

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

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

**Geneva, 16-20 November 2015**

## SUMMARY OF RECOMMENDATIONS

<p><b><u>2. Accreditation (Art. 10 of the ICC Statute)</u></b></p>
<p><b><u>2.1 Cyprus: Commissioner for Administration and Human Rights (CAHR)</u></b>  <b>Recommendation:</b> The SCA recommends that the CAHR be accredited with <b>B</b> status.</p>
<p><b><u>2.2 Ireland: Irish Human Rights and Equality Commission (IHREC)</u></b>  <b>Recommendation:</b> The SCA recommends that the IHREC be accredited with <b>A</b> status.</p>
<p><b><u>2.3 Myanmar: Myanmar National Human Rights Commission (MNHRC)</u></b>  <b>Recommendation:</b> The SCA recommends that the MNHRC be accredited with <b>B</b> status.</p>
<p><b><u>3. Re-Accreditation (Art. 15 of the ICC Statute)</u></b></p>
<p><b><u>3.1 Germany: German Institute for human Rights (GIHR)</u></b>  <b>Recommendation:</b> The SCA recommends that the GIHR be re-accredited with <b>A</b> status.</p>
<p><b><u>3.2 Great Britain: Equality and Human Rights Commission (EHRC)</u></b>  <b>Recommendation:</b> The SCA recommends that the EHRC be re-accredited with <b>A</b> status.</p>
<p><b><u>3.3 Jordan: National Centre for Human Rights (JNCHR)</u></b>  <b>Decision:</b> The SCA decided to defer consideration of the review of the JNCHR to the second session of 2016.</p>
<p><b><u>3.4 Luxembourg: Commission Consultative des droits de l'homme (CCDH)</u></b>  <b>Recommendation:</b> The SCA recommends that the CCDH be re-accredited with <b>A</b> status.</p>
<p><b><u>3.5 Malaysia: Human Rights Commission of Malaysia (SUHAKAM)</u></b>  <b>Recommendation:</b> The SCA recommends that SUHAKAM be re-accredited with <b>A</b> status.</p>
<p><b><u>3.6 Morocco: National Human Rights Council (CNDH)</u></b>  <b>Recommendation:</b> The SCA recommends that the CNDH be re-accredited with <b>A</b> status.</p>
<p><b><u>3.7 Palestine: Independent Commission for Human Rights (PICHR)</u></b>  <b>Recommendation:</b> The SCA recommends that the PICHR be re-accredited with <b>A</b> status.</p>
<p><b><u>3.8 Qatar: National Human Rights Committee (NHRC)</u></b>  <b>Recommendation:</b> The SCA recommends that the NHRC be re-accredited with <b>A</b> status.</p>
<p><b><u>4. Review (Art. 18.1 of the ICC Statute)</u></b></p>
<p><b><u>4.1 Thailand: National Human Rights Commission (NHRC)</u></b>  <b>Recommendation:</b> The SCA recommends that the NHRC be accredited with <b>B</b> status.</p>

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

**5.1 Egypt: National Council for Human Rights (NCHR)**

**Decision:** The SCA decided **to defer** consideration of the re-accreditation of the NCHR to the second session of 2016.

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

**1. BACKGROUND**

- 1.1. In accordance with the Statute (Annex I) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), the SCA has the mandate to consider and review applications for accreditation, reaccreditation and special or other reviews received by the National Institutions, Regional Mechanisms and Civil Society Section (NIRMCSS) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat, and to make recommendations to the ICC Bureau members with regard to the compliance of applicant institutions with the Paris Principles (Annex II). The SCA assesses compliance with the Paris Principles in law and in practice.
- 1.2. In accordance with the SCA Rules of Procedure, the SCA is composed of NHRI representatives from each region: Canada for the Americas (Chair), Mauritania for Africa, Palestine for Asia-Pacific and France for Europe.
- 1.3. The SCA convened from 16-20 November. OHCHR participated as a permanent observer and in its capacity as ICC Secretariat. In accordance with established procedures, regional coordinating committees of NHRIs were invited to attend as observers. The SCA welcomed the participation of representatives from the Secretariat of the Asia Pacific Forum (APF) and the European Network of National Human Rights Institutions (ENNHRI).
- 1.4. Pursuant to article 10 of the Statute, the SCA considered the applications for accreditation from the NHRIs of Cyprus, Ireland and Myanmar.
- 1.5. Pursuant to article 15 of the Statute, the SCA also considered applications for re-accreditation from the NHRIs of Germany, Great Britain, Jordan, Luxembourg, Malaysia, Morocco, Palestine and Qatar.
- 1.6. Pursuant to article 18.1 of the Statute, the SCA reviewed the NHRI of Thailand.
- 1.7. In view of the recent political development and parliamentary elections in Egypt, the SCA discussed the re-accreditation of the NHRI of Egypt, deferred since May 2013.
- 1.8. In accordance with the Paris Principles and the ICC SCA Rules of Procedure, the classifications for accreditation used by the SCA are:
  - A: Compliance with the Paris Principles;
  - B: Not fully in compliance with the Paris Principles or insufficient information provided to make a determination;
  - C: No status - Not in compliance with the Paris Principles.
- 1.9. The General Observations (Annex III), as interpretative tools of the Paris Principles, may be used to:
  - a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;

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

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

**1.11.** Pursuant to Article 12 of the Statute, where the SCA comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose final decision is subject to the following process:

- i) The recommendation of the SCA shall first be forwarded to the applicant;
- ii) An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt.
- iii) Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau;
- iv) Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the SCA and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;
- v) If at least four members coming from two or more regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;
- vi) The decision of the ICC Bureau on accreditation is final.

