Palestine attended the online segment and did not attend the in-person segment due to the prevailing situation in the Gaza region and State of Palestine at the time.

In accordance with section 3.1 of the SCA's RoP, the NHRI of Kenya, as alternate member for Africa and the NHRI of New Zealand, listed as the alternate member for Asia-Pacific, participated to learn about the procedures in practice, in advance of serving on the SCA.

Given the absence of the NHRI of Palestine during the in-person segment due to exceptional circumstances, the NHRI of New Zealand, listed as the alternate member for Asia-Pacific, assumed the full member role during the in-person segment.

Additionally, the NHRI of South Africa was designated by SCA members to act as the Chair, in the absence of the NHRI of Palestine, during the in-person segment.

**1.3** During its retreat in October 2022, the SCA decided to introduce an online segment in its sessions in order to provide for sufficient time in its deliberation and to undertake a pilot during its 2023 sessions. The SCA, therefore, convened from 25-29 September 2023 for the online segment and from 23-27 October 2023, for the in-person segment. OHCHR participated as a permanent observer in its capacity as GANHRI Secretariat. In accordance with the RoP, regional networks of NHRIs were invited to attend as observers. The SCA welcomed the

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<sup>1</sup> Available at

[https://www.ohchr.org/sites/default/files/documents/countries/nhri/ganhri/EN\\_GANHRI\\_Statute\\_adopted\\_15032023.pdf](https://www.ohchr.org/sites/default/files/documents/countries/nhri/ganhri/EN_GANHRI_Statute_adopted_15032023.pdf)

<sup>2</sup> Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement>

participation of representatives from the Secretariats of the Asia-Pacific Forum (APF), European Network of National Human Rights Institutions (ENNHRI), Network of African National Human Rights Institutions (NANHRI) and La Red de Instituciones Nacionales de Derechos Humanos (RINDHCA). In accordance with the RoP, the SCA also welcomed the participation of the GANHRI Head Office.

**1.4** Pursuant to article 14.1 of the Statute, the SCA took a decision regarding the re-accreditation of the NHRIs of Bahrain, Egypt, and Uganda.

**1.5** Pursuant to article 15 of the Statute, the SCA considered applications for re-accreditation from the NHRIs of Argentina, Australia, Germany, Guatemala, Liberia, Malawi, Moldova, Nepal, Nigeria, and Northern Ireland.

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

**1.7** Pursuant to article 16.2 of the Statute, the SCA decided to initiate a special review for the NHRIs of Burundi and Great Britain.

**1.8** Pursuant to article 18.4 of the Statute, the SCA reached an opinion that an exceptional circumstance, necessitating the urgent suspension of the accreditation status of the NHRI of Niger, was met and recommended the GANHRI Bureau to immediately suspend its accreditation status.

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

- A:** Fully compliant with the Paris Principles;
- B:** Partially compliant with the Paris Principles.

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

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

- a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
- b) Persuade domestic governments to address or remedy issues relating to an institution’s compliance with the standards articulated in the General Observations;
- c) Guide the SCA in its determination of new accreditation applications, re-accreditation applications or other review:
  - i) If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.
  - ii) If the SCA has noted concern about an institution’s compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to

address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, nor is offered no reasonable explanation why no efforts had been made, it would be open to the SCA to interpret such lack of progress as non-compliance with the Paris Principles.

- 1.12** The SCA notes that when specific issues are raised in its report in relation to accreditation, re-accreditation, or special reviews, NHRIs are required to address these issues in any subsequent application or other review.
- 1.13** The SCA wishes to highlight its expectations that all NHRIs will take the necessary steps to pursue continuous efforts at improvement and to enhance effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA. Failure to do so may result in a finding that an NHRI is no longer operating in compliance with the Paris Principles.
- 1.14** Pursuant to Article 12.1 of the Statute, where the SCA comes to an accreditation recommendation, it shall be deemed accepted by the GANHRI Bureau unless it is successfully challenged by the applicant NHRI in accordance with the following process:
- i) The recommendation of the SCA shall, as soon as practicable, be forwarded to the applicant NHRI;
  - ii) The applicant NHRI can challenge a recommendation of the SCA by submitting a letter addressed to the GANHRI Chairperson and copied to the GANHRI Secretariat within twenty-eight (28) days of the date of communication of the recommendation;
  - iii) At the end of this twenty-eight (28) day period, the GANHRI Secretariat will forward to Bureau members, as soon as practicable, the recommendations of the SCA. If the applicant NHRI has not challenged the recommendation, it shall be deemed accepted by the Bureau;
  - iv) If an applicant NHRI submits a challenge within these twenty-eight (28) days, the GANHRI Secretariat will forward to the Bureau, as soon as practicable, all relevant materials related to the challenge. GANHRI Bureau members will be provided with twenty (20) days in which to determine whether or not to support this challenge;
  - v) Any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the Chair of the SCA and the GANHRI Secretariat of this support. If the challenge does not receive the support of at least one (1) Bureau member within twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;
  - vi) If at least one (1) member of the GANHRI Bureau supports the challenge of the applicant NHRI within these twenty (20) days, the GANHRI Secretariat will notify members of the Bureau as soon as practicable of this support and will provide any additional relevant information;
  - vii) Once provided with this notification and any additional relevant material, any member of the GANHRI Bureau that supports the challenge of the applicant NHRI shall, within twenty (20) days, notify the GANHRI Chairperson and GANHRI Secretariat of this

support. If the challenge does not receive the support of at least four (4) Bureau members in total coming from not less than two (2) regions within the twenty (20) days, the recommendation of the SCA will be deemed accepted by the Bureau;

viii) If the challenge receives the support of at least four (4) Bureau members in total coming from not less than two (2) regions, the recommendation of the SCA shall be referred to the following GANHRI Bureau meeting for a decision.

- 1.15** At each session the SCA conducts a teleconference with every NHRI. It may also consult with and seek further information from NHRIs where necessary.
- 1.16** Pursuant to Article 18.2 of the Statute, any decision that would serve to downgrade or remove accreditation status from an NHRI can only be taken after the NHRI 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. Upon failure of the NHRI to do so, its status will be downgraded or removed, where applicable.
- 1.17** At any time, the SCA may receive information that raises concern that the circumstances of a NHRI have changed in a way that affects its compliance with the Paris Principles, and the SCA may then initiate a Special Review of that NHRI's accreditation status.
- 1.18** Pursuant to Article 16.4 of the Statute, any review of the accreditation classification of a NHRI must be finalized within 18 months.
- 1.19** The SCA acknowledges the high degree of support and professionalism of the GANHRI Secretariat (OHCHR-NIRMS).
- 1.20** The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and gave one (1) week to provide any comments on them. The summaries are only prepared in English, due to financial constraints.
- 1.21** Once the recommendations of the SCA are adopted by the GANHRI Bureau, the report of the SCA is placed on the SCA website (<https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx>).
- 1.22** The SCA considered information received from civil society. The SCA shared that information with the concerned NHRIs and considered their responses.
- 1.23 Notes:** The GANHRI Statute, the Paris Principles, the General Observations and the Practice Notes referred to above can be downloaded in Arabic, English, French and Spanish from the SCA website at <https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Rules-of-Procedures.aspx>

## SPECIFIC RECOMMENDATIONS

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

#### 1.1. Argentina: The Defensoría del Pueblo de la Nación Argentina (DPNA)

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

The SCA has deferred the review of the DPNA on four occasions – in October 2016, in November 2017, in October 2018, and in October 2019 – based on its concern that the position of Defensor has been vacant since 2009 and that, despite multiple attempts, a Defensor has not been appointed. In October 2019, the SCA decided to further defer the review of the accreditation of the DPNA. It sought a policy guidance from the GANHRI Bureau inquiring whether an NHRI under review, whose decision-making body remains vacant due to considerable delay in the appointment process that is entirely beyond its control, should keep its current accreditation status and for how long, particularly when the institution is otherwise operating independently, effectively and in compliance with the Paris Principles.

In November 2019, the GANHRI Bureau responded with the following guidance: *“as long as the institution is taking relevant follow-up steps in relation to the appointment/selection process, and otherwise is compliant with the Paris Principles, it should continue to be considered an NHRI and should retain its status, without specific time limit”*.

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

The SCA encourages the DPNA to continue its engagement with OHCHR, GANHRI, the RINDHCA, and other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

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

##### **1. Human rights mandate**

The SCA has been informed that the DPNA has taken actions presenting draft bills before the Parliament’s Bicameral Commission of the Defensoria to amend its enabling law to explicitly include the promotion mandate. The SCA is also aware that this proposal was not considered by the Bicameral Commission of the Defensoria of Parliament, who stated that since the DPNA has constitutional rank, a constitutional reform is required to explicitly include the promotion mandate.

In practice, the DPNA states that it undertakes promotional activities. The SCA is of the view that an NHRI should have as broad mandate as possible which is to be set forth in a constitutional or legislative text and should include both the promotion and protection of human rights.

The SCA recommends that the DPNA continues to advocate for the explicit inclusion of the promotion mandate in the Argentinian normative framework. In the meantime, the SCA encourages the DPNA to continue interpreting its mandate broadly.



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

## **2. Selection and appointment**

The SCA notes that the current person in charge of the DPNA was appointed by the Parliament’s Bicameral Commission of the Defensoria, in August 2015, on the basis of the longest-serving staff of the DPNA. The SCA takes note that the prevailing political situation in the country has led to a lack of appointment not only of the Defensor, but also of Supreme Court Judges, the Attorney General, and the head of the Penitentiary institution.

The SCA is of the view that this short-term measure addresses, to some extent, the lack of leadership in the institution and ensures the full implementation of the mandate of the DPNA. However, such measure shall not become permanent.

The SCA acknowledges the efforts made by the DPNA to advocate for the selection and appointment of a Defensor including the presentation of *amicus curiae* before the Supreme Court of Justice. However, the SCA strongly recommends that the DPNA continues to advocate for the selection and appointment of the Defensor.

The SCA notes that it is critically important to ensure the formalization and application of a clear, transparent and participatory selection and appointment process for an NHRI’s decision-making body 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 urges the DPNA to continue advocating, as a matter of priority, for the finalization of the selection and appointment process of the Defensor.

The SCA refers to Paris Principle B.1 and to General Observation 1.8 on ‘Selection and appointment of the governing body’.

### **1.2. Australian Human Rights Commission (AHRC)**

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

The SCA acknowledges the advocacy of the AHRC for changes to its selection and appointment process to strengthen compliance with the Paris Principles. The SCA recognises that the Federal Parliament has passed the Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Act 2022, which amends the AHRC’s enabling legislation, to provide that all appointments for commissioners and the President must be publicly advertised and merit-based. The SCA welcomes the supplementary Policy and Guidelines on Appointments to the AHRC which further strengthens the selection process. The SCA notes that these instruments collectively address its previous concerns on the selection and appointment process.

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

The SCA encourages the AHRC to continue to actively engage with the OHCHR, GANHRI, APF, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

**The SCA notes:**

**1. Human Rights Mandate**

The SCA notes that the recent amendments to the Australian Human Rights Commission Act (AHRC Act) did not address its recommendation to provide for an explicit reference to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) or the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in the mandate of the AHRC.

The SCA notes that despite the lack of explicit reference, the AHRC considers that some rights contained in CAT and ICESCR are covered in the other human rights instruments scheduled to the AHRC Act. The SCA also acknowledges that the AHRC continues to broadly interpret its mandate to encompass all human rights and conducts work directly in relation to instruments that are not scheduled to its legislation.

