

**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, 27-31 October 2014

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

3. Accessibility

The SCA notes that several of the CFR’s publications and links on its website are available in English only, including the amended version of its enabling law.

The SCA encourages the CFR to address these issues as soon as possible and to ensure all relevant information about its practices and procedures is easily accessible, and in relevant languages.

4. Encouraging ratification or accession to international instruments

In accordance with article 2(2) of its enabling law, the CFR may make proposals for the amendment or making of laws affecting fundamental rights and / or the expression of consent to be bound by an international treaty.

The SCA acknowledges the CFR’s view that, as its Constitution is derived from the European Charter of Fundamental Rights, it does not often encounter the need for ratification of or accession to international instruments. The SCA also acknowledges the CFR’s past efforts to carry out this activity.

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

The CFR is encouraged to monitor developments in international human rights law, promote state participation in advocacy for and the drafting of international human rights instruments and take a strategic approach in recommending ratification of 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’.

2.3 Libya: National Council for Civil Liberties and Human Rights (NCCLHR)

Recommendation: It is recommended that the NCCLHR be accredited with **B status**.

The SCA welcomes the establishment of the NCCLHR. It commends the NCCLHR for its continuing efforts to promote and protect human rights despite the volatile political and security situation in which it operates. It notes with concern attempts by militias and armed groups to threaten and intimidate the staff of the NCCLHR.

The SCA applauds the NCCLHR for submitting a parallel report for consideration during the upcoming UPR of Libya. It also welcomes its engagement with the Network of African NHRIs and with the Arab Network for NHRIs.

The SCA notes with appreciation that the NCCLHR is advocating for its entrenchment as a Constitutional human rights body and for subsequent changes to its current enabling law. The SCA encourages the NCCLHR to continue its efforts to address fundamental

deficiencies in its enabling law that limit its full compliance with the Paris Principles as outlined below.

The SCA notes:

1. Selection and appointment

Article 2 of Law No. 5/2011 (the Law) provides that the President, Vice President and Board are appointed by a decision of the National Transitional Council (NTC). The NTC was dissolved in 2012 and replaced by the General National Congress.

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

- require the advertisement of vacancies for Commissioners;
- establish clear and uniform criteria upon which all nominating 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 of the NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of a NHRI.

The SCA encourages the NCCLHR to advocate for the formalization of such a process in relevant laws, regulations or binding administrative guidelines, and for its subsequent application in practice, including 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

In accordance with Article 2 of the Law, four of the members of the Board must be women and two must be under the age of 35. The Law is otherwise silent on the requirement for pluralistic composition of the Board.

The SCA notes that pluralism refers to the broader representation of national society, for example with respect to gender balance, representation of persons with disabilities and of national and ethnic minorities. A diverse decision-making body and staff body facilitates a 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 SCA encourages the NCCLHR to advocate for provisions in its enabling law to ensure that its Board and staff complement is representative of the diverse segments of society.

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

3. Guarantee of tenure

The Law is silent on the grounds for dismissal of Board members as well as the procedure by which such dismissal would be undertaken.

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

The SCA encourages the NCCLHR to advocate for the formalization of a dismissal process that includes the following elements:

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

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

4. Immunity

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

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 NCCLHR to advocate for the inclusion of express provisions in its enabling law 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'.

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, a NHRI. Members should be required to disclose conflicts of interest and to avoid participation on decisions where these arise.

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

6. Recommendations by NHRIs

The SCA notes that, to date, the NCCLHR has had limited success in having the Legislature and the Executive respond to its requests and recommendations. The SCA commends the NCCLHR for continuing to produce reports and recommendations in spite of the limited cooperation it has received to date.

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 NCCLHR to continue its work in this regard.

The SCA refers to its General Observation 1.6 on 'Recommendations made by NHRIs'.

7. Reports

The Law is silent on the procedure by which the reports of the NCCLHR are to be provided to the appropriate authorities.

The SCA considers it important that the enabling laws of an NHRI establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by Parliament. The SCA considers it preferable that an NHRI has the explicit power to submit reports directly to parliament rather than through the government.

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

8. Interaction with the international human rights system

Article 3(8) of the Law provides that the NCCLHR will participate “within the Libyan delegation, and in meetings of the regional and international concerned in protection of the General Freedoms and Human Right”.

The SCA recognizes that an NHRI may have a role to play in assisting the State in meeting its reporting obligations before international bodies. However, the SCA emphasizes the need for NHRIs to participate in these bodies in a manner independent of the government.

The SCA encourages the NCCLHR to conduct its engagement with the international human rights system independently of government. It further encourages the NCCLHR to advocate for an amendment to the enabling law to clearly provide for independent participation.

9. Financial autonomy

The NCCLHR notes in its annual report that it “is concerned about its independence due to the constant attempts by the Executive Authority to interfere in its financial performance by imposing the political controller’s policy of the Financial Controllers Department of the Ministry of Finance, in clear violation of the law of its inception in addition to being contrary to international customs and traditions in force relating to the establishment of national human rights institutions as well as the Paris Principles which represent the basic rules and the minimum guarantees to achieve independence”.

The SCA notes that the classification of a NHRI as an independent State institution has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting.

Where a State has developed uniform rules to ensure that State agencies are properly accountable for their use of public funds, the application of such rules or regulations on a NHRI is not considered inappropriate provided they do not compromise the NHRI’s ability to perform its role independently and effectively.

The administrative requirements imposed on a NHRI must be clearly defined and should be no more onerous than those applicable to other State agencies.

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

10. Adequate funding

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

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

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-

- located with government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
 - c) remuneration of members of the decision-making body (where appropriate);
 - d) the establishment of 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 encourages the NCCLHR to advocate for the allocation of an appropriate level of funding to effectively carry out its mandate.

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

The SCA encourages the NCCLHR to seek assistance and advice from the OHCHR and engage with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

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 the AIHRC be re-accredited with **A status**.

The SCA acknowledges that the AIHRC 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 the AIHRC response to SCA recommendations made in November 2013, including its successful advocacy for a Presidential Decree establishing a merit-based selection and appointment process for Commissioners, and increased funding from the government.

The SCA encourages the AIHRC to continue its vigilance in monitoring, promoting and protecting human rights in Afghanistan, and its pursuit of improvements to the structure and staffing of the Commission.

The SCA notes:

1. Selection and appointment

The SCA notes the adoption on 13 September 2014 of a Presidential Decree that further elaborates the process for the selection of the AIHRC Chairperson and 8 Commissioners. The decree requires:

- the establishment of a pluralist selection committee to undertake a competency-based review of all applicants;