- 1.12.** At each session the SCA conducts a teleconference with every NHRI. It may also consult with and seek further information from NHRIs where necessary. In addition, OHCHR desk officers and, as appropriate, OHCHR field officers were available to provide further information, as needed.
- 1.13.** Pursuant to Article 18.1 of the statute, any decision that would serve to remove accredited "A" status from an applicant can only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the written evidence deemed necessary to establish its continued conformity to the Paris Principles.
- 1.14.** At any time, the SCA may receive information that raises concern that the circumstances of a NHRI have changed in a way that affects its compliance with the Paris Principles, and the SCA may then initiate a special review of that NHRI's accreditation status. When considering whether or not to initiate a special review, the SCA has adopted a new procedure whereby, in addition to written submissions made by the NHRI, civil society and any other stakeholder, the NHRI is afforded the opportunity to make an oral statement to the SCA during the session.
- 1.15.** Pursuant to Article 16(3), any review of the accreditation classification of a NHRI must be finalized within 18 months.
- 1.16.** The SCA acknowledges the high degree of support and professionalism of the ICC Secretariat (OHCHR NIRMCS).
- 1.17.** The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and gave one week to provide any comments on them. The summaries are only prepared in English, due to financial constraints. Once the recommendations of the SCA are adopted by the ICC Bureau, the report of the SCA is placed on the ICC website (<http://nhri.ohchr.org/>).
- 1.18.** The SCA considered information received from civil society. The SCA shared that information with the concerned NHRIs and considered their responses.
- 1.19. Notes:** The ICC statute, the Paris Principles and the General Observations referred to above can be downloaded in Arabic, English, French and Spanish from the following links:
1. The ICC Statute:  
<http://nhri.ohchr.org/EN/AboutUs/Governance/Statute.aspx>
  2. The Paris Principles and General Observations:  
<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>

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

### **2.1 Cyprus: Commissioner for Administration and Human Rights (CAHR)**

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

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

The SCA encourages the CAHR to seek assistance and advice as needed from ENNHRI and OHCHR.

The SCA notes:

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

In accordance with section 3 (1) of the law, the President, upon recommendation of the Council of Ministers and with the prior consent of the majority of House of Representatives, appoints the Commissioner for Administration.

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

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

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

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

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

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

## **2. Mandate**

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

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

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

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

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

The mandate of CAHR has increased significantly over the past years, with no concurrent increase in allocated resources. The SCA notes, in particular, that the CAHR has been assigned responsibility as the NPM under OPCAT and as the NMM under the CRPD with no increase in budget or staff. The SCA also notes that two (2) staff have been seconded to other government departments, and that three (3) vacant positions have been abolished despite being provided for in the budget.

Further, while the CAHR has management and control of its budget provided that the limits for each category of expense are respected, amendments to cover expenses not foreseen must be approved by the Ministry of Finance. The SCA is concerned that this may restrict the ability of the CAHR to direct its budget to those areas it has determined are most important.

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

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

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

additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

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

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

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

#### **4. Staffing**

The CAHR is not empowered to recruit its own staff.

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

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

NHRI staff should not be seconded or re-deployed from branches of the public service.

The SCA encourages the CAHR to advocate for changes to its enabling law to allow it to recruit its own staff.

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

#### **5. Pluralism**

There is no requirement in the law that the staff of the CAHR be representative of the diverse segments of society.

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

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

The SCA notes that there are diverse models for ensuring the requirement of pluralism in the composition of NHRIs as set out in the Paris Principles. In the case of single-member

institutions such as the CAHR, pluralism can be achieved by ensuring staff are representative of the diverse segments of society.

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

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

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

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

The SCA notes:

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

The SCA notes that the law does not provide the IHREC with an explicit mandate to encourage ratification or accession to international instruments.

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

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

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

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

According to section 46 of the enabling law, “the Minister for Justice and Equality may, after consultation with the IHREC, advance funds which the Minister, with the consent of the Minister for Public Expenditure and Reform, considers to be reasonably sufficient for the purposes of the expenditure of the IHREC in the performance of its functions”.

The SCA is concerned that the Minister for Justice and Equality has significant discretion over the allocation of funds to the IHREC, and that this has the potential to impact on its effectiveness and independence.

The SCA encourages the IHREC to advocate for appropriate amendments to its enabling law in order to ensure the adequacy of the IHREC’s funding and safeguard its financial independence.

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

### **2.3 Myanmar: National Human Rights Commission (NHRC)**

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

The SCA welcomes the establishment of the NHRC in law. It commends the NHRC for its continuing efforts to promote human rights despite the challenging context in which it operates, noting in particular the NHRC coordinating program to educate key stakeholders in the application of human rights.

The SCA notes:

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

Section 5 of the Law requires that a Selection Board be established by the President of the Republic consisting of the Chief Justice of the Union; Minister of Home Affairs; Minister of Social Welfare, Relief and Resettlement; Attorney General; one representative from the Bar Council; two representatives from the Parliament; one representative from the Myanmar Women's Affairs Federation; and two representatives from registered NGOs. The Selection Board is mandated under section 8 of the Law to adopt procedures for nominating prospective members of the NHRC and submit a list of thirty (30) nominees to the President, who, in accordance with section 9 of the Law, selects and appoints suitable members, in coordination with the Speakers of both Houses of the Parliament.

The SCA is concerned that the composition of the Selection Board includes a significant number of members of the government and that there is no quorum requirement in the Law. In addition, it is concerned that the designation of, and process for selection of civil society representatives (in particular from 'registered' civil society organisations) is not sufficient to ensure a transparent and participatory selection process.

In addition, the SCA received conflicting reports regarding whether the most recent selection process was conducted in accordance with the law. Several civil society organisations reported that the recent selection process was not made public.

The SCA emphasizes the requirement for a clear, transparent and participatory selection process that promotes merit-based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution. Such a process would include requirements to:

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

The SCA encourages the NHRC to engage with the new Parliament and government to address the concerns outlined above and to ensure the selection and appointment process is enshrined in relevant laws, regulations or binding administrative guidelines

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

## **2. National Institutions operating in situations of internal unrest or internal armed conflict**

The SCA noted reports from the Human Rights Council and from civil society highlighting concerns about human rights violations occurring as a result of situations of armed conflict between the government and different ethnic groups, as well as internal unrest between different ethnic and religious groups.

While the SCA noted that the NHRC had conducted some inquiries and made some public statements, it notes that in times of internal conflict or unrest, NHRIs are expected to conduct themselves with a heightened level of vigilance and independence, and to promote and ensure respect for the human rights of all individuals in all circumstances and without exception. In this regard an NHRIs actions may include monitoring, documenting, issuing public statements and releasing regular and detailed reports on human rights violations through the media, and that these should be provided in a timely manner.