The SCA notes that the AHRC has conducted research and advocacy on Australia's ratification of OPCAT, conducts immigration detention inspections, handles complaints under the AHRC Act that relate to torture, cruel, inhumane and degrading treatment and reports to Parliament on these matters.

Further, that the AHRC handles discrimination complaints and has conducted advocacy related to economic, social and cultural rights, which has included submissions to the Federal Parliament on welfare reforms, social support for children and Indigenous peoples, exploitation of peoples with disabilities, domestic and sexual violence, and mental health.

The SCA encourages the AHRC to advocate for the CAT, ICESCR and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to be scheduled to the AHRC Act to ensure all core international human rights instruments and standards are provided for in the AHRC's mandate. In this context the SCA acknowledges the AHRC's recent advocacy for a national Human Rights Act.

The SCA also encourages the AHRC to continue to advocate for the Federal Government to implement the recommendations of the Commission's Free and Equal project to modernise federal discrimination laws and introduce new human rights protections. Such implementation will further strengthen the Commission's mandate to promote and protect human rights.

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

**2. Adequate funding**

The AHRC received an additional A\$38 million (USD 24.08 million) of Federal Government funding in October 2022 over the next 4 years, including A\$16 million (USD 10.14 million) for two new responsibilities, A\$18 million (USD 11.41 million) for core appropriation, and a one-off increase of A\$3.6 million (USD 2.28 million), to address a backlog in complaints. This is in addition to a A\$16.050 million (USD 10.17million) equity injection from Government in 2022 to restore the Commission's financial stability.

While acknowledging the additional funding the Federal Government has provided to the AHRC to address its financial situation, the SCA notes that, to function effectively, an NHRI must be provided

with an appropriate level of ongoing funding in order to guarantee its independence and its ability to freely determine its priorities and activities.

The SCA recommends that the AHRC continue to advocate for an appropriate level of funding to carry out the full breadth of its mandate. Such appropriate level of funding shall ensure sufficient ongoing resources to:

- enable statutory commissioners to fulfil their mandates;
- ensure the timely handling of complaints and inquiries;
- undertake its human rights education and awareness raising functions;
- engage with communities nationally, including in regional and remote areas, and with marginalised groups and communities; and
- ensure sufficient corporate support resources, including for updated ICT infrastructure, to support these functions and outreach.

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

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

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

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

The SCA encourages the GIHR to continue to actively engage with the OHCHR, GANHRI, ENNHRI, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

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

##### **1. Human rights mandate**

Section 2.1 of DIMRG law states that ‘[t]he German Institute for Human Rights (registered association) shall inform the public on the situation of human rights in Germany and abroad and shall contribute to the prevention of human rights violations and the promotion and protection of human rights’.

The SCA acknowledges that the GIHR interprets its protection mandate broadly and undertakes protection functions for example through investigation and monitoring, holding of hearings, submitting *amicus curiae* briefs to the Constitutional Court, and publishing research and recommendations on various human rights issues, including on racial discrimination and the rights of refugees and migrant workers.

Further, the SCA acknowledges that the GIHR informed the SCA that it has taken steps to strengthen its monitoring function in specific areas, as well as to enhance the general monitoring and investigation capacities of the GIHR.

The SCA also notes that the Monitoring Mechanism for the UN Convention on the Rights of the Child within the GIHR has been made permanent and that the GIHR has received an additional State-level mandate to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD). In addition, two National Rapporteur Mechanisms have been established within the GIHR, one on trafficking in human beings and one on gender-based violence.

The SCA further notes that the GIHR has received a 66% increase of its annual budget from 2021 to 2022, currently amounting to €5.17 million (USD 5.4 million). This increase allowed for the strengthening of its monitoring and investigation capacities regarding key human rights issues in Germany, including forced evictions, older persons, children, homeless persons, racism, the situation of asylum seekers and migrants, actions of security forces, and business and human rights.

The SCA acknowledges that the GIHR has developed an advocacy strategy for amending the GIHR Law. Further, that it has commissioned a legal opinion to analyse how the GIHR protection powers would have to be designed and the relevant constitutional requirements associated with strengthening the GIHR's protection mandate, including its capacity to monitor and access places of deprivation of liberty.

The SCA acknowledges that the GIHR has made use of its current mandate to protect human rights in practice but notes that the protection mandate of the GIHR could be further strengthened.

The SCA is of the view that an NHRI's mandate should be interpreted in a broad 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.

Specifically, the mandate should:

- extend to the acts and omissions of both the public and private sectors;
- provide the authority to address recommendations to public authorities, to analyse the human rights situation in the country, and to obtain statements or documents in order to assess situations raising human rights issues;
- authorize unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice; and
- authorize the full investigation into all alleged human rights violations, including the military, police and security officers.

The SCA reiterates that the GIHR should continue to advocate for appropriate amendments to its enabling law to strengthen its protection mandate, including its investigation function and its powers to access information and data, as well as to monitor places of deprivation of liberty.

The SCA also recommends that the GIHR continue to advocate to ensure that the National Rapporteur Mechanisms on trafficking in human beings and on gender-based violence established within the GIHR be made permanent.

The SCA notes that the responsibilities of NHRIs shall include the submission to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights. The SCA also refers to the 'Belgrade Principles on the relationship between national human rights institutions and parliaments', which state that parliaments should ensure participation of NHRIs and seek their expert advice in relation to human rights during meetings and proceedings of various parliamentary committees, and that NHRIs should advise and/or make recommendations to parliaments on issues related to human rights, including the State's international human rights obligations.

The SCA encourages the GIHR to strengthen and seek formalization of its engagement with the Federal Parliament including participation in Parliamentary hearings.

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

## **2. Selection and appointment**

Section 24.1 of the GIHR Statutes outlines how members of the Board of Trustees are selected and appointed through a number of different appointing bodies, including the GIHR General Assembly, the German Federal Parliament, and representatives of civil society organizations. The SCA notes that the selection and appointment process led by the Federal Parliament does not allow for the advertisement of vacancies. While noting that the current Board of Trustees of the GIHR is pluralistic, the SCA reiterates its view that advertising vacancies broadly maximises the potential number of candidates, thereby promoting pluralism.

The GIHR reported to the SCA that, in the context of the upcoming renewal of the Board of Trustees, the GIHR has written to the President of the Federal Parliament and to the Federal Parliament Committee on Human Rights and Humanitarian Aid to remind them of the requirements under the Paris Principles, namely to advertise vacancies broadly. The GIHR informed the SCA that it will continue to submit this issue in its engagement with the Federal Parliament, also taking the opportunity that the Federal Parliament has started a process of revising its rules of procedure.

The assessment of applicants based on pre-determined, objective, and publicly available criteria, promotes the merit-based appointment of candidates, limits the capacity for undue interference in the selection process, and serves to ensure the appropriate management and effectiveness of the NHRI.

The SCA encourages the GIHR to continue to advocate for the formalization and application of a consistent and uniform process that includes requirements to publicize vacancies broadly, including in the context of the Federal Parliament’s ongoing process of revising its rules of procedures.

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**

Two voting members of the GIHR’s Board of Trustees are members of the Federal Parliament. The GIHR notes that it has brought the SCA’s previous concern and recommendation on this matter to the attention of the GIHR General Assembly and of the Federal Parliament Committee on Human Rights and Humanitarian Aid.

The GIHR informs the SCA that the Board of Trustees is primarily the accountability body for the Board of Directors, who in turn is primarily responsible for the activities of the GIHR and can be considered the central decision-making body for the GIHR operations. However, the SCA notes that the Board of Trustees is also an organ of the GIHR that takes some important decisions.

An NHRI is required to be independent of government in its composition, operation, and decision-making. It must be constituted and empowered to consider and determine its strategic priorities and activities based solely on its determination of the human rights priorities in the country, free from political interference. For these reasons, government representatives and members of parliament should not be members of, nor participate in the decision-making of, organs of an NHRI.

The SCA encourages the GIHR to continue its advocacy for the necessary changes in its governance structure and accordingly amend the law.

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. Term of office**

The SCA reiterates its concern that according to Sections 6(1) and 7 of the DIMGR Law, the members of the Board of Directors are appointed for a renewable period of four years, and that the term limits are not defined in the legislation, leaving open the possibility of unlimited tenure.

The SCA reiterates its view that to promote institutional independence, it would be preferable for the term of office to be limited to one reappointment. The SCA encourages the GIHR to continue to advocate for amendments to its enabling law to provide for such a limit for the reappointment of the members of the Board of Directors.

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

#### **1.4. Guatemala: The Procuraduría para los Derechos Humanos of Guatemala (PDH)**

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

The SCA highlights that NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review. The SCA welcomes information that the budget of the PDH has increased by 104% for the year 2023. The SCA also notes the important work carried out by PDH to promote human rights. The SCA encourages the PDH to enhance the breadth of its protection mandate and ensure that the increased financial resources contribute to the efficiency and perceived credibility of the institution. Such adequate funding should ensure the gradual and progressive realization of the improvement and transparency of the PDH’s operation and the fulfilment of its mandate.

The SCA encourages the PDH to continue its engagement with OHCHR, GANHRI, the RINDHCA, and other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

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

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

The law does not explicitly vest the PDH with the function to encourage ratification or accession to international human rights instruments.

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

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

## **2. Cooperation with other human rights bodies and civil society organizations**

The PDH informs that it cooperates with civil society organizations including by acting as mediator between civil society and government on issues concerning growing public protests.

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

The SCA encourages the PDH to continue and strengthen its cooperation with civil society organizations and human rights defenders. The SCA refers to Paris Principles C(f) and (g) and to its General Observation 1.5 on 'Cooperation with other human rights bodies'.

## **3. Visiting places of deprivation of liberty**

The law requires the need for the PDH to obtain prior authorization from a judge to access premises where human rights violations are alleged to have occurred or to be occurring. The PDH notes that, in practice, it conducts unannounced visits to places of detention without prior authorization from a judge.

While the SCA notes that the PDH carries out unannounced visits in practice, it reiterates the previous recommendations made in 2018 to advocate for the explicit mandate to conduct unannounced visits to all places of detention.

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

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

## **4. Selection and appointment**

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

In practice, the public has four days after the publicization of the short-list of candidates for the position of Procurador, to present information before Congress shall there be opposition to any of the candidates.

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

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

The PDH informs that civil society organizations may take part in the selection and appointment process through members of Parliament. The SCA is of the view that a formal involvement of civil society organization should be direct rather than through members of Parliament. This could be achieved, for example by:

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

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

The SCA reiterates its previous recommendation of 2018 and encourages the PDH to advocate for the formalization and application of a process that includes requirements to:

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

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

### **1.5. Liberia: Independent National Commission on Human Rights (INCHR)**

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

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

The SCA acknowledges steps taken by the INCHR to resolve the conflict amongst its members and that the INCHR has finalized its strategic plan and has jointly collaborated to monitor the 2023 general elections.

The SCA expresses concern over publicly available information regarding allegations of sexual harassment against one of the members of the INCHR Board. The SCA reiterates that ensuring the integrity and credibility of its members is a key factor in ensuring the effectiveness of an NHRI and affects its real and perceived independence and accessibility.

The SCA encourages the INCHR to continue to implement the full breadth of its mandate in a credible, independent, and effective manner.

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



## **The SCA notes:**

### **1. Pluralism**

Article 9 (6) of the INCHR Act states that the composition of the members shall reflect to the extent possible the pluralistic nature of the Liberian Society.

