

**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, 18-22 November 2013

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

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

5. Pluralism of staff

The SCA highlights the importance of ensuring that the staff is representative of the diverse society in which the institution operates. A diverse staff facilitates the NHRI's appreciation of, and capacity to engage on all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRI for all citizens. The CFR is encouraged to develop policies and procedures to ensure that its staff is broadly representative of the society in which it operates. The SCA refers to General Observation 1.7 on 'Ensuring Pluralism of the National Human Rights Institution', particularly subsection (d).

6. Limitations due to national security

Whilst recognising that the scope of the mandate of a National Human Rights Institution may be restricted for national security reasons, General Observation 2.7 notes that this limitation should not be unreasonably or arbitrarily applied and should only be exercised under due process. The SCA recommends that Section 23 of the CFR law be interpreted in such a way as to ensure that the CFR can carry out effective investigations into the relevant bodies.

The SCA encourages the CFR to seek advice and assistance from the European Network of NHRIs and OHCHR.

2.4 Oman: Oman National Human Rights Commission (ONHRC)

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

The SCA welcomes the application for accreditation lodged by the ONHRC. It notes with appreciation the work it undertakes in promoting and protecting human rights in Oman.

However, the SCA has noted a number of concerns regarding the compliance of the ONHRC's Royal Decree¹ with relevant international standards. The SCA encourages the ONHRC to advocate for amendments to the Royal Decree to promote compliance with the Paris Principles. The amendments should address a range of issues including the following:

1. Government representatives on NHRIs

The Royal Decree provides for the appointment of 14 commissioners out of which 2 are members of parliament and 6 are government officials. All have voting rights, and together are in the majority on the governing body.

The Sub-Committee notes that the Paris Principles require a National Human Rights Institution to be independent of government in its composition and operation. It must be

¹ The SCA understands that in Oman a Royal Decree is equivalent to legislation.

constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights situation in the country.

While it is important for an NHRI to maintain effective working relationships, and where relevant, consult with government, for the reasons outlined above, government officials should not be represented on an NHRI's governing body. For the same reason, members of parliament should not be members of, nor participate in the decision making organs of an NHRI. Their presence 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 refers to Paris Principle B.1, B.3 and C(c), and to General Observation 1.9 on 'Government representatives on National Human Rights Institutions'.

2. Mandate

The Royal Decree does not provide the ONHRC with a clear mandate and appropriate powers to promote and protect human rights in the areas specifically highlighted by the Paris Principles.

All National Human Rights Institutions should be legislatively mandated with specific functions to both promote and protect human rights. The 'promotion' functions are defined in General Observation 1.2 as those that seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. 'Protection' functions are understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling.

The SCA is of the view that a National Institution's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights that includes all rights set out in international, regional and domestic instruments.

The SCA encourages the ONHRC to advocate for amendments to the Royal Decree to provide it with the powers necessary to fulfil a broad promotion mandate. It is acknowledged that such changes may have staffing and resource implications for the NHRI.

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

3. Selection and appointment

Article 2 of the Royal Decree on the National Human Rights Commission stipulates that appointments are made by the Sultan. Vacancies for the position of Commissioner are not advertised publicly and the application and selection process is not transparent.

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

The SCA encourages the ONHRC to advocate for the formalization of the selection process in the Royal Decree and for its subsequent application in practice. This should include requirements to:

- publicize vacancies broadly;
- maximize the number of potential candidates from a wide range of societal groups;
- promote broad consultation and / or participation in the application, screening and selection process;
- assess applicants on the basis of pre-determined, objective and publicly available criteria; and
- select members to serve in their own individual capacity rather than on behalf of the organization they represent.

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

4. Immunity

There are no provisions in the Royal Decree to provide members of the ONHRC with functional immunity for actions undertaken and decisions made in good faith in the performance of their official functions.

It is strongly recommended that provisions be included in national law to protect legal liability of members of the National Human Rights Institution's decision-making body for the actions undertaken and decisions made in good faith in their official capacity. Such functional immunity reinforces the independence of a National Institution, promotes the security of tenure of its decision-making body, and its ability to engage in critical analysis and commentary on human rights issues. It is acknowledged that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances it may be necessary to lift immunity. However, the 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.