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

The SCA encourages the NHRC to interpret its mandate in a broad, liberal and purposive manner, and to promote and protect human rights of all including the rights of Rohingya and other minority groups.

The SCA refers to Paris Principles A.3(a)(ii)-(iv), and to its General Observations 1.2 on 'Human rights mandate' and 2.6 on 'National Institutions during the situation of a coup d'état or a state of emergency'.

## **3. Pluralism**

The SCA notes that, while section 7(c) of the enabling law requires equitable representation of men and women, at present only two (2) of the eleven (11) NHRC members are women.

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

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

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

The budget of the NHRC is submitted to the President's Office for approval. Funds are then transferred from this Office on a quarterly basis. The SCA is concerned that this arrangement provides the Executive with substantial control over the NHRC's ability to continue to operate.

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.

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

The SCA encourages the NHRC to advocate for appropriate amendments to its enabling law in order to ensure the adequacy of the NHRC's funding and safeguard its financial independence.

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

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

Section 44(3) of the Law provides for the NHRC to visit all places of confinement upon prior notification.

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

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

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

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

The Paris Principles recognize that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms and the 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;
- making statements during debates before review bodies and the Human Rights Council; and
- monitoring and promoting the implementation of relevant recommendations emanating from the international human rights system.

While it is appropriate for the NHRIs to provide information to the government in the preparation of the State report, NHRIs must maintain their independence and where they

have the capacity to provide information to human rights mechanisms should do so in their own right.

The SCA encourages the NHRC to continue its engagement with the international human rights system.

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

## **7. Annual report**

In accordance with article 22(m) of the Law, special reports of the NHRC are submitted to the President rather than tabled in Parliament.

The SCA considers it important that the enabling laws of a NHRI establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. The SCA encourages the NHRC to advocate for changes to its enabling law to provide the explicit power to table all reports directly in the legislature, rather than through the Executive, and in doing so to promote action on them.

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

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

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

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

The SCA welcomes the adoption of a new law that establishes the GIHR in primary legislation. It commends the GIHR for its sustained efforts to advocate for the passage of this legislation.

The SCA notes:

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

In accordance with section 4 of the Law and section 9 of the Statute, the Board of Trustees decides on the admission of new members of the General Assembly on the basis of written applications, guided by the principle of pluralistic representation of civil society and taking into consideration the tasks of the GIHR. The Law and Statute are otherwise silent on the process for selection and appointment of members of the General Assembly.

In accordance with Section 6 of the Law, the Board of Trustees is comprised of eighteen (18) voting member and nine (9) non-voting members: six (6) elected by the General Assembly by simple majority vote; three (3) chosen by Forum Human Rights; one (1) chosen by the German Disability Council; three (3) representatives of academic institutions in the field of human rights appointed by Parliament; three (3) human rights NGOs appointed by Parliament; two (2) members appointed from among the Federal Parliamentary Committee on Human Rights and Humanitarian Aid; and nine (9)

delegated by their respective government department. Other than for the members elected by the General Assembly, the selection process is not clearly defined.

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

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

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

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

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

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

## **2. Political representatives on NHRIs**

Two (2) members of the GIHR's Board of Trustees are members of the German Parliament, and these members have voting rights.

The SCA further notes that the number of non-voting members of the GIHR's Board of Trustees, who are representatives of government ministries, has increased.

The Paris Principles require that a NHRI 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 a NHRI. Their membership of, and participation in, the decision-making body of the NHRI has the potential to impact on both the real and perceived independence of the NHRI.

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

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

Reiterating its previous recommendation in November 2013, the SCA encourages the GIHR to advocate 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'.

### **3. Human rights mandate**

The GIHR is legislatively mandated to both promote and protect human rights. However, its protection mandate appears to be somewhat limited.

The SCA understands protection activities as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations. Some NHRIs may also have an individual complaint handling mandate.

The SCA acknowledges that GIHR interprets its protection mandate broadly and undertakes certain protection activities through, for example, monitoring activities, publishing research and advice on various human rights issues, submitting amicus curiae briefs, providing a legal aid fund, and interacting with international human rights mechanisms. It also acknowledges that the GIHR has been designated as the NMM under the CRPD and with monitoring functions under the CRC.

However, the SCA encourages the GIHR to advocate for appropriate amendments to its enabling law that would clarify and strengthen its protection mandate.

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

### **4. Adequate funding**

The SCA notes that, during this review period, the GIHR has been entrusted with several new responsibilities, including monitoring functions under the CRC, analyzing the continuing human-rights related effects of totalitarian dictatorships as well as the situation of armed conflict and post-conflict situations, and submitting to Parliament an annual report on the situation of human rights in Germany. While additional financial means were provided for a period of two years for this first activity, no increase in funding has been provided for the other newly-mandated tasks.

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

ensure the gradual and progressive realization of the improvement of the Institution's operations and the fulfillment of its mandate.

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

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

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

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

## **5. Guarantee of tenure**

Section 2(4) of the Statute provides that, if a voting member of the Board of Trustees leaves the organization or institution which has appointed him or her, or resigns from his or her position on the Board, then his or her replacement is elected or appointed for the remaining duration of the term of the Board. The Statute and Law are otherwise silent on the dismissal procedure for members of the Board.

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

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

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

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

## **6. Functional immunity**

In accordance with section 31.5 of the Statute, personal liability of the Board of Directors towards the Association is restricted to acts of intent or gross negligence. The Statute and Law are otherwise silent on the issue of immunity, including for members of the General Assembly and the Board of Trustees.

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

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

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

The SCA refers to Paris Principles B.3 and C(a) and to its General Observation 2.3 on 'Guarantee of functional immunity'.

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

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

The SCA notes:

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

In accordance with paragraph 1(1) of Schedule 1 of the Act, the Secretary of State shall appoint members of the EHRC. Paragraph 2(1) provides that an individual may be appointed if he or she (i) has experience or knowledge relating to a relevant matter (discrimination or human rights) or (ii) is suitable for appointment for some other special reason, having regard to the desirability of the Commissioners together having experience and knowledge relating to relevant matter (discrimination or human rights).