The SCA notes information regarding the lack of sufficient plurality within the current membership of the INCHR. In particular, that the appointment of two Commissioners leads to a Board with 6 representatives from the southeast region, 4 representatives from the same ethnic groups and one member from the Northwest region of Liberia.

The INCHR reported that it has proposed amendments to the INCHR Law to ensure that pluralism based on ethnicity and regional representation is considered and implemented throughout the selection and appointment process of members of the INCHR.

The SCA is of the view that a diverse decision-making and staff body facilitates the NHRI's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates and promotes the accessibility of the NHRI for all citizens. Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity, or minority status.

The SCA recommends that the INCHR take steps to ensure pluralism and diversity including appropriate religious, ethnic, regional and gender balance in its composition.

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

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

Article 9 of INCHR Act provides that the Chairperson and members of the INCHR shall be appointed by the President from a list of persons recommended by the Independent Committee of Experts formed by the Chief Justice of the Republic. The appointment by the President is done with the consent of the Senate.

The SCA notes that the selection and appointment process is not sufficiently broad, transparent, and participatory. The law does not:

- Outline the membership of the Independent Committee of Experts;
- Require the publication and advertisement of vacancies;
- Promote broad consultation and/or participation in the screening and selection process; and
- Provide merit criteria for the selection of members of the Commission

The INCHR reports that it has proposed amendments to the INCHR Law to address the SCA recommendation made in this regard.

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

The SCA reiterates its previous recommendation encouraging the INCHR to advocate for the formalization and application of a process that includes requirements to:

- Publicize vacancies broadly;
- Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- 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
- 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. Adequate funding**

The operational budget for the INCHR has increased from USD 54,103 to USD 123,242 for the fiscal year 2023, which has enabled the INCHR to pay rent arrears and other outstanding utilities. While the SCA acknowledges the increase, the INCHR reports that the existing budget is not sufficient to meet the needs of the institution, in particular to set up regional offices and to ensure adequate remuneration of commissioners.

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

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

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

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

The SCA encourages the INCHR to continue to advocate for adequate level of funding to ensure that it can effectively carry out the full breadth of its mandate, open regional offices, and provide adequate remuneration to its members. The SCA also encourages the INCHR to advocate for regular and timely release of its funding to ensure effective implementation of its mandate.

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

#### **4. Annual reports of NHRIs**

In accordance with Article 4 (17) of the INCHR Act, INCHR is required to prepare and submit annual reports to the heads of the three branches of Government. The Act does not require Parliament to consider and debate the report. The SCA notes that in practice, the INCHR annual reports are debated in plenary by the Senate while the Senate Committee on Judiciary and Human Rights is responsible for overseeing and following up on implementation of recommendations from INCHR Reports.

It is important that the enabling law establish a process whereby the NHRIs reports are required to be publicly circulated, and tabled, discussed, and considered by the legislature. It is preferable for an NHRI to have the explicit power to table reports directly in the legislature, rather than through the Executive, and in doing so to promote action on them.

The SCA recommends that the INCHR continue to advocate for amendments to its law to ensure that Parliament consider and debates its reports.

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

#### **5. Dismissal process**

Article 14(2) of the INCHR Law states that the President may dismiss a member of the INCHR upon impeachment and conviction by the legislature, based on proven gross misconduct in a court of law for treason, bribery, misapplication of entrusted property or other felonies. Additionally, Article 43 of the Constitution of Liberia provides that the legislature shall prescribe a procedure for impeachment that is yet to be elaborated.

In accordance with Article 14 (1) of the INCHR Law, a member of the INCHR can be removed from office on the ground of incapacity or inability to perform the duties of his/her office. The SCA notes that there is no requirement for objective and independent mechanisms to determine the ground of incapacity. Further, there is no specificity within the law on the procedure to be employed in coming to a resolution for the dismissal on the basis of inability to perform duties by a member.

The INCHR reports that it has proposed amendments to its enabling law to elaborate on the impeachment process which would apply to the dismissal of INCHR members.

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

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfil their mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law. It should not be allowed based solely on the discretion of 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 reiterates its previous recommendation that the INCHR continue to advocate for the enactment of a law that prescribes the impeachment process of its members. The SCA also recommends that the INCHR advocate for amendments to its law that outline an independent and

objective procedure for the removal of its members on the ground of incapacity and inability to fulfil duties.

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

## **6. Term of Office**

According to Article 15 (1) of the INCHR Law, the Chairperson and Commissioners shall hold office for six and five years, respectively. The INCHR Law is silent on the number of times the Chairperson and the Commissioner can be re-appointed, leaving the possibility open for unlimited tenure.

The SCA notes information from the INCHR that it has proposed amendments to the INCHR Law to limit to one reappointment.

The SCA is of the view that 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. As a proven practice, the SCA encourages that a term of between three (3) and seven (7) years with the option to renew once be provided for in the NHRI’s enabling law.

The SCA recommends that the INCHR continue to advocate for amendments to its enabling law to provide for term limits for the Chairperson and Commissioners.

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

## **1.6. Malawi: Malawi Human Rights Commission (MHRC)**

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

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

The SCA encourages the MHRC to continue to actively engage with the OHCHR, GANHRI, NANHRI, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

**The SCA notes:**

### **1. Adequate Funding**

The SCA notes information from the Committee against Torture (CAT/C/MWI/CO/1) 2023 and the MHRC stating that inadequate funding that has impacted its ability to effectively implement its mandate including under the Access to Information Act and Gender Equality Act.

The MHRC states that it continues to engage with the Office of the President, the Ministry of Finance, and the Ministry of Justice which has resulted in a 41% increase in funding and the budget ceiling. The MHRC has also engaged with development partners to get additional funding for the implementation of mandated activities such as monitoring of places of deprivation of liberty.

The SCA notes that despite the increase in funding, the MHRC has reported a shortfall of 40% in its budget and that it operates at 48% staff capacity with over half of its established positions unfilled. The MHRC further reports that it requires more resources to: get suitable office premises; establish regional offices; implement additional mandate areas under the Access to Information Act and Gender Equality Act; and to increase the capacity of its members and staff on emerging thematic issues including minority rights, climate change, and environmental justice.

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

In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the NHRI's operations and the fulfilment of its mandate. Provision of adequate funding by the State should, as a minimum, include the following:

- 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;
- salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- remuneration of members of its decision-making body (where appropriate);
- the establishment of well-functioning communications systems including telephone and internet; and
- 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 recommends that the MHRC continue to advocate for an appropriate level of funding to effectively carry out its mandate including under the Access to Information Act and Gender Equality Act, for suitable office premises, to establish regional offices, and to increase the capacity of its members and staff on emerging thematic issues including but not limited to minority rights, climate change, and environmental justice.

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

## **2. Dismissal**

Section 131(3) of the Constitution of Malawi provides that a member may be removed from office on grounds of incompetence, incapacity, and in circumstances where the member is compromised to the extent that his or her ability to exercise duties in office is seriously in question. Section 32 of the General Interpretation Act provides that members are dismissed by the President upon recommendation from the Law Commissioner and the Ombudsman who are also in charge of the selection and appointment process.

The SCA is of the view that the dismissal process is not sufficiently independent and objective because:

- The exact procedure for dismissal is not outlined in the Constitution or the broader enabling legal framework and has not been established in practice;
- The law does not provide for appropriate procedural protections and due process; and
- The dismissal is by the President on the recommendation of the Law Commissioner and Ombudsman who are also part of the selection and appointment process.

The SCA reiterates 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 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. Dismissal 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 members of the decision-making body and are essential to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA acknowledges the consistent efforts of the MHRC to engage the Office of the President and the Ministry of Justice to amend its enabling law to, *inter alia*, provide for an independent and objective dismissal process. It further notes that a comprehensive review of the MHRC enabling law has been prioritized as part of ongoing Public Sector Reforms in Malawi.

The SCA encourages the MHRC to continue to advocate for amendments to its enabling law to provide for an independent and objective dismissal process.

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

### **3. Protection from civil and criminal liability**

The enabling law of the MHRC does not explicitly provide protection from criminal or civil liability for official actions undertaken in good faith to Commissioners and staff.

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

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

The SCA recognizes that no office holder should be beyond the reach of the law and thus, in certain circumstances, such as corruption, it may be necessary to lift immunity.

However, the authority to do so should not be exercised by an individual, but rather by an appropriately constituted body such as the superior court or by a special majority of parliament. It is recommended that the Law clearly establish the grounds, and a clear and transparent process, by which the functional immunity of the decision-making body may be lifted.

The SCA reiterates its previous recommendations of March 2012 and November 2012, that the MHRC continue to advocate for amendments to its enabling law to provide functional immunity for members and staff for actions and decisions undertaken in good faith.

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

### **1.7. Moldova: The Office of the People's Advocate of Moldova (OPA)**

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

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

The SCA encourages the OPA to continue to actively engage with the OHCHR, GANHRI, ENNHRI, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

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

##### **1. Pluralism**

The OPA's enabling law is silent with regards to pluralism and diversity of its staff. The SCA notes information provided by the OPA of its commitment to uphold the 2008 law on public service and status of civil servants prohibiting discrimination and that, in practice, the OPA recruitment process aims to ensure inclusion of a wide range of societal groups.

The SCA considers the pluralistic composition of the NHRI to be fundamentally linked to the requirement of independence, credibility, effectiveness, and accessibility. The SCA emphasizes that pluralism refers to broader representation of national society and consideration must be given to ensuring pluralism in the context of ethnicity, minority status, and persons with disability. This facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. The SCA further notes that ensuring pluralism through staff that are representative of the diverse segments of society is particularly relevant for single member NHRIs, such as Ombuds institutions.

The SCA recommends the OPA to advocate for the formalization of processes that ensure that the principles of pluralism and diversity are reflected in its staff. The SCA further recommends that OPA takes steps to ensure these principles are implemented.

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

## 2. Adequate funding

The SCA acknowledges that the OPA was able to increase the number of positions in the institution from 65 to 72, following amendments to the Regulation on the organizations and operation of the OPA made in February 2023. The SCA notes that the OPA reported that only 48 positions out of 72 were filled.

Furthermore, the OPA informed the SCA that the remuneration of staff of the OPA is lower than the average salary in the public sector. The OPA informed that it has taken steps to improve the situation of remuneration of staff, including by lodging a claim before the Constitutional Court of Moldova regarding the unconstitutionality of the law regulating the remuneration of the OPA staff.

The OPA also reports that one of the main challenges for the OPA was the conditions of its premises. The SCA acknowledges that the OPA reported progress towards securing the OPA headquarters.

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.

While the provision of "adequate funding" is determined in part by the national financial climate, States have the duty to protect the most vulnerable members of society, who are often the victims of human rights violations, even in times of severe resource constraints. As such, the SCA believes that it is nevertheless possible to identify certain aspects of this Paris Principles requirement that must be taken into account in any particular context. Among others, they include the following:

- *Accessibility to the public* – This is particularly important for the most vulnerable sections of society, who would otherwise have particular difficulty bringing attention to any violation of their human rights.
- *NHRI staff* - NHRIs should be resourced in such a manner as to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the NHRI's mandate. Salaries and benefits awarded to NHRI staff should be comparable to those of civil servants performing similar tasks in other independent institutions of the State.
- *Allocation for activities* – NHRIs should receive adequate public funding to perform their mandated activities. An insufficient budget can render an NHRI ineffective or limit it from reaching its full effectiveness. Where the NHRI has been designated with additional responsibilities by the State additional financial resources should be provided to enable it to discharge these functions.