The SCA refers to its General Observation 2.3 on 'Guarantee of functional immunity'.

5. Tenure of members

The Royal Decree is silent about removal of commissioners or grounds thereof. Article 3 of the Royal Decree provides that ONHRC members shall serve for a renewable three-year period.

The SCA encourages that the grounds for dismissal be clearly defined in the Decree. Where appropriate, the Decree should specify that the application of the ground must be supported by a decision of an independent body with appropriate jurisdiction. Dismissal should not be allowed based solely on the discretion of the appointing authorities. This is essential to ensure the security of tenure of the members of the governing body and the independence of, and public confidence in, the senior leadership of a national human rights institution.

The SCA refers the ONHRC to its General Observation 2.1 on 'Guarantee of tenure for Members of National Human Rights Institution decision-making body'.

6. Interaction with international human rights system

The SCA notes that the ONHRC has had limited engagement with the international human rights system.

The SCA emphasizes the importance of NHRI engagement with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and the UPR), and the Treaty Bodies, in a manner that reflects the principle of independence. Depending on the ONHRC's assessment of domestic priorities and resources, this may include submitting independent reports and providing input into these processes and following up at the national level to the recommendations originating from the international human rights system.

The SCA refers to Paris Principle A.3 and its General Observation 1.4 on 'Interaction with the International Human Rights System'.

7. Encouraging ratification or accession to international human rights instruments

The Royal Decree does not provide the ONHRC with a specific mandate to encourage ratification and implementation of international human rights standards.

The SCA encourages the ONHRC to advocate for the entrenchment of this function in the Royal Decree of the Commission to ensure effective protection of human rights and refers to Paris Principle A.3 (b) and General Observation 1.3 on 'Encouraging ratification or accession to international human rights instruments'.

8. Annual report

The SCA takes note that the Annual Report is submitted to the Sultan through the Parliament (State Council), which has the authority to edit the report.

The SCA emphasizes that annual and thematic reports serve to highlight key human rights concerns in a country and provide a means by which an NHRI can make recommendations, and monitor respect for human rights. Furthermore, annual and thematic reports provide a public account, and therefore public scrutiny, of the effectiveness of an NHRI. Accordingly, the SCA is of the view that ONHRC should have the authority to publish and submit its reports and recommendations directly to the Parliament, the Sultan and to any other competent body.

The content of annual and thematic reports prepared by the NHRI should not be subject to control and edit by the government or parliament.

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

9. Adequate funding

The SCA notes that the ONHRC's budget has been increased in the past two years.

It notes that NHRI must be adequately funded in order to function effectively and independently. It notes that the Paris Principles require the State to provide sufficient funding to allow the ONHRC to undertake the range of functions specified in the Royal Decree. Provision of adequate funding by the State should, as 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;
- e) the allocation of a sufficient amount of resources for mandated activities. Where the National Institution 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.

In return for the provision of public funds, and in order to maintain public confidence, an NHRI should comply with appropriate domestic regulations on financial management and accountability, including independent annual auditing and the public release of financial reports. Financial management and auditing requirements should be the same as those applicable to other independent agencies of the State and importantly should not impact on the independent exercise of the NHRIs mandate.

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

10. Conflicts of Interest

The Royal Decree 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 in decisions where these arise.

The SCA encourages the ONHRC to actively address the issues raised above and to seek assistance and advice from the OHCHR and Asia Pacific Forum of NHRIs.

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

3.1 Afghanistan : Afghanistan Independent Human Rights Commission (AIHRC)

Recommendation: The SCA recommends that consideration of the re-accreditation of the AIHRC be **deferred** to its second session of 2014.

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

The SCA commends the AIHRC for the recent inquiries and reports, which detail human rights violations in times of conflict, and human rights violations experienced by women and girls. In documenting such violations, the AIHRC's actions help to address impunity for past violations and promote a culture that is receptive to human rights.