The SCA notes that in practice the appointment process is subject to detailed guidance from the Office of the Commissioner for Public Appointments. The Commissioner for Public Appointments regulates the processes by which ministers make appointments on merit to the boards of national and regional public bodies. The appointment process is undertaken by the EHRC's sponsor department, the Government Equalities Office within the Department for Culture, Media and Sport.

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

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

Further, while the SCA acknowledges that the EHRC has provided as an example of “some other special reason” ensuring pluralist representation, the SCA is concerned that provision is not sufficiently defined in the law and may be open to abuse.

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

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

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

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

## **2. Full-time members**

All members of the EHRC work on a part-time basis. The number of days members are expected to work each year is determined by the Secretary of State in consultation with the EHRC, and is set out in members’ terms and conditions of appointment.

According to paragraph 1(3) of Schedule 1 of the Act, EHRC members hold office for a fixed term ranging from two (2) to five (5) years, and a member whose period of membership has expired may be re-appointed.

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

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

An appropriate minimum term of appointment is crucial in promoting the independence of the membership of the NHRI, and to ensure the continuity of its programs and services. An appointment period of three years is considered to be the minimum that would be

sufficient to achieve these aims. As a proven practice, the SCA encourages that a term of between three (3) and seven (7) years with the option to renew once be provided for in the NHRI's enabling law.

The SCA encourages the EHRC to advocate for changes to its enabling law to provide for remunerated full-time members amongst its decision-making body, with a term of between three (3) and seven (7) years, with the option to renew once.

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

### **3. Guarantee of tenure**

In accordance with paragraph 2(3) of Schedule 1 of the Act, the Secretary of State may dismiss a Commissioner who is, in the opinion of the Secretary of State, unable, unfit or unwilling to perform his functions.

The SCA acknowledges that the EHRC has indicated that Commissioners can only be dismissed for a very narrow range of reasons, and that such a dismissal could be challenged by judicial review or in an employment tribunal. However, The SCA emphasizes that, in order to address the requirement for a stable mandate, which is important in reinforcing independence, the enabling law of a NHRI must contain an independent and objective dismissal process similar to that accorded to members of other independent State agencies.

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

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

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

### **4. Annual report**

In accordance with paragraph 32 of Schedule 1 of the Act, the annual report of the EHRC is sent to the Secretary of State, who then lays it before Parliament.

The SCA acknowledges that the EHRC has indicated that the Minister's role is limited to laying the document before Parliament, and that he or she is not permitted to modify the report or require that modifications be made. However, the SCA considers it important that the enabling laws of a NHRI establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. It is preferable for a NHRI to have the explicit power to table reports directly in the legislature, rather than through the Executive, and in doing so to promote action on them.

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

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

The EHRC has experienced a significant cut in its budget since 2010. The SCA acknowledges the EHRC's report that most public bodies have experienced a cut in funding. However, the SCA notes that the EHRC has experienced a cut in funding, equivalent to approximately seventy percent (70%) of its 2010 budget. The SCA also notes that the number of staff have been reduced from 500 in 2010 to 204 in 2015.

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

Further, in accordance with paragraph 38 of Schedule 1 of the Act, the Secretary of State shall pay to the EHRC such funds as appear to the Secretary of State to be reasonably sufficient for the purpose of enabling it to perform its functions.

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

The SCA encourages the EHRC to advocate for appropriate amendments to its enabling law in order to ensure the adequacy of the EHRC's funding and safeguard its financial independence.

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

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

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

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

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

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

### **3.3 Jordan: National Centre for Human Rights (JNCHR)**

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

The SCA notes that the JNCHR has proposed amendments to its enabling law, and that these amendments have been referred to the Council of Ministers.

The SCA considers that the passage of these amendments will significantly contribute to the compliance of the JNCHR with the Paris Principles. The SCA encourages the JNCHR to continue to advocate for the passage of these amendments.

The SCA notes:

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

In accordance with Article 13(A) of the Law, the JNCHR shall be supervised by a Board of Trustees of no more than twenty-one (21) members, whose Chairman and members are appointed by Royal Decree at the recommendation of the Prime Minister. The Law is otherwise silent on the selection and appointment process.

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

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

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 notes that the proposed amendments:

- do not require the advertisement of vacancies;
- require consultation with relevant authorities and civil society bodies, but do not specify the form that such consultation should take, not who the relevant authorities are.

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

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

- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

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

## **2. Political representatives on NHRIs**

The SCA notes that two (2) members of the JNCHR's Board of Trustees are parliamentarians, and these members have voting rights.

The Paris Principles require that a NHRI 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 a NHRI. Their membership of, and participation in, the decision-making body of the NHRI has the potential to impact on both the real and perceived independence of the NHRI.

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

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

The SCA encourages the JNCHR to advocate 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'.

## **3. Full-time members**

Board members serve on a voluntary basis and are not remunerated.

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

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

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

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

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

The Law is silent on the grounds and process for dismissal of members of the Board.

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

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

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

The SCA acknowledges that the JNCHR has advocated for changes to its enabling law to provide for dismissal under the following conditions: a) resignation; b) conviction by a regular court for a felony or misdemeanor of a moral and ethical nature; c) loss of any of the eligibility requirements; or d) the expiration of the Board term. The SCA notes that the proposed amendment continues to be silent on the process for dismissal.

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

#### **5. Conflicts of interest**

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

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

The SCA encourages the JNCHR to advocate for the inclusion of express provisions in its enabling law that protect against real or perceived conflicts of interest.

#### **6. Adequate funding and financial independence**

The SCA welcomes the proposed amendment to the Law to specify that the JNCHR should receive financial support that is adequate to enable the JNCHR to exercise its functions and implement its programs and activities in a satisfactory manner. It acknowledges that the NHRC has advocated for increased funding in order to carry out its activities. In particular, the SCA notes that the JNCHR in its Statement of Compliance indicates that it has plans to open regional offices, but that it has been unable to do so as a result of limited financial resources.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely

determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the Institution's operations and the fulfillment of its mandate.