The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

The SCA therefore recommends that the OPA continue to advocate for an appropriate level of funding to effectively fulfill its mandate, to permit the employment and retention of staff with the requisite qualifications and experience, and to ensure the allocation of funds for premises which are accessible to the wider community.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding.' and General Observation 2.4 on 'Recruitment and Retention of NHRI Staff'



### 3. Protection from criminal and civil liability

The amendments made to the Law no.52/2014 in February 2023 remove the requirement for the Parliament of Moldova to approve the initiation of criminal proceedings against the People's Advocate in case of flagrant and money laundering offenses, offenses related to inappropriate performance in the public sector, and illicit enrichment offense.

The OPA reported that it has challenged the constitutionality of these amendments before the Constitutional Court of Moldova, to preserve the functional independence and the irrevocability of the People's Advocate.

The SCA emphasizes that national law should include provisions to protect members of an NHRI from legal liability for acts undertaken in good faith in their official capacity. Such provisions promote:

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

Providing members of the NHRI's decision-making body and staff protection from both criminal and civil liability for actions undertaken in good faith in their official capacity protects them from individual legal proceedings from anyone who objects to a decision or action of the NHRI.

The SCA recommends that the OPA continues to advocate for the removal of the above provisions from the Law no.52/2014, and towards restoring the stronger provisions regarding the functional immunity of the Ombudsman for actions taken in their official capacity in good faith.

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

#### 1.8. Nepal: National Human Rights Commission of Nepal (NHRCN)

**Recommendation:** The SCA recommends the NHRCN maintain its **A** status.

At its first session of 2021, the SCA decided to undertake a special review of the accreditation status of the NHRCN, based on information received from a group of civil society organizations alleging that the 2021 appointment process of the NHRCN was inconsistent with domestic law and the essential requirements of the Paris Principles.

At its second session of 2021, the SCA decided to defer the review of NHRCN to its second session of 2022, pending the decision of the Constitutional Bench of the Supreme Court on the legality of the

recent appointments. In its second session of 2022, the SCA recommended that the NHRCN be downgraded to **B** status.

The SCA is satisfied that the information provided by the NHRCN demonstrates full compliance with the Paris Principles.

The SCA commends the efforts undertaken by the NHRCN to advocate for amendments to the National Human Rights Commission Act (NHRC Act) to address the SCA's recommendations. The SCA encourages the NHRCN to continue to advocate for amendments to the NHRC Act to provide for a selection and appointment process that complies with the Paris Principles.

The SCA notes that the verdict of the Supreme Court on the legal challenge to the appointment of NHRCN members in 2021 has not yet been delivered and that a hearing date has been set for 6 December 2023.

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

The SCA encourages the NHRCN to continue its cooperation and actively engage with OHCHR, GANHRI, APF, and other NHRIs, as well as relevant stakeholders at international, regional, and national levels, to effectively discharge its mandate.

**The SCA notes:**

**1. Recommendations by NHRIs**

Article 249 of the Constitution of Nepal sets the function, duties, and powers of the NHRCN. Articles 4 to 9 of the NHRC Act further explain the function, duties, and powers of NHRCN, including drawing attention to human rights issues, providing opinion or consultation, making names public, and keeping their record, constituting a committee or task force, and provision regarding interim relief and rescue.

The NHRCN reports that it makes various recommendations to the national authorities. Further, it follows up on recommendations by sending letters to the government and conducting dialogue programs to discuss implementation.

The SCA recommends the NHRCN to continue engaging Government to respond to its advice and requests and to indicate, within a reasonable time, how they have complied with their recommendations.

The SCA encourages the NHRCN to conduct follow-up activities to monitor the extent to which its recommendations have been implemented.

The SCA refers to Paris Principles A.1, A.2, A.3 and to its General Observation 1.6 'Recommendation by NHRIs'.

**2. Selection and appointment**

The SCA acknowledges that the NHRCN has proposed a Bill with significant amendments to the NHRC Act, in line with the Paris Principles, and has conducted consultations with civil society

organizations and experts in this regard. During its interview with the SCA, the NHRCN reported further that it has received support from parliamentarians on the proposed Bill.

The proposed Bill provides for the advertisement of vacancies at the NHRCN and the establishment of a shortlisting committee of three members 'who have made distinguished contribution in the fields of law, justice, human rights and social sector'. The SCA is of the view that this provision, if passed, will work towards addressing the SCA's concerns on the selection and appointment process.

The SCA encourages the NHRCN to ensure that the Bill also establishes mechanisms to support pluralism and diversity among members of the NHRCN, including gender and other marginalized groups. The SCA considers the pluralistic composition of the NHRI to be fundamentally linked to the requirement of independence, credibility, effectiveness, and accessibility.

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

The SCA recommends that the NHRCN continue to advocate for the passage of the proposed Bill and ensure that it complies with the requirements of the Paris Principles and General Observations, in particular on the selection and appointment process, providing for a process that includes requirements to:

- Publicize vacancies broadly;
- Maximize the number of potential candidates from a wide range of societal groups;
- 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
- Select members to serve in their own 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' and 1.7 on 'Ensuring pluralism of the NHRI'.

### **3. Adequate funding of NHRI**

The SCA received detailed information on the financial situation in which the NHRCN is operating, with the initial allocation of budget for the 2022/2023 Fiscal Year reported as USD 1,939,115. The amounts for the 2021/2022 (USD 1,903,095) and 2020/2021 (USD 1,932,361) fiscal years were reported to be in a similar range. The SCA is of the view that the current level of funding is not sufficient for the effective discharge of the NHRCN's mandate, including to ensure the functioning of its 10 field offices. The SCA notes that the NHRCN requires additional funding to ensure that the NHRCN effectively discharges its mandate according to the Paris Principles, including to guarantee access to the NHRI among the population in regional areas of Nepal.

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.

The SCA encourages the NHRCN to continue to advocate for an appropriate level of funding to carry out its mandate including the work at the grassroots level with its 10 field offices.

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

### **1.9. Nigeria: Nigeria Human Rights Commission (NHRC)**

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

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

The SCA encourages the NHRC to continue to actively engage with the OHCHR, GANHRI, NANHRI, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

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

##### **1. Human Rights Mandate**

Section 6 (d) of the NHRC Act provides the NHRC with the power to visit prisons, police cells, and other places of detention to ascertain conditions and make recommendations to appropriate authorities. The Act is silent on whether the NHRC can conduct unannounced visits. The NHRC reports that it conducts unannounced places of deprivation of liberty in practice.

The SCA is of the view that all NHRIs should be legislatively mandated with specific functions to both promote and protect human rights. In particular, the mandate should authorize unannounced and free access to inspect and examine any public premises, documents, equipment, and assets without prior written notice.

The SCA recommends that the NHRC advocate for amendments to its enabling law to explicitly provide for the power to conduct unannounced visits to places of deprivation of liberty without prior written notice.

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

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

The NHRC enabling law is not explicit on the mandate to encourage ratification of or accession to international human rights instruments. The NHRC reports that it carries out this function in practice and it had successfully advocated for the ratification of Convention on the Rights of Persons with Disabilities and the African Charter on the Rights and Welfare of the Child.

The SCA is of the view that encouraging ratification of or accession to international human rights instruments, and the effective implementation of international human rights instruments to which the state is a party, is a key function of an NHRI. The SCA considers it important that these duties form an integral part of the enabling legislation of an NHRI.

The SCA recommends that the NHRC advocate for amendments to its enabling law to explicitly provide for the mandate to encourage ratification of or accession to international human rights instruments.

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

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

The SCA notes that the NHRC has limited engagement with international human rights systems in particular the United Nations human rights treaty bodies and the Human Rights Council.

However, the SCA further notes that the NHRC has submitted its report for the fourth cycle of the Universal Periodic Review (UPR) of Nigeria and that it is encouraging the government to ensure broad national consultation in drafting of the UPR national report.

The SCA emphasizes that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and UPR) and the United Nations Human Rights Treaty Bodies, 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 Committees;
- making statements during debates before review bodies and the Human Rights Council;
- assisting, facilitating, and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and
- monitoring and promoting the implementation of relevant recommendations originating from the human rights system.

The SCA recommends that the NHRC strengthen its engagement with the international human rights system.

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

### **4. Recommendations by NHRIs**

Section 5 of the NHRC Act empowers the NHRC to monitor and investigate human rights violations and make appropriate recommendations. In addition, section 22 of the NHRC Act provides that the awards and the recommendations of the NHRC shall be recognized as binding and be enforced upon application to Court.

The NHRC states that it has made recommendations to Parliament, the National Police Service, the Nigerian Armed Forces, and relevant ministries, departments, and agencies including in the context of countering insurgency and insecurity in Nigeria. The NHRC also reports that, in practice, its annual report is discussed by the Human Rights Committee of the National Assembly.

The NHRC further states that it is engaging stakeholders to develop a practice note on the enforcement of the NHRC recommendations and awards on human rights violations in line with section 22 of the NHRC Act to be issued by the Chief Justice to relevant heads of court.

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

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

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

The SCA recommends that the NHRC conduct follow-up activities to monitor the extent to which its recommendations have been implemented.

The SCA encourages the NHRC fully implement section 22 of the NHRC Act in order to strengthen the follow-up and implementation of its recommendations.

The SCA refers to Paris Principles A.3(a), C(c), and D(d) and to its General Observation 1.6 on 'Recommendations by NHRIs' and General Observation 2.9 on 'The quasi-judicial competency of NHRIs (complaints handling).

## **5. Selection and appointment process**

According to section 2 (3) of the NHRC Act, the Chairperson and the members of the Council are appointed by the President subject to confirmation by the Senate. The SCA notes that this provision is not explicit on the need to publicize vacancies, does not establish objective and merit-based criteria and does not require participation of civil society.

The NHRC reports that it has engaged the Human Rights Committee of the National Assembly on the requirement to publicize vacancies as recommended by the SCA in November 2016. The SCA notes that the NHRC has sought the advice of OHCHR in the 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.

Such a process should include requirements to:

- Publicize vacancies broadly;
- Maximize the number of potential candidates from a wide range of societal groups;
- 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
- Select members to serve in their own individual capacity rather than on behalf of the organization they represent.

The SCA recommends that the NHRC continue to advocate for amendments to its enabling law to provide for a clear, transparent, and participatory selection and appointment process.

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

## **6. Adequate funding**

The funding of the NHRC has gradually increased since 2018 including a 33% increase for the financial year 2021-22.

The NHRC reports that, while its funding situation has improved, it would benefit from additional funding in order to effectively carry out its mandate and build the capacity of its members and staff.

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

The SCA recommends that the NHRC continue to advocate for the funding necessary to effectively carry out the full breadth of its mandate and build the capacity of its members and staff.

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

## **7. Dismissal**

In accordance with section 4(1) of the NHRC Act, members of the Council may be removed from office by the President, subject to confirmation of the Senate by simple majority.

The SCA is of the view that the dismissal process is not sufficiently independent and objective as it is at the sole discretion of the Senate, also the selecting entity. In addition, the grounds for dismissal are not examined by an independent authority. Furthermore, the exact dismissal procedure is not stipulated in the NHRC Act

The SCA emphasizes that in order to address the Paris Principles 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.

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’.

#### **1.10. Northern Ireland Human Rights Commission (NIHRC)**

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

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

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

**The SCA notes:**

##### **1. Adequate funding**

The SCA was informed of the UK Government response to the Independent Review carried out in 2022, in which the Government accepted the majority of the recommendations made. The SCA obtained confirmation that the NIHRC has received an exceptional uplift to its 2023-2024 budget. The NIHRC informed the SCA that this uplift is welcomed as it allows it to operate at the minimum financial level required to implement most of its core functions. However, the NIHRC informed that this increase will not allow the continuation of some of its work, particularly in relation to human rights education.