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

The SCA further welcomes the reduction in reliance of the JNCHR on donor funding for its activities. However, the SCA notes that the JNCHR requires the approval of the Council of Ministers in order to accept foreign donor funding.

Funding from external sources should not compose the core funding of the NHRI, as that is the responsibility of the State. However, the SCA recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support a NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases NHRIs should not be required to obtain approval from the state for external sources of funding, which may otherwise detract from its independence.

The SCA welcomes the report that the JNCHR has been able to obtain in 2015 a separate budget line for its funding. It encourages the JNCHR to advocate for the entrenchment of this practice in its enabling law, regulations, or binding administrative guidelines.

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

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

The JNCHR reports that it conducts announced and unannounced visits to correction and rehabilitation centres (prisons), temporary detention centres, police station holding areas, and other institutions including the detention centre of the General Intelligence Department, as well as juvenile centres, elderly centres and centres for persons with disabilities.

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

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

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

## **8. Regional offices**

The JNCHR does not have regional offices.

The SCA underscores the importance of ensuring the JNCHR is broadly accessible to the wider community, including those that are most vulnerable. Establishing a regional presence through the opening of regional offices enhances such accessibility.

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

### **3.4 Luxembourg: Commission consultative des droits de l'homme (CCDH)**

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

The SCA notes:

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

In accordance with article 4(1) of the Law, members of the CCDH are appointed by the government. The regulation regarding selection provides that this appointment is based on the proposal of an internal selection committee comprised of members of CCDH, and the opinion of an external selection committee comprised of the heads of five (5) non-governmental organizations. The SCA is of the view that it would be preferable for the process also to include greater representation from diverse segments of society, such as those listed in the Paris Principles at B1.

The SCA refers to Paris Principle B.1.

#### **2. Full-time members**

Members of the CCDH serve on a part-time basis and are not remunerated.

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

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

The SCA encourages the CCDH to advocate for changes to its enabling law to provide for remunerated full-time members in its decision-making body.

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

#### **3. Immunity**

The Law does not provide functional immunity for members of the CCDH for actions undertaken in good faith in their official capacity. The SCA notes that this was identified as an issue of concern during its 2010 review.

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

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

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

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

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

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

In accordance with article 1(2) of the Law, reports of the CCDH are transmitted to the government, and the Prime Minister then transmits these reports to Parliament. A 2008 motion of Parliament was passed requiring the CCDH annual report to be tabled and debated by Parliament. This was recalled in a 2014 motion. However, the CCDH annual report has not yet been tabled or debated by Parliament.

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

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

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

The resources of the CCDH, including its staff complement and financial resources, are not sufficient to effectively carry out its mandate. Further, the mandate of the CCDH has been increased to include the NMM for the CRPD and the National Rapporteur on Human Trafficking without a corresponding increase in resources.

The SCA also notes that the Minister of Finance proposes the budget of the CCDH to the Parliament. The SCA encourages the CCDH to continue to advocate for processes to ensure financial autonomy, and sufficient and sustainable State funding.

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

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

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

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

## **6. Recommendations by National Human Rights Institutions**

The SCA notes that the CCDH is not systematically consulted on draft legislation by the Executive. The SCA commends the CCDH for continuing to produce reports and recommendations in spite of this.

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

The SCA encourages the CCDH to continue its work in this regard.

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

### **3.5 Malaysia: Human Rights Commission (SUHAKAM)**

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

The SCA notes:

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

The SCA notes that, in order to promote greater transparency in the 2013 selection and appointment process, vacancies were published in various Malay and English newspapers in Peninsular Malaysia and the States of Sabah and Sarawak, as well as on official websites. In addition, letters were sent to over 70 organisations from a wide variety of civil society organisations inviting them to nominate qualified candidates for the positions.

Notwithstanding this positive development, the SCA remains concerned about certain aspects of the selection and appointment process.

In accordance with section 5(2) of the Act, the King, on recommendation of the Prime Minister, appoints SUHAKAM Commissioners. Before making a recommendation, the Chairperson must consult a Selection Committee comprised of the Chief Secretary to the Government, the Chairperson of the Commission, and three (3) members of civil society, appointed by the Prime Minister, who have knowledge of or practical experience in human rights matters. The law therefore provides the Prime Minister with discretion to nominate the three civil society candidates on the Selection Panel.

In addition, the SCA is concerned that, while the Prime Minister must consult the Selection Committee, there is no legal requirement that he or she make recommendations from the list of candidates that were been determined by the independent Selection Committee to be suitable for appointment.

The SCA noted these concerns in 2009 and highlighted that the combination of these two factors leaves open the potential for political interference.

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

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

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

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

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

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

## **2. Full-time members**

The Act does not specify whether SUHAKAM members serve in a full-time or part-time capacity. SUHAKAM reports that, officially, members serve on a part-time basis.

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

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

The SCA acknowledges that currently five members do not hold positions in other organizations and, accordingly, dedicate their full time to SUHAKAM. However, the SCA notes that this is not provided for by the Act and accordingly encourages SUHAKAM to advocate for changes to its enabling law to provide for remunerated full-time members amongst its decision-making body.

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

## **3. Adequate funding**

According to section 19 of the Act, the Government shall provide SUHAKAM with adequate funds on an annual basis to enable the Commission to discharge its functions. The SCA has received information that SUHAKAM may be subject to significant (50%) budgetary cuts for 2016.

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

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

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

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

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

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

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

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

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

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

#### **5. Annual and Special Reports**

In accordance with section 21 of the Act, SUHAKAM may present annual and thematic reports to Parliament. However, there is no requirement for the Government to table and debate the report in Parliament.

The SCA acknowledges with appreciation SUHAKAM efforts since its establishment in calling on the Parliament to discuss its annual reports. However, the SCA is of the view this practice should be enshrined in the Act.

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

#### **6. Guarantee of tenure**

In accordance with section 10(d) of the Act, the King may remove a member, on the advice of the Prime Minister, if he is of the opinion that the members: (i) has engaged in any paid office or employment which conflicts with his duties as a members of the Commission; (ii) has misbehaved or conducted himself in such a manner as to bring disrepute to the Commission; or (iii) has acted in contravention of the Act and in conflict

with his duties as a members of the Commission. This provision provides significant discretion to the Prime Minister in recommending the removal of a member, and, as the grounds are ill defined, may not provide sufficient protection against political interference. The SCA emphasizes that, in order to address the requirement for a stable mandate, which is important in reinforcing independence, the enabling law of a NHRI must contain an independent and objective dismissal process.

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

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

### **3.6 Morocco: Conseil National des Droits de l'Homme (CNDH)**

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

The SCA commends the efforts made by the CNDH to promote and human rights in Morocco, noting in particular its work in relation to gender equality.

The SCA welcomes with appreciation the entrenchment of CNDH in the 2011 Constitution and the adoption of a new founding law in March 2011, which partially addressed the concerns expressed by the SCA in 2010.

The SCA notes that the CNDH has submitted new amendments to its enabling law to the Council of Ministers. It notes that these amendments have been referred to the Ministry of Justice and Liberty for review. The SCA notes with appreciation that these amendments would further broaden the mandate of the CNDH. It encourages the CNDH to continue to advocate for the passage of these amendments.

The SCA notes:

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

In accordance with article 35 of the Law, CNDH members are appointed by a Royal Decree based on the nominations of various entities. The SCA notes that, because the process to be employed is not specified, different processes are likely to be used by each nominating entity.

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

- require the advertisement of vacancies;

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

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

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

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

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

## **2. Guarantee of tenure**

In accordance with article 39 of the Royal Decree, membership may be lost for reasons including "physical incapacity" or "as a result of acts or practices that are inconsistent with the obligations associated with membership in the Council".

The SCA is of the view that:

- the former ground should require the determination of an incapacity by an appropriate independent medical professional or tribunal, and
- the latter ground the initial ground of termination is not appropriately defined and could be open for misuse.

Further, the SCA notes that the exact procedure for dismissal is not outlined. While the SCA acknowledges that the CNDH reports that such termination is effected based on a decision of the Council (taken either by consensus or by vote), this is not specified by the law or laid out in binding regulations or administrative guidelines.

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

The grounds for dismissal must be clearly defined and appropriately confined to those actions that impact adversely on the capacity of the member to fulfil his or her mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by the decision of an appropriate body with independent

jurisdiction. The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law. It should not be allowed based solely on the discretion of the appointing authorities.

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

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

### **3. Functional immunity**

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

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

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

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

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

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

### **3.7 Palestine: Independent Commission for human Rights of Palestine (PICHR)**

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

The SCA acknowledges that the PICHR continues to be an effective national human rights institution, carrying out a broad range of activities to promote and protect human rights despite operating in a particularly difficult and volatile political and security environment.

The SCA commends actions taken by PICHR to implement SCA's recommendations, through by-laws including a definition for human rights and guarantees of tenure for members of the governing body.

The SCA encourages the PICHR to continue its vigilance in monitoring, promoting and protecting human rights in Palestine.

The SCA notes:

### **1. Establishment of national institutions**

The SCA commends the efforts made by the PICHR to advocate for its establishment in primary legislation. It notes that the draft legislation had been prepared and submitted to the Palestinian Legislative Council in 2005, before the disruption of its activities in 2006. The SCA recognizes that the PICHR considers its by-laws the reference point until the draft law is adopted.

The SCA acknowledges the specific circumstances of the Palestinian Authority and the fact that a draft law that was submitted in 2005 was not able to be adopted as a result of the disruption of the activities of the Palestinian Legislative Council. It encourages the PICHR to continue to engage with the Palestinian Authority to formalize its status through the adoption of an enabling law.

The SCA also welcomes with appreciation the development of the PICHR's bylaws in the spirit of an enabling law.

The SCA refers to Paris Principle A.2 and to its General Observation 1.1 on 'Establishment of NHRIs'.

### **2. Full-time members**

In accordance with article 14 of the bylaws of the PICHR, the Commissioner General serves on a full-time basis and all other Commissioners on a part-time basis. However, the PICHR reports that the Commissioner General has served only on a part-time basis for the past two years.

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

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

The SCA encourages the NCHR to advocate for changes to its enabling law to provide for remunerated full-time members amongst its decision-making body.

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

### **3. Adequate funding**

The PICHR received its primary funding from donors and the state provides only five percent (5%) of its budget. While the SCA acknowledges that the State is itself reliant on funding from external sources and therefore has limited capacity to fully fund the budget of the PICHR, it remains the obligation of the State to fund its NHRIs. The SCA notes that the State has regularly failed to provide the five percent that it is expected to contribute.

The SCA wishes to express its appreciation to the donor consortium for its ongoing essential support of the PICHHR without which the PICHHR would not be able to function.

Funding from external sources should not compose the core funding of the NHRI, as that is the responsibility of the State. However, the SCA recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support a NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases NHRIs should not be required to obtain approval from the state for external sources of funding, which may otherwise detract from its independence.

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

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

The SCA acknowledges the efforts of the PICHHR to advocate for stable government funding. It encourages the PICHHR to continue its efforts in this regard.

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

#### **4. Annual and special reports**

According to article 2 of the by-laws, the PICHHR issues monthly, annual, field and fact-finding reports on specific human rights violations. The PICHHR provides relevant recommendations to the President and the Palestinian Legislative Council in accordance with article (31) of the Palestinian Basic Law.

The by-laws are silent about the need for the relevant government ministries and the competent parliamentary committees to hold discussion on PICHHR reports and their recommendations.

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

#### **3.8 Qatar: National Human Rights Committee (NHRC)**

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

The SCA welcomes with appreciation the adoption of Law No.(12) of 2015, which addresses the SCA's 2010 concern about immunity for members of the Commission.

The SCA notes:

## **1. Selection and appointment**

In accordance with the 2015 Law, the NHRC is comprised of no less than seven (7) civil society representatives and four (4) representatives from government ministries. All members are appointed by Emiri decree. The 2015 Law also indicates that the civil society representatives should have experience and interest in human rights. The law is otherwise silent on the process and criteria used to determine the suitability of applicants. In March 2009, the SCA requested the NCHR advocate for changes to its legislation to provide for a transparent, participatory, merit based selection process.