The NIHRC noted that this short-term budget uplift does not provide for its financial stability in the long-term. The SCA notes that the second recommendation of the Independent Review, which related to the need for a comprehensive budget review to establish a baseline budget for the NIHRC, has not yet been implemented. However, the SCA was informed that the NIHRC and relevant authorities are working together on Terms of Reference for a budget review. The NIHRC informed the SCA that it expects the review would be completed in time to inform the next Spending Round in 2025. While recognising the short-term uplift of the NIHRC budget and its reported close cooperation with relevant authorities, the SCA is of the view that the long-term financial sustainability of the NIHRC has not yet been ensured. The SCA was also informed of the Government’s public commitment to continue supporting the NIHRC, particularly with regard to financial adequacy and stability.



The SCA reiterates 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, including the recruitment and retention of the required expertise. The SCA notes that the NIHRC has submitted a proposal to address concerns in relation to recruitment and retention of staff.

In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of improvement in the NIHRC's operation and the fulfilment of its mandate. Provisions of an adequate funding by the State should, at a minimum, include the following:

- The allocation of funds for premises that are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies;
- Salaries and benefits awarded to staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- Remuneration of members of its decision-making body (where appropriate); and
- The allocation of a sufficient amount of resources for mandated activities.

The SCA recommends that the NIHRC continue its engagement with relevant national authorities, in line with their public commitment, to ensure an adequate and appropriate level of funding as well as long term financial sustainability to enable it to carry out the full breadth of its mandate in an efficient and effective manner.

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

## **2. Financial autonomy**

The SCA reiterates its previous concern that the budget allocation to the NIHRC is subject to the United Kingdom Government expenditure priorities, and that this has the potential to impact the NIHRC's effectiveness and functional independence.

The NIHRC informed the SCA that it has been engaging constructively with the UK Government on exploring new modalities of budget allocation that could allow for improved independence and effectiveness, which may require legislative change in order to be taken forward.

The SCA therefore reiterates its previous recommendation that the NIHRC advocate for appropriate modifications to applicable administrative procedures to ensure that its functional independence and financial autonomy are guaranteed.

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

## **3. Diversity and pluralism**

The NIHRC reported that their staff has a diverse representation in terms of gender balance, ethnicity and religious belief. It also reported that four Commissioners whose terms have ended have been recently reappointed by the Secretary of State as per the Northern Ireland Act of 1998. The NIHRC recognised the need to further strengthen the pluralism and diversity amongst the Commissioners.

The SCA is of the view that the NIHRC could achieve wider pluralistic representation of its membership and reiterates that pluralism and diversity in the membership and staff of an NHRI facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates. In addition, it promotes the accessibility of the NHRI.

The SCA recommends that the NIHRC continue advocating for pluralism, including minority representation, in its composition and staffing.

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

#### **4. Visiting places of deprivation of liberty**

The NIHRC legal framework does not vest the institution with the statutory power to conduct unannounced visits to places of deprivation of liberty. The NIHRC informed the SCA that, in practice, it works closely with national bodies with a mandate to carry out unannounced visits to places of deprivation of liberty, such as the Justice Inspector and Prison Ombudsman. The NIHRC also reported that it has conducted announced visits to places of deprivation of liberty. The SCA notes that providing the NIHRC with the ability to conduct unannounced visits to places of deprivation of liberty would require amendments to the NIHRC's enabling law.

The SCA encourages the NIHRC to continue to access all places of deprivation of liberty, including without prior notice. It further encourages the NIHRC to effectively monitor, investigate, and report on the human rights situation in places of deprivation of liberty 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 1.2 on 'Human rights mandate' and General Observation 1.6 on 'Recommendations by NHRIs'.

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

### **2.1. Bahrain: National Institution for Human Rights (NIHRB)**

**Decision:** The SCA decides to **defer** the re-accreditation of NIHRB to its second session of 2024 (12 months).

The SCA acknowledges NIHRB's efforts in addressing the concerns previously raised by the SCA through advocating for amendments to its enabling legal framework, including by Decree-Law No. (20) 2016 and Royal Order No. 39 of 2023. The SCA notes that the 2023 Royal Order will apply for the next appointment process of the decision-making body of the NIHRB in 2025. Further, the SCA acknowledges the appointment of a Child rights commissioner within the NIHR in June 2023.

The SCA encourages the NIHRB to continue to actively engage with the OHCHR, GANHRI, APF, other NHRIs, as well as relevant stakeholders at international, regional, and national levels to continue strengthening its institutional framework and working methods.

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

### **1. Addressing human rights violations**

The SCA acknowledges that following the amendment of the Establishment Law in 2016, the NIHRB was vested with the statutory power to perform unannounced visits to places of deprivation of liberty.

The SCA received various third-party submissions that raised concerns about the independence and effectiveness of the NIHRB in addressing human rights violations, including torture and arbitrary detention. The NIHRB responded to these allegations by stating that it has taken all necessary steps in discharging its mandate under Article 12 of its Establishment Law and monitors, follows up, engages, and communicates with government agencies and official authorities on issues related to human rights. The NIHRB reported that it had undertaken various interventions with authorities to respond to a recent hunger strike in Bahrain's main prison, which included engagement with the media.

The NIHRB 2022 annual report indicates that it has received 80 complaints related to economic, social, and cultural rights, of which five complaints related the right to work, and has provided 306 cases of legal assistance on various human rights cases. The NIHRB reported that it has received 275 complaints relating to women's rights and has successfully advocated for legislative changes to allow for Bahraini women to pass on citizenship to their children.

While noting that the NIHRB addresses individual complaints and conducted some visits to detention centres, the SCA considers that the NIHRB has still not provided sufficient evidence of its work addressing serious human rights violations, including torture and arbitrary detention. The SCA urges the NIHRB to broaden and strengthen its efforts to address serious human rights violations to ensure compliance with the Paris Principles.

The SCA notes that NHRIs are expected to promote and ensure respect for the human rights of all individuals in all circumstances and without exception.

The SCA refers to Paris Principles A.1, A.2, and A.3 and its General Observation 1.2 on 'Human rights mandate' and General Observation 1.6 on 'Recommendations by NHRIs'.

### **2. Cooperation with civil society**

The NIHRB informed the SCA that it has signed 18 memoranda of understanding with civil society organizations. Further, that it has undertaken a range of human rights promotion initiatives with civil society organizations in Bahrain. However, the SCA is not satisfied that this provides sufficient evidence of effective and meaningful cooperation with civil society organizations, including human rights defenders, in the exercise of its protection mandate on serious human rights violations.

Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize, and maintain regular, constructive, and systematic working relationships with other domestic institutions and actors established for the

promotion and protection of human rights. The interaction may include the sharing of knowledge, such as research studies, best practices, training programs, statistical information and data, and general information on its activities.

The SCA urges the NIHRB to strengthen its cooperation with civil society organizations, particularly in the discharge of its protection mandate.

The SCA refers to Paris Principles C (f) and (g) and to its General Observations 1.2 on 'Human Rights Mandate' and 1.5 on 'Cooperation with other human rights bodies.'

**The SCA notes the following issue, which was not a ground for deferral, but was considered relevant to accreditation.**

### **3. Selection and appointment**

While acknowledging the amendment to the selection and appointment process under Royal Order No. (17) of 2017 as amended by Royal Order No. (39) Year 2023, the criteria for the identification of the full-time and part-time members of the Council of the Commissioners is not explicit under Article 3 bis of the Royal Order No. (39) of 2023.

The SCA notes that the amended regulations adopted in August 2023, will apply for the next appointment process of the decision-making body of the NIHRB in 2025.

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

#### **2.2. Egypt: The National Council for Human Rights (NCHR)**

**Decision:** The SCA decides that further consideration of the re-accreditation application of the NCHR will be **deferred** for 12 months (or two sessions).

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

**The SCA decided to defer consideration of the NCHR on the following grounds.**

**The SCA encourages the NHRC to take the actions necessary to address these issues and to provide further information and evidence, as required:**

#### **1. Addressing human rights violations**

The SCA received third-party submission raising concerns about the NCHR effectiveness in dealing with serious human rights violations, including torture, enforced disappearances, conditions of detention and detainees, situation of human rights defenders, fair trial rights and due process, as well as freedom of expression, peaceful assembly, and association. The SCA notes that the NCHR reports undertaking various actions to address serious human rights issues in Egypt, including fact-finding missions, hearing sessions to investigate human rights violations, election monitoring, prison visits and monitoring of various government detention facilities.

While the SCA also notes the information provided by the NCHR relating to 3,000 complaints of human rights violations received and that these complaints are being addressed or referred to the relevant authorities, it does not have information on the type of complaints handled nor on the categories of rights violations.

The SCA encourages the NCHR to strengthen its efforts to raise public awareness on its mandate to protect human rights and address all human rights violations. The SCA emphasizes 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 is of the view that the information provided by the NCHR is not sufficient to demonstrate how it implements its full mandate to monitor, promote, and protect the rights of everyone including human rights defenders.

The SCA encourages the NCHR to address all violations of human rights and to ensure effective follow-up so that the State makes the necessary changes to ensure that human rights are clearly protected. The SCA further encourages the NCHR to ensure that its positions on these issues are made publicly available, as this will contribute to the strengthening of the credibility and accessibility of the institution for all people in Egypt.

NHRIs are expected to promote and ensure respect for all human rights, democratic principles, and the strengthening of the rule of law in all circumstances, and without exception.

In fulfilling its protection mandate, an NHRI must not only monitor, investigate, and report on the human rights situation in the country, but it should also NHRI should monitor the implementation of recommendations from annual and thematic reports, inquiries, and other complaint-handling processes. NHRIs would be more effective when provided with the authority to monitor the extent to which public authorities follow their advice and recommendations.

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

The SCA refers to Paris Principles A.1, A.2, A.3, and D(d) and its General Observation 1.6 on 'Recommendations by NHRIs', 1.2 on 'Human rights mandate'.

## **2. Visits of places of deprivation of liberty**

The Human Rights Committee (CCPR/C/EGY/CO/5) in 2023 expressed concerns about the lack of safeguards to ensure the NCHR full independence and effectiveness as well as concern on allegations that visits to places of deprivation of liberty by the NCHR are often denied and, when granted, are prearranged, and do not allow for unhindered access or confidential interviews with detainees. These concerns were also shared by the Committee against Torture in 2023 (CAT/C/EGY/Q/5/Add.1) and the Universal Periodic Review of Egypt (A/HRC/36/12) in 2017

The NCHR reported that it regularly conducts announced visits places of detention. The NCHR also states that these visits are facilitated by the Minister of Interior who helps them in accessing detainees records as well as providing immediate relief to detainees that may be required. The NCHR indicated that it has conducted 15 visits since the beginning of 2023 while there are more than 150 places of

deprivation of liberty across the country. However, the SCA has not received substantive evidence of actions and follow-up by the NCHR regarding human rights violations in these facilities.

The SCA highlights that an NHRI's mandate should authorize unannounced and free access to inspect and examine any public premises, documents, equipment, and assets without prior written notice.

In fulfilling its protection mandate, the NCHR is encouraged to 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. Therefore, the SCA encourages the NCHR to continue to advocate for the explicit mandate to conduct unannounced visits to all places of detention.

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

### **3. Independence**

The SCA notes that the NCHR is made up of political representatives and members of political parties who are part of its decision-making body. The third-party submissions also notes that the NCHR members are politically aligned and lack independence citing as example the Vice President who serves as campaign manager for the presidential election.

The NCHR responded that the presence of politicians within the decision-making body of the NHRI is a demonstration of the pluralistic representation of the Egyptian society within the NCHR. The NCHR also reports that it has always acted in an independent manner.

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, government representatives and members of Parliament should neither be members of, nor participate in, the decision-making of organs of an NHRI.

The SCA also notes that a fundamental requirement of the Paris Principles is that an NHRI is, and is perceived to be, and able to operate independent of government interference. In fulfilling its protection mandate, an NHRI must not only monitor, investigate, and report on the human rights situation in the country, it should also undertake rigorous and systematic follow-up activities to promote and advocate for the implementation of its recommendations and findings, and the protection of those whose rights were found to be violated.

The SCA refers to Paris Principles A1, A2, and A3 and its General Observation 1.2 on 'Human rights mandate'.

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

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

The NCHR, as per Article 3(7) of the Law, may follow up the implementation of the international human rights treaties, covenants, and conventions ratified by Egypt and submit necessary proposals, observations, and recommendations in this regard to competent bodies. However, the Law is silent on an expressed mandate to encourage ratification.

The SCA notes that the current proposed amendments to the NCHR Law include provision to encourage the concerned authorities to ratify and adhere to the international conventions and treaties relating to Human Rights. Therefore, the SCA encourages the NCHR to continue to advocate for the explicit mandate to encourage ratification of international human rights mechanisms.

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

## **2. Selection and appointment**

Article 2 Bis (a) of the Law provides that the House of Representatives receives nomination from the Supreme Council of Universities, the Supreme Council of Culture, professional syndicates, and other civil society organizations (CSOs). Article 2 Bis (a) further provides that the General Committee of the House of Representatives selects by majority of vote with due consideration for an equitable representation of all segments of the Egyptian society. The Parliament's decision becomes final after its endorsement by the President of the Republic, and the official gazette shall publish the relevant Presidential decree. The Law does not require publication of vacancies nor uniform selection criteria by different nominating entities.

The SCA highlights that it is critically important to ensure the formalization of a clear, transparent, and participatory selection and appointment process for an NHRI's decision-making body in relevant legislation, regulations, or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI. The SCA is of the view that advertising vacancies broadly maximizes the potential number of candidates, thereby promoting pluralism. It is recommended that the selection and appointment process be formalized in relevant legislation, regulations, or binding administrative guidelines, as appropriate.

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

- Publicize vacancies broadly;
- 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
- Select members to serve in their own individual capacity rather than on behalf of the organization they represent.

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

## **3. Financial Autonomy**

The NCHR Law requires Parliament to approve any grants and donations received by the NCHR from a foreign body. The NCHR reports that it enjoys a cordial relationship with Parliament and that there has never been a case of grants being refused, including the grant from the European Union.

The SCA notes that an NHRI should not be required to obtain approval from the State for external sources of funding, as this requirement may detract from its independence. To function effectively, a

national human rights institution 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.

The SCA therefore recommends that the NCHR advocates for an amendment to its law to remove the requirement for Parliament's approval before receiving external funding.

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

#### **4. Annual Report**

The NCHR informed the SCA that due to the recent selection and appointment process that lasted three months, its annual reports from 2020 to 2022 were not published. The NCHR indicated that it has prepared a consolidated report for the period December 2020 to June 2023 which was translated into English and published on its website.

The SCA emphasizes the importance for a NHRI to prepare, publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations, and proposals to address any human rights issues of concern.

The SCA considers it important that the enabling laws of an NHRI establish a process whereby the institution's reports are required to be widely circulated, discussed, and considered by the legislature. Where an NHRI has made an application for accreditation or, re-accreditation, it will be required to submit a current annual report, that is, one from the preceding year's reporting period.

The SCA finds it difficult to assess the effectiveness of a National Institution and its compliance with the Paris Principles in the absence of regular annual reports. The SCA acknowledges that the NCHR is taking actions to ensure its annual and thematic reports are regularly prepared and published.

The SCA recommends that the NCHR ensures the preparation and publication of regular thematic and its annual reports in a regular and timely manner.

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

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

Article 10 Bis of the Law provided that "the competent investigative authority shall inform the National Council for Human Rights and the House of Representatives of the arrest or detention of any member of the Council, with a detailed statement of the incident". The SCA notes that this provision does not provide protection for criminal and civil liability for actions undertaken in good faith by the members and staff of the NCHR.

The SCA is of the view that providing members of the NHRI's decision-making body and staff protection from both criminal and civil liability for actions undertaken in good faith in their official capacity protects them from individual legal proceedings from anyone who objects to a decision or action of the NHRI.



The NCHR is of the view that Article 2.14 of the Constitution, which guarantees the independence of the NCHR, is sufficient to provide functional immunity. The SCA also notes that the current proposed amendments to the NCHR Law would provide for stronger immunities of membership while performing their duties. Therefore, the SCA encourages the NCHR to continue to advocate for amendments to its enabling law to explicitly provide protections from civil and criminal liability for official actions undertaken in good faith.

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

### **2.3. Uganda: Uganda Human Rights Commission (UHRC)**

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

During the session, the UHRC informed the SCA of proposed amendments to its enabling law which will lead to a merger of the UHRC with the Equal Opportunities Commission. The UHRC further informed the SCA that the proposed merger is scheduled to take place in June 2024.

The SCA notes that the merger is likely to change the structure and mandate of the UHRC.

The SCA invites the UHRC to seek the support of OHCHR, GANHRI, NANHRI, and other NHRIs as well as relevant stakeholders at international, regional, and national levels in order to continue strengthening their institutional framework and working methods.

**The SCA decided to defer the consideration of the UHRC on the following grounds.**

**The SCA encourages the UHRC to take necessary actions to address these issues and to provide further information and evidence, as required:**

#### **1. Ability to address human rights violations.**

In accordance with the 2022 State of Human Rights Report, the UHRC reports that there is a backlog of 1750 cases before the Human Rights Tribunal. The UHRC states that the backlog of cases is attributed to the absence of the Chairperson in 2021. In addition, the UHRC reports that the current backlog stands at approximately 1500 cases and that the UHRC projects to complete the cases in a six-month period.

The SCA notes the passage of the Anti-Homosexuality Act in May 2023 which imposes the death penalty for ‘aggravated homosexuality’. This Act is likely to exacerbate and legitimise continued stigmatisation, violence, harassment, and discrimination against LGBTIQ+ persons. The UHRC informed the SCA that it has written to the President and Parliament advocating for the Bill to be withdrawn. Further, that there is an ongoing case before Court which challenges the Constitutionality of the legislation. As the matter is sub-judice, the UHRC stated that it can only monitor the situation of rights of LGBTIQ+ persons and continues to engage civil society in this regard.

The SCA notes the publicly available information stating that the UHRC is ‘*chronically under-funded and under-staffed, and reports of political interference in its mandate undermine its legitimacy, independence and impartiality.*’ However, the UHRC states that its enabling law guarantees its independence and that since its establishment, it has not been subject to any form of political interference.

In response to the concluding observations by the Committee on the Elimination of Discrimination against Women of 2023 (CEDAW/C/UGA/CO/8-9) raising concern over adequacy of funding and steps being taken to address the issue, the UHRC stated that 98% of its budget is funded from government sources whereas 2% is funded from development partners. The UHRC reported that its current staff complement does not reflect the desired staff requirement to ensure effective performance of its mandate. Further, that the merger with the Equal Opportunities Commission will lead to an increase in the number of staff and address the shortage of staff.

The SCA notes that the UHRC did not provide any indication as to whether its funding is sufficient to enable the UHRC fulfil the full breadth of its mandate including effective resolution of complaints before the Human Rights Tribunal.

In considering all the information provided, the SCA is not satisfied with the following:

- how the UHRC has substantiated that it is fulfilling its mandate to promote and protect human rights in an independent and effective way;
- addressing the backlog of cases before the Human Rights Tribunal;
- how the UHRC has engaged on and publicly addressed human rights violations against LGBTIQ+ persons including the Anti-Homosexuality Law and its impact on the enjoyment of human rights;
- how it protects the independence of the institution and addressed reports of political interference in the execution of its mandate in practice; and
- evidence to show that the UHRC is adequately funded to be able to effectively implement the full breadth of its mandate.

An NHRI's mandate should be interpreted in a broad and purposive manner to promote a progressive definition of human rights, which includes all rights set out in international, regional, and domestic instruments. NHRIs are expected to promote and ensure respect for all human rights, democratic principles, and the strengthening of the rule of law in all circumstances and without exception.

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

The SCA recommends that the UHRC take steps to implement the full breadth of its mandate in an effective and independent manner including addressing the rights of LGBTIQ+ people, the human rights impact of the Anti-Homosexuality Act and the resolution of complaints in a timely and efficient manner.

The SCA also recommends that the UHRC advocate for adequate funding necessary to ensure that it can effectively carry out its mandate including recruitment of staff and the effective resolution of complaints.

The SCA refers to Paris Principles A.1, A.2, and A.3. The SCA also refers to the Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding of NHRIs'.

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

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

Section 3(1) of the UHRC Act provides that the Chairperson and members of the UHRC are appointed by the President with the approval of Parliament. The UHRC reports that the Minister of Justice

receives applications and with the approval of Cabinet sends a shortlist of candidates to the President for appointment. Further, that appointed candidates are publicly interviewed and vetted by Parliament.

The SCA notes that the selection and appointment process is not sufficiently transparent and participatory. In particular, it does not:

- Require the publicising of vacancies;
- Promote broad consultation and participation of civil society; and
- Provide for a merit criteria for the appointment of members of the UHRC.

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 and participatory selection, and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA notes the information provided by the UHRC, that proposed amendments to its enabling law are before the Minister of Justice.

The SCA encourages the UHRC to continue to advocate for the formalization and application of a clear, transparent, and participatory selection and appointment process that includes the requirements to publicize vacancies, promote broad consultation and / or participation in the application, screening, selection, and appointment process and provide a merit criteria for appointment of members of the UHRC.

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. Dismissal**

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

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

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

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 the independence of, and public confidence in, the senior leadership of an NHRI.

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

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

#### 4. Term of office

In accordance with Article 51 (4) of the Constitution, the Chairperson, and members of the UHRC shall serve for a period of six years and are eligible for re-appointment.

The Law is silent on the number of times the Chairperson and members may be reappointed which leaves open the possibility of unlimited tenure.

The SCA encourages the UHRC to advocate for amendments to the Law to provide for limits on the number of times that the Chairperson and members may be reappointed.

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

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

#### 3.1. Burundi : Commission nationale indépendante des droits de l'homme (CNIDH)

**Decision:** The SCA decides to initiate a **Special Review** of the CNIDH at its first session of 2024.

In September 2023, the SCA received a joint third-party submission alleging political interference in the most recent selection of new CNIDH members. Decree n°100/122 of 3 April 2023 appointed as Executive Secretary of the CNIDH Bureau, a candidate who had received one vote instead of a candidate who received 96 votes by the selection committee set up by the National Assembly. The third-party submission also alleges that the CNIDH is unwilling to monitor and investigate politically sensitive cases, involving political opponents, important political figures, members of the internal security forces or members of the youth group affiliated to the leading political party. The submission further claims that the CNIDH has not taken steps to facilitate granting access to the UN Special Rapporteur on the situation of the human rights to the territory by the authorities of Burundi. Furthermore, the submission indicates that the CNIDH has refused to engage with civil society organizations.