While the NCHR has formed its own a selection committee to nominate candidates for appointment, the SCA notes that its 2009 recommendation has not been addressed. It reiterates its original recommendation that a transparent, participatory, merit based selection process should be entrenched in the law.

In particular, the current law does not:

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

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

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

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

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

## **2. Pluralism**

The decree law does not require pluralism in the membership of the NHRC. The SCA notes that, at present, only three (3) of the thirteen (13) NHRC members are women.

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

While welcoming NHRC's engagement in ensuring gender balance, the SCA encourages the NHRC to advocate for the inclusion of provisions in its decree law to ensure diversity in its membership and staff.

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

### **3. Conflict of interest**

The decree law is silent on a situation where members have an actual or perceived conflict of interest.

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

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

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

In accordance with article 10 of the 2010 Law, termination of a member is effected by an Emiri decree upon a proposal of the NHRC for reasons which include performing "an act contrary to the objectives of the NHRC or that would disrupt the performance of its duties and terms of reference" and "a disability which may prevent the member from performing the duties of his membership".

The SCA is of the view that:

- the initial ground of termination is not appropriately defined and could be open for misuse; and
- the latter ground should require the determination of an incapacity by an appropriate independent medical professional or tribunal.

Further, the SCA notes that the exact procedure for dismissal is not outlined in the Law.

The SCA reiterates its comment from 2010 that, in order to address the requirement for a stable mandate, which is important in reinforcing independence, the enabling law of a NHRI must contain an independent and objective dismissal process similar to that accorded to members of other independent State agencies.

The grounds for dismissal must be clearly defined and appropriately confined to those actions that impact adversely on the capacity of the members to fulfill 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 to be based solely on the discretion of the appointing authorities.

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

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

#### **4. SPECIFIC RECOMMENDATIONS - Review under Article 18.1 of the ICC Statute**

##### **4.1 Thailand: National Human Rights Commission of Thailand (NHRCT)**

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

At the SCA's session in October 2014, it gave the NHRCT the opportunity to provide, in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The SCA is of the view that the information provided by the NHRCT has not adequately addressed its concerns.

The SCA reiterates its concerns as follows:

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

The SCA expressed concerns about the selection process for Commissioners. In particular, the SCA noted that:

- There is no requirement to advertise vacancies on the NHRCT;
- The selection committee established by Section 8(1) of the enabling law is composed of officials from a very small number of public institutions, with no clear representation, or a requirement for consultation with key stakeholder groups or civil society;
- There is no provision for broad consultation and/or participation, in the application, screening and selection process;
- There does not appear to be clear and detailed criteria upon which to assess the merit of eligible applicants.

The SCA notes that these concerns have not been addressed.

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

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

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

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

## **2. Functional immunity and independence**

The SCA expressed its concern that the NHRCT is forced to rely on a variety of provisions in various laws to ensure its functional immunity and independence.

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

- security of tenure;
- the NHRIs 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 national human rights institution.

The SCA encourages the NHRCT to advocate for the inclusion of provisions in its founding legislation that clearly establish functional immunity by protecting members from legal liability for actions undertaken in good faith in the course of their official duties.

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

## **3. Addressing human rights issues in a timely manner**

The SCA expressed concern that the NHRCT had not addressed serious human rights violations in a timely manner.

In 2010, violent demonstrations and civil unrest resulted in a significant number of deaths and injuries as a result of alleged violations of human rights by law enforcement agencies. In October 2014, the SCA expressed concern that despite the serious nature of these violations, it took NHRCT three years to complete investigations and publish its report into the alleged human rights violations that occurred in 2010.

From July 2013 to May 2014, further demonstrations also resulted in a significant number of deaths and injuries. While acknowledging that the NHRCT has been operating in difficult circumstances, the SCA notes that the NHRCT completed and released its investigation report in November 2015.

The SCA reiterates its concern that the NHRCT has not been addressing human rights violations in a timely manner.

The SCA notes that in the situation of a coup d'état or a state of emergency, NHRIs are expected to conduct themselves with a heightened level of vigilance and independence, and to promote and ensure respect for human rights, democratic principles and the strengthening of the rule of law in all circumstances and without exception. Their actions may include monitoring, documenting, issuing public statements and releasing regular and detailed reports on human rights violations through the media in a timely manner. Furthermore, an NHRI should also undertake rigorous and systematic follow up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those whose rights have been

violated. These actions, in particular the release of public reports, serve to combat impunity for human rights violations.

The SCA refers to Paris Principles A.3 and as well as to its General Observations 1.6. 'Recommendations by NHRIs', and 2.6 'NHRIs during the situation of a coup d'état or a state of emergency'.

#### **4. Independence and neutrality**

During its October 2014 session, the Chairperson confirmed that staff members of the NHRCT were displaying publicly their political affiliations whilst undertaking official functions.

The SCA welcomes the report of the NHRCT that the Chairperson has directed that staff should not publicly display their political affiliations whilst undertaking official functions and that such conduct would be contrary to the Code of Conduct.

The SCA is therefore satisfied that this issue of concern has been addressed.

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

#### **5.1 Egypt: National Council for Human Rights (NCHR)**

**Decision:** The SCA decides **to defer** consideration of the review of the NCHR to its second session of 2016.

The SCA first considered the re-accreditation of the NCHR in October 2011. At that time it deferred the application for one year so that the NCHR's re-accreditation could be undertaken following the enactment of proposed amendments to the enabling law to address compliance with the Paris Principles. The SCA made the following recommendation:

*"The SCA commends the NCHR for the manner in which it has been undertaking its duties following the change of government earlier this year. In particular it notes:*

- the decision of the members to resign en-masse in order to facilitate the reconstitution of the NCHR by the new interim government,*
- that following their resignation, members continued to undertake their duties pending the reconstitution of the new NCHR;*
- the on-going actions of the reconstituted NCHR in continuing to monitor the human rights situation in Egypt; and*
- its on-going documentation of allegations of human rights violations that occurred in the lead up to and following the popular uprising and subsequent change of government. Furthermore, the SCA notes that these activities have been undertaken in very volatile circumstances, made more difficult by the loss of the NCHR's premises through fire. The SCA also notes that the NCHR has advised the Government to enact amendments to its enabling legislation. This advice accompanied their resignation earlier in the year and it is expected that amendments are likely to be considered in 2012. It is for this reason that the Sub-Committee recommends deferral for one year so that the NCHR's re-accreditation can be undertaken following the enactment of amendments to the enabling law.*

*In the interim, the SCA encourages the NCHR to continue to advocate for relevant changes to the enabling legislation in order to ensure compliance with the Paris Principles. In particular, the Sub-Committee draws the attention of the NCHR to the following issues:*

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

*The existing legislation does not provide a clear, transparent and participatory selection process that promotes the independence of, and public confidence in, the senior leadership of the NCHR. It encourages the NCHR to support amendments to the selection process to:*

- publicise vacancies*
- maximise the number of potential candidates from a wide range of societal groups;*
- promote broad consultation and/or participation in the application, screening and selection process; and*
- ensure pluralism in the composition of the Council and the staff.*

*The SCA draws the attention of the NCHR to General Observation 2.2 'Selection and appointment of the governing body'.*

### **2. Term of office of members**

*The enabling law provides that a Commissioner shall be appointed for a term of 3 years. An appropriate minimum term of appointment is crucial in promoting the independence of the member and the NCHR, and to ensure the continuity of its programs and services. The SCA is of the view that an appointment for a period of three years is the minimum that would be sufficient to achieve these aims. It encourages the NCHR to consider advocating for amendments to the enabling law to provide for a longer term of between three and seven years with the option to renew once.*

### **3. Security of tenure of members**

*Members of the governing body of the NCHR should be provided with immunity from legal prosecution for actions undertaken in good faith in the context of their employment. In addition, grounds for the dismissal of members of the governing body should be clearly defined and decisions undertaken by a regularly constituted court, tribunal or other bodies as appropriate.*

*The SCA encourages the NCHR to advocate for the inclusion of amendments to provide for: limited immunity of members; appropriately defined grounds for dismissal; and an independent and objective dismissal process. It draws the NCHR's attention to General Observation 2.9 on Guarantees of Tenure.*

### **4. Access to places of detention and confinement**

*The SCA notes that limitations on the NCHR's ability to visit and access places of detention without prior notice may hamper the fulfilment of its human rights monitoring and protection obligations. The SCA encourages the amendment of legislation to permit the NCHR to make unannounced visits to all public and private places of voluntary and involuntary detention and confinement.*

### **5. Mandate**

*The SCA notes the mandate of the NCHR encompassed in Article 3 of the enabling law. The SCA encourages the NCHR to advocate to maintain a broad mandate to promote and protect all human rights, and for the enactment of additional amendments that provide it with the necessary powers to fulfil its mandated functions".*

In November 2012, the SCA reviewed the NCHR a second time and decided to defer the NCHR until its first session of 2013 and made the following recommendation:

*“ . . . The SCA encourages the NCHR to continue to advocate for the enactment of the amendments that are compliant with the international standards contained in the Paris Principles and elaborated in the ICC General Observations, noting in particular the requirements in Paris Principles B.1 – B.3, which require independence from government.*

*The SCA again refers the NCHR to issues raised in its report of October 2011. These specifically addressed concerns about the selection and appointment process, the duration of appointment of members, security of tenure, appropriately defining the grounds and process for dismissal of members, access to places of detention and confinement and a broader mandate to promote and protect human rights.*

*The SCA also highlights the following comments on the proposed amendments that were before it:*

*- Proposed Article 2 states that the NHCR shall not comprise more than 5 members of political parties whether members of the People’s Assembly or the Shura Council. The criteria for the selection of candidates should focus on applicants having appropriate skills, qualification and experience in the promotion and protection of human rights. Membership of a political party is not, in itself, a relevant criteria for the selection of members to the governing body on an NHRI. In addition, in order to ensure both the actual and perceived independence of the NCHR, which is a fundamental requirement in the Paris Principles, neither members of parliament, nor members of political parties, should be appointed as members of the governing board nor should they have the right to vote. Finally, in determining the overall composition of the NHCR, the appointment process should also highlight that the Parliamentary Committee of Human Rights, ensure fair gender representation in each of the proposed categories; and*

*- The NHRC may refer alleged human violations committed by public officials to the relevant public authority. The reference of such matters to the relevant public authorities should not preclude the capacity of the NHRC to conduct its own independent inquiry. The SCA encourages the NCHR to continue its activities in a manner which reflects the independence, in law as well as in practice, required under the Paris Principles and despite the challenging context in the country, especially as to the investigation of human rights violations”.*

The SCA reviewed the NCHR for a third time in May 2013, at which time it decided to again defer consideration of the re-accreditation of the NCHR. At this time is noted that *“Despite the challenging context in which the NCHR is functioning, the SCA encourages it to continue its activities in a manner which reflects its independence, in law and in practice, as required by Paris Principles B.1 and B.3. This pertains especially to the investigation of alleged human rights violations, particularly torture, forced disappearances and violence”.*

The SCA discussed the re-accreditation of the NCHR for a fourth time during its current session. It again acknowledges the specific circumstances in which the NCHR has been functioning, and its continuous efforts trying to amend its law, after the revolution of 2011. It recognizes that amendments proposed in June 2013 were not adopted as a result of the dissolution of the People’s Assembly in June 2012 and of the Shura Council in June 2013.

The SCA notes that the current Parliamentary elections are expected to be completed by 2 December 2015 and that a new Parliament be convened in the second half of December 2015.

It encourages the NCHR to engage with the new Parliament to advocate for the adoption of proposed amendments to its law that comply with the Paris Principles, noting the issues raised in previous reviews.

The SCA encourages the NCHR to remain vigilant in speaking out on human rights issues in Egypt in a balanced, unbiased, objective and impartial way in order to demonstrate its independence and concern for the promotion and protection of human rights for all persons in Egypt. This includes issues related to freedom of expression and the independence of the judiciary.

The SCA will consider the re-accreditation of the NCHR at its second session in 2016.