The Report of the Special Rapporteur on the situation of human rights in Burundi, (A/HRC/54/56) of October 2023 states that the reports issued by the CNIDH are silent on politically sensitive issues, such as cases of misappropriation of funds, enforced disappearances and arbitrary arrests and torture by National Intelligence Service agents against political opponents, media professionals or members of civil society organizations. According to the report, the CNIDH has excluded such cases from its monitoring. The report further adds that the renewal of the CNIDH members has been tainted by irregularities. As per the report, the appointment of members by Presidential Decree No. 100/122 of 3 April 2023 contradicts the provision of the enabling law of the CNIDH.

On 22 September 2023, the CNIDH responded that the selection process was conducted in accordance with its enabling law and has been endorsed by the President of Burundi. It also reports that political grounds have never been a consideration for monitoring and investigating cases.

The SCA is of the view that the available information raises serious concerns about the continued compliance of the CNIDH with the Paris Principles, including its independence and ability to fulfil its mandate. Therefore, the SCA decides to initiate a Special Review in accordance with Article 16.2 of the GANHRI Statute in order to determine the CNIDH's ongoing compliance with the Paris Principles.

### 3.2. Great Britain: The Equality and Human Rights Commission (EHRC)

**Decision:** The SCA decides to initiate a **Special Review** of the Equality and Human Rights Commission (EHRC) of Great Britain at its first session of 2024.

The SCA received nine third-party submissions, between January 2023 to May 2023, from civil society organizations and human rights advocates calling for a special review of the accreditation status of the EHRC. These submissions allege, among others, that the institution does not demonstrate independence from government in relation to positions taken on LGBTQI+ issues. Further, according to the submissions, the EHRC is not engaging in meaningful consultations with organizations working on the rights of transgender people, including when it provided advice to the UK Government on the definition of ‘sex’ in the national legislation.

The SCA also obtained information, through publicly available sources, that the EHRC has significantly changed its position in relation to key issues affecting the rights of transgender people. In particular, the EHRC’s position and guidance issued in April 2022 and April 2023 have been criticized by some civil society organizations as contradictory to its previous positions and relevant international standards.

Additional publicly available information refers to internal disputes within the EHRC, reporting an alleged “toxic culture” within the organization, allegations of bullying and harassment, and significant resignations, including of senior staff. The publicly available information raises concerns about the EHRC’s ability to conduct its mandate in an independent and effective manner.

On 1 September 2023, the EHRC provided information to the SCA responding to the civil society allegations. The EHRC rejected the claims by the third parties and stated that it has engaged with stakeholders with a wide range of differing and opposing views. The EHRC referred to its work on the rights of transgender people, including those who have been discriminated against in the workplace.

The EHRC argued that its positions on the definition of the protected characteristic of ‘sex’ in the Equality Act are grounded in their expert understanding of the law and human rights standards, and are intended to promote an informed and respectful dialogue on the topic. The EHRC further stated that it reaches its assessments independently and authoritatively, on the basis of evidence, data and the law.

The EHRC also addressed concerns about their independence and impartiality, highlighting their diverse Board composition and existing procedures to manage conflicts of interest.

Regarding the staff turnover, the EHRC reported that it is in line with the average across the UK public sector, and that the majority of its staff assesses the EHRC as a good place to work.

The SCA also notes the concerns expressed by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE- SOGI) in his end of mission statement following his country visit to the United Kingdom in April-May 2023. Following a meeting with the EHRC in May 2023, the Independent Expert expressed the opinion that the action of the EHRC, through its advice on the definition of ‘sex’ under the Equality Act, is “wholly unbecoming of an institution created to ‘stand up for those in need of protection and hold governments to account for their human rights obligations’”.

The SCA is of the view that third party submissions and publicly available information raise serious concerns about the continued compliance of the EHRC with the Paris Principles, including its ability to conduct its mandate independently, to take positions in line with international standards, and its cooperation with civil society.

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

### **3.3. Myanmar: Myanmar National Human Rights Commission (MNHRC)**

**Recommendation:** The SCA recommends that the MNHRC's accreditation status be **removed**.

In accordance with Article 18.2 of the GANHRI statute, a recommendation to remove accreditation status does not take effect for a period of one year. The SCA notes that the MNHRC maintains B status until the SCA's second session of 2024. This allows an opportunity for the MNHRC to provide the evidence necessary to establish its partial compliance with the Paris Principles.

During this period, the MNHRC is encouraged to continue to actively engage with the OHCHR, GANHRI, APF, other NHRIs, as well as relevant stakeholders at international, regional, and national levels to strengthen its institutional framework and working methods.

During its first session of 2023, the SCA decided to initiate a special review of the MNHRC in accordance with article 16.2 of the GANHRI Statute based on:

- the report of the United Nations High Commissioner for Human Rights to the Human Rights Council (A/HRC/52/21) stating that 'the military authorities have also targeted the country's legal and institutional systems by unilaterally adopting laws, imposing amendments to existing provisions and using laws and institutions to target opponents and suppress dissent. The judiciary of Myanmar and the National Human Rights Commission have effectively been subsumed under military control, thus eliminating any element of independence and credibility';
- publicly available information alleging a lack of independence of the MNHRC, its inability to effectively address human rights and the latest selection and appointment process of commissioners of 2021;
- a third-party submission dated 23 February 2023 from a group of civil society organizations raising concerns about the MNHRC's lack of independence and its inability to exercise its mandate to promote and protect human rights amid significant political change in Myanmar.

At its second session of 2023, the SCA gave the MNHRC the opportunity to provide a response in writing and through interview in relation to the following issues:

- its independence in view of report A/HRC/52/21 stating "that MNHRC has been subsumed under military control";
- its ability to effectively address human rights issues since the military coup of 2021;
- the state of its cooperation with civil society in the promotion and protection of human rights in Myanmar as referenced in public information available from civil society organizations;
- the state of its cooperation with the international human rights system including submission of alternative reports to Treaty Bodies and interaction with the United Nations Special procedures with the view to promoting and protecting human rights in Myanmar;

- the impact of the 1 February 2021 decree of the military appointing the commissioners and its compliance with the MNHRC Law and the Paris Principles; and
- additional third-party submissions dated 1 and 31 May 2023, reiterating concerns about the MNHRC's independence and its ability to effectively address human rights violations in Myanmar.

The MNHRC reported that it continues to promote and protect human rights in Myanmar amidst restrictions imposed on its operations by the State of Emergency declared under article 420 of the Constitution of Myanmar. The MNHRC reported further that it is the only independent human rights institution in the country.

The MNHRC informed the SCA that the 2020 selection and appointment process was conducted in line with the MNHRC Enabling Law, and that the State Administrative Council decree in 2021 allowed those appointed in 2020 to continue in their roles under the state of emergency arrangements.

The SCA acknowledges the information provided by the MNHRC in writing and during the interview. However, the SCA is of the view that the information provided does not demonstrate sufficient independence and effectiveness to warrant continued accreditation under the Paris Principles. In particular, the MNHRC has not spoken out in a manner that supports the promotion and protection of all human rights and has not adequately addressed human rights violations committed by government authorities and the military. Therefore, the SCA considers that the MNHRC is operating in a manner that seriously compromises its independence and/or effectiveness as an accredited NHRI in partial compliance with the Paris Principles.

In view of the information before it, the SCA is concerned that the institution's independence and effectiveness has not been sufficiently maintained in line with the requirements of the Paris Principles.

**The SCA notes with deep concern:**

**1. Independence**

The report A/HRC/52/21 states that the MNHRC had been 'subsumed under military control, thus eliminating any element of independence and credibility'. Various third-party submissions before the SCA also indicate that the MNHRC remains under the control of the State Administrative Council and has been 'condoning and abetting' the activities of the military government. The SCA acknowledges the responses provided by the MNHRC during its interview; including that article 24 of the MNHRC Enabling Law empowers it to act independently, and that during the state of emergency the MNHRC has sent many recommendations to the government and undertaken various human rights promotion activities, including lectures. However, the SCA is not satisfied that these activities demonstrate that the MNHRC is continuing to operate independently in practice.

The SCA notes with deep concern a public statement of the MNHRC issued on 7 January 2023, describing the actions of the President of the State Administration Council in releasing and reducing the sentences of prisoners as 'humanitarian' and an indication of the 'goodwill of the government'. These comments were made despite reports of torture, arbitrary detention, extrajudicial killings, targeting of civilians by the military, and mistreatment of prisoners taking place across Myanmar, according to the report A/HRC/52/21 and third-party submissions received by the SCA. The SCA considers that this message of endorsement from the MNHRC, coupled with the absence of public positions on the widespread violations allegedly taking place across the country, provides evidence that the MNHRC is operating in a manner that seriously compromises its independence.

The SCA also notes reports that the MNHRC is not cooperating with civil society organizations. During its interview with the SCA, the MNHRC reported that it was engaging actively with civil society organizations prior to the COVID-19 outbreak and is willing to continue such engagement when it becomes feasible. Third-party submissions lodged with the SCA illustrate a significant lack of trust and confidence in the MNHRC among many civil society organizations working in and on Myanmar. The SCA considers the degree of civil society disengagement from the MNHRC as evidence that its independence has been compromised.

The SCA highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to fulfil their mandates effectively. NHRIs should develop, formalize, and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.

The SCA reiterates the fundamental requirement of the Paris Principles that an NHRI is, and is perceived to be, able to operate independent of government interference.

The SCA refers to Paris Principles A.3, B.1, C(f) and C(g) and to its General Observations 1.5 on 'Cooperation with other human rights bodies'.

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

The SCA has considered reports of widespread human rights violations taking place across Myanmar since the February 2021 military coup, including in the report A/HRC/52/21 and third-party submissions, and the allegations that the MNHRC has not used its mandate to respond to these violations in an independent and effective manner.

The SCA notes the response provided by the MNHRC that it continues to monitor peaceful assembly and visit places of detention, making recommendations to authorities on conditions of individual detainees, but that all those in detention have been held under the State Administration Council Amendment Law (No 21/2021) of the Counter-Terrorism Law (No 23/2014) and are outside the jurisdiction of the MNHRC. The SCA is concerned by the views expressed by the MNHRC that protesters have refused to register or obey instructions to disperse under the Amended Anti-Terrorism Law.

During its interview, the MNHRC reported that, according to the MNHRC Enabling Law, it cannot intervene in cases that are under trial or have been finally determined by any court. While the SCA notes this limitation on the MNHRC's ability to intervene in individual cases, the SCA is of the view that this does not prevent the institution from responding to systemic violations occurring in places of detention using other aspects of its functional mandate, including through issuing reports, public statements, and making recommendations to authorities. As an institution with access to places of detention in Myanmar, the MNHRC is uniquely placed to monitor and report on systemic violations in this context.

The SCA is of the opinion that the MNHRC has not demonstrated willingness to adequately address all human rights issues including arbitrary detention, attacks on peaceful protests, prosecution of minorities, application of the death penalty, the lack of due process and fair trial, and attacks on civilians and civilian structures, among others. Further, the MNHRC has not made its positions on these issues publicly available to ensure the strengthening of the credibility and accessibility of the institution for all people in Myanmar.



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

While the SCA notes that the MNHRC is currently operating within a challenging operational context under a state of emergency declared in accordance with article 420 of the Constitution of Myanmar, it emphasizes that in the situation of a coup d'état or a state of emergency, it is expected that an NHRI will conduct itself with a heightened level of vigilance and independence, and in strict accordance with its mandate. NHRIs are expected to promote and ensure respect for human rights, democratic principles and the strengthening of the rule of law in all circumstances and without exception. In situations of conflict or a state of emergency, this may include monitoring, documenting, issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

The SCA calls on the MNHRC to strengthen its efforts to address all human rights issues in a manner that demonstrates its ability to protect and promote human rights. The SCA further recommends that the MNHRC ensure that its positions on these issues are made publicly available, as well as effectively and independently cooperate with the international human rights system and develop, formalize, and maintain working relationships as appropriate with other domestic institutions, including civil society and non-governmental organizations.

The SCA refers to Paris Principles A.1, A.2, and A.3, and to its General Observation 1.2 'Human rights mandate', 2.5 on 'NHRIs during the situation of a coup d'état or a state of emergency, and 2.6 on 'Limitation of power of National Human Rights Institutions due to national security'.

#### **3.4. Russian Federation: Office of the Commissioner for Human Rights in the Russian Federation (OCHR)**

**Recommendation:** The SCA recommends that the OCHR accreditation status be **removed**.

In accordance with Article 18.2 of the GANHRI Statute, a recommendation to remove an accreditation status does not take effect for a period of one year. The one-year period following this recommendation to remove accreditation status allows an opportunity for the OCHR to provide the necessary evidence to establish its continued conformity with the Paris Principles.

During its first session of 2023, based on the request by the GANHRI Chairperson, the SCA initiated a special review of the OCHR, pursuant to Article 16.2. of the GANHRI Statute, following the immediate suspension of the OCHR accreditation status as decided by the GANHRI Bureau under Article 18.4 of the GANHRI Statute.

Further, the SCA considered:

- A joint third-party submission requesting the Special Review of the A-status accreditation of the OCHR claiming that it is neither independent in practice nor willing to address pressing human rights issues, and that it implicitly or directly supports the Russian government in policies and acts that contravene international human rights law; and
- A written response from the OCHR regarding allegations contained in the third-party submission.

In its second session of 2023 in September and October, the SCA gave the OCHR the opportunity to provide a response in writing and through an oral interview in relation to the following issues:

- The independence of the institution in discharging its mandate, including in connection with actions taken to investigate and address claims of forced transfers of children and other serious human rights violations by Russian authorities in the Russian Federation and beyond;
- Actions undertaken to address human rights violations, including with regards to claims of serious human rights violations of the Russian armed forces, and regarding the rights of human rights defenders, civil society organization, and media;
- Public statements made by the Commissioner in relation to alleged human rights violations committed by Russian authorities since January 2022;
- Cooperation with international and regional bodies, including in taking steps to cooperate on addressing the above-mentioned human rights violations; and
- Cooperation with civil society organization working on human rights issues.

The SCA notes that the OCHR did not provide a written response to these concerns, as requested, and did not participate during the interview, despite follow-ups and reminders. The OCHR indicated by email that, at an unspecified time, it will share its responses to the draft list of questions that had been shared by the SCA in preparation of the interview. In view of these circumstances, the SCA regrets the lack of sufficient engagement of the OCHR with the accreditation process but notes that it has reached its recommendation based on all the documentation before it.

The SCA acknowledges the OCHR's response to the third-party information submitted in February 2023. The SCA notes the difficult context in which the OCHR operates. However, in view of all the information before it, the SCA is not satisfied that the OCHR has adequately addressed its concerns. The SCA is of the view that the OCHR has not spoken out in a manner that promotes the protection of human rights and has not addressed human rights violations committed by the government authorities.

With reference to Article 18.1 of the GANHRI Statute, the SCA is of the view that the OCHR is operating in a manner that seriously compromises its independence and/or effectiveness, to an extent that the SCA believes the OCHR should no longer be accredited as an NHRI within the framework of the Paris Principles.

**The SCA notes with deep concern:**

**1. Independence**

The third-party submissions received in February 2023 expressed, among others, the following views:

- That the High Commissioner for Human Rights in the Russian Federation is neither independent in practice nor willing to address pressing human rights issues, and that room for criticism and independent action by the Commissioner appears severely restricted, especially after the escalation of the conflict in Ukraine in February 2022.
- That Russia has more than 500 political prisoners and is waging a war of aggression in Ukraine that is widely condemned by the international community, and that institutions such as the OCHR survive mostly to lend credibility to the Russian government's claim that it is democratically elected and based on the rule of law.
- That Aleksey Navalny is a political prisoner and is treated inhumanely by prison authorities, that the OCHR ignores the attacks on his fundamental rights and freedoms, and that the

OCHR's position in this respect show that it is cooperating with the propaganda operatives who seek to undermine Mr Navalny in the eyes of the Russian public.

The SCA shared the third-party information with the OCHR. The OCHR responded on 8 February 2023, and expressed the following views:

- That it is an independent body highly trusted by the citizens of Russia, as confirmed by public opinion surveys.
- That, in 2022, more than 700 unlawful decisions of authorities and officials were cancelled at the request of the OCHR, and the rights of 54,000 Russian citizens were restored; and that the OCHR had assisted more than 5 million refugees who had arrived in Russia since February.
- That, in cooperation with the Ukrainian Parliament Commissioner for Human Rights, hundreds of prisoners of war have been exchanged, the whereabouts of dozens of missing persons have been established, and families separated by the conflict have been reunited.
- That it has reviewed 52 appeals regarding issues related to the conditions of Mr Navalny's detention, his placement into a punishment cell, the access to his lawyers, and the provision of the necessary medical assistance. Further, that in March 2021, following appeals by the OCHR, Mr Navalny received medical consultations and medical treatment. The OCHR also informed that, among other things, at the OCHR's request Mr Navalny's detention conditions were inspected, and that they were concluded to be in compliance with the legislation of the Russian Federation and with international standards.

In making its own assessment and determination on the accreditation status of the OCHR, the SCA also considered public statements, and other documents issued by the OCHR including public statements issued by the OCHR Commissioner expressing support for the conduct of the "Special Military Operation" by the Russian Federation, and endorsing the consequences of the "referenda" in the occupied territories of Donetsk and Luhansk regions. The SCA notes that there are multiple and credible reports of gross human rights violations perpetrated by Russian authorities in the current context, and that the United Nations General Assembly Resolution A/RES/ES-11/4 has referred to the "referenda" as illegal.

Based on the information before it and the lack of response from the OCHR for further information to satisfy the SCA concerns relating to impartiality and independence, the SCA is of the view that the OCHR is operating in a manner that seriously compromises its independence. In particular, the OCHR is not acting independently when considering human rights violations committed by Russian authorities, and is supporting positions and actions of the Russian authorities against international norms. Therefore, the SCA urges the OCHR to restore its actual and perceived independence, when promoting and protecting human rights.

The SCA refers to Paris Principles A.1, A.2, A.3, and C(c) and to its General Observations 1.2 on 'Human rights mandate' and 2.6 on 'Limitation of power of National Human Rights Institutions due to national security'.

### **3. Addressing human rights violations**

The third-party submission received by the SCA expressed, among others, the following views:

- That the OCHR closely cooperates with the human rights ombudspersons of the so-called People's Republics of Donetsk and Lugansk, which they consider to be surrogate entities established by Russia in Eastern Ukraine to mask its occupation. Further, that these

institutions are typical creations of the Russian government aimed at creating a semblance of respectability and covering up international crimes.

- That, at the end of September 2022, Russia unilaterally declared that the Ukrainian Donetsk and Lugansk regions, and two others (Kherson and Zaporizhzhia), were parts of Russia. Further, that Russia's aggression is a serious violation of international law and its warfare is accompanied by war crimes on a massive scale and crimes against humanity, and that there are also features of the war that have given rise to fears that genocide is taking place in areas of Ukraine under Russian control. Nevertheless, that the OCHR Commissioner summoned the ombudsperson of Donetsk to an all-Russian gathering of ombudspersons in mid-November 2022, thereby recognizing her office as a Russian institution. That, in this as in other acts, the OCHR has shown itself to be neither independent in practice nor willing to address pressing human rights issues.

In response to these allegations, the OCHR expressed the following views:

- That it is its duty to protect the rights of Russian citizens wherever they are, and that 70% of citizens in Donbas are Russian. Further, the OCHR claims that human rights violations, including genocide, have targeted Russians on the territory of Donbas after the so-called illegal seizure of Kiev in 2014.
- That the interaction with the ombudspersons in the so-called Donetsk People's Republic and Lugansk People's Republic had made it possible to ensure the evacuation of hundreds of citizens from the war zone and to provide humanitarian assistance to the people remaining there; and
- That, in June 2021, the SCA reaccredited the OCHR with A status. The OCHR also referred to the SCA report commending its efforts in discharging its mandate.

In making its own assessment and determination on the OCHR accreditation status, the SCA also considered:

- reports of forced transfers of children, including those under institutionalised care, from Donetsk, Kherson, Kharkiv, Luhansk and Zaporizhzhia regions to other regions in Russian occupied territory, as well as reports of deportations of children to the Russian Federation<sup>3</sup>
- the official position of the OCHR denying the reported illegal transfers and deportations of children from the territory of Ukraine that are under effective control of the Russian Federation, and
- reports of serious human rights violations and crackdown on human rights defenders, civil society organization, and the media in the Russian Federation.

Based on available information and the lack of response from the OCHR to address the SCA concerns, the SCA is of the view that the OCHR has not effectively engaged and publicly addressed various human rights issues of serious concern, including in the context of the armed conflict. Further, that the OCHR has not acted nor spoken out in a manner that promotes and protects all human rights, hereby seriously compromising its independence and credibility. The SCA is concerned that, in some instances, the OCHR has taken positions denying allegations of egregious human rights violations by Russian authorities, including allegations of war crimes such as the unlawful deportation and transfer of children by Russian authorities. NHRIs are expected to promote and ensure respect for all human

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<sup>3</sup> The United Nations Human Rights Monitoring in Ukraine Updates on the Human Rights Situation in Ukraine 1 August-31 October 2022 [https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU\\_Update\\_2022-12-02\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf)

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

The SCA urges the OCHR to take proactive steps to promote and protect all human rights, including monitoring serious allegations of human rights violations and speaking up where violations have been committed, in an independent and effective manner.

The SCA refers to Paris Principles A.1, A.2, A.3, and C(c) and to its General Observations 1.2 on 'Human rights mandate' and 2.6 on 'Limitation of power of National Human Rights Institutions due to national security'.

#### **4. SUSPENSION (Article 18.4 of the GANHRI Statute)**

##### **4.1. Niger : Commission Nationale des droits humains (CNDH)**

**Decision:** The SCA decides to recommend the immediate suspension of the CNDH accreditation status pursuant to Article 18.4 of GANHRI Statute.

The SCA is aware of publicly available information confirming that on 26 July 2023, a military coup occurred in the Republic of Niger. Following the coup, the military government suspended the constitutional order and the rule of law in Niger and issued ordinance n°2023-01 of 28 July 2023, abolishing all constitutional bodies. Additionally, the military government issued ordinance n°2023-02 of 28 July 2023, establishing new institutions and replacing the CNDH with another body to be established by the military government.

The Republic of Niger is experiencing a sudden and dramatic change in the internal political order with a break in the constitutional or democratic order and declaration of a state of emergency. Additionally, the ordinances issued have significantly altered the existence of the CNDH contrary to the Paris Principles. The SCA is of the opinion that this constitutes an exceptional circumstance under Article 18.6 of the GANHRI Statute and therefore applies to the CNDH warranting its immediate suspension under Article 18.4 of the GANHRI Statute.