

CONFIDENTIAL LEGAL ADVICE ON THE DRAFT LAW OF THE COMMISSION FOR HUMAN RIGHTS AND EQUAL TREATMENT (CHRET) OF THE NETHERLANDS

I. BACKGROUND

This legal advice has been prepared on a confidential basis by the National Institutions and Regional Mechanisms Section (NIRMS) of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in collaboration with the Irish Human Rights Commission, acting on behalf of the European Group of National Human Rights Institutions (hereinafter referred as “the European Group”).

Since 1999, the Equal Treatment Commission (ETC) has been a “B” status member (not fully in compliance with the Paris Principles) of the International Coordinating Committee of National Human Rights Institutions (ICC). The ICC Sub-Committee of Accreditation (SCA) undertook the revision of the ETC in 2004 and more recently in March 2010, when the Sub-Committee recommended the ETC would maintain its “B” status, due to - *inter alia*- its “lack of independence ... from the Ministry of Justice” as well as its “mandate ... limited to issues regarding issues of discrimination and equality”.

During the March 2010 revision, the Sub-Committee recognized the efforts currently undertaken to establish a National Human Rights Institution (NHRI) in the Netherlands based on the Paris Principles. Likewise, the SCA recommended the ETC seeks the advice and assistance from OHCHR and the European Group in its effort to ensure that the draft enabling legislation for such an institution is in full compliance with the Paris Principles.¹ Ms. Laurien J. L. Koster, President of the ETC, has formally requested such advice in a letter dated April 29, 2010.

II. ANALYSIS CRITERIA

a) The Paris Principles

This advice is based on the “*United Nations Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights*” (known as the Paris Principles) which six key criteria are: (1) independence, guaranteed by statute or constitution; (2) autonomy from Government; (3) pluralism, including in membership; (4) a broad mandate based on universal human rights standards; (5) adequate powers of investigation; and (6) adequate resources.²

b) The SCA General Observations

This advice is also based on lessons learned stemming from the practice of NHRIs and the General Observations developed by the ICC Sub-Committee on Accreditation.³

¹ See Report and Recommendations of the Session of the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions, Geneva, 29 March – 1 April 2010, pages 8 and 9.

² The Paris Principles were approved by the UN General Assembly in Resolution 48/134 of 20 December 1993. (See Annex I)

³ See the General Observations attached as Annex II.

The General Observations are interpretive tools of the Paris Principles that can be used to provide further tailored advice on specific aspects of the Paris Principles and the crucial value of clear provisions on:

- a clear and broad mandate;
- a sound constitutional and legislative foundation;
- adequate resources;
- representation of all sectors of society;
- non-judicial remedies and effective case-handling proceedings;
- effective linkages with all stakeholders and civil society;
- transparent and participatory process in the establishment and functioning of a NHRI;
- demonstrated independence;
- the need for effective privileges and immunities of staff and members;
- the need to ensure physical, social, cultural and linguistic accessibility.

c) The SCA Recommendations

This comment takes into account the recommendations made by the Sub-Committee on Accreditation to the ETC, as described in the table below:

Table 1. SCA Recommendations to the ETC

The Netherlands: ETC
<p>SCA 2004 Session Recommendation: B (no change) With follow-up</p> <p>The Netherlands Equal Opportunity Commission was granted status B accreditation in 1999, due to its narrow equal treatment mandate and the absence of supporting documentation. In 2004, the Commission applied for Accreditation status A, submitting its accreditation grid, enabling legislation, annual report and budget and other supporting documents. In these documents, the Commission indicates concerns over its lack of autonomy from the Ministry of Justice. Furthermore, we note the indication of various potential changes in its national environment, such as the ongoing discussion with the Government on the establishment of an institution with a broad human rights mandate, keeping in mind that each country can only have one fully accredited national institution. In light of these considerations, the Sub-Committee believes the Commission is not in full compliance with the Paris Principles. The Committee recommends that the ICC maintains the status B accreditation, and that the Commission submit a progress report on these issues in 2005. It is further recommended that the ICC Chairperson correspond with the Commission with a view to providing more detailed information on these considerations and steps that need be taken to ensure that the Commission is in compliance with the Paris Principles.</p>
<p>SCA March 2010 Session</p> <p>Recommendation: The SCA recommends that the Equal Treatment Commission (ETC) be</p>

accredited with **B status**.

The SCA commends the pledge made by The Netherlands before the Human Rights Council regarding the establishment of an NHRI based on the Paris Principles. In this respect, the SCA recognizes the efforts currently undertaken to establish such an institution, by merging the ETC with a proposed broad-mandate institution. The SCA commends the ongoing efforts of the ETC to ensure that the enabling legislation will be in full compliance with the Paris Principles, and encourages it to seek advice and assistance from OHCHR and the regional coordinating committee (European Coordinating Committee) in this endeavour.

The SCA:

- Expresses concern regarding the lack of independence of the ETC from the Ministry of Justice with respect to sections 16.3 and 17.2 of its founding law, which leave the appointment, promotion and dismissal of the Centre's members and staff mainly in the hands of the Ministry of Justice, also the entity in charge of authorizing and allocating the institution's budget. The SCA refers to General Observations 2.2 "Selection and appointment of the governing body" and 2.9 "Guarantee of tenure for members of governing bodies."
- Notes that the ETC's mandate is limited to issues regarding issues of discrimination and equality only and therefore the SCA recommends it be broadened in line with the Paris Principles and General Observation 1.2 "Human rights mandate".
- Recommends that the ETC be vested with the legislative competence to freely address public opinion, raise public awareness on human rights issues and carry out education and training programs.

The SCA encourages the ETC to interact effectively and independently with the International Human Rights System, specifically with UN Human Rights Treaty Bodies, Special Procedures Mandate Holders and Human Rights Council, including the UPR, and provide information independently of the Government and later ensure follow up action to recommendations resulting from that system, pursuant to General Observation 1.4 "Interaction with the International Human Rights System".

The SCA encourages the proposed joint ETC-NHRI to apply for ICC accreditation status following its establishment.

III. COMMENTS ON THE DRAFT LEGISLATION

OHCHR and the European Group of NHRIs commend the efforts currently undertaken to merge the ETC into a new Dutch NHRI in line with the Paris Principles. Such an institution, properly constituted and resourced, will be an important, positive addition to the national human rights protection system in The Netherlands.

It is commendable that the current draft law is the result of an open and inclusive process, which included the participation of a diversity of actors, including civil society organizations working in the field of human rights.

A. Issues of Concern in the current text

1. Human Rights mandate

OHCHR and the European Group of NHRIs commend the fact that this draft law broadens the mandate of the institution to cover the promotion and protection of human rights; notably by making explicit reference to the Paris Principles and to European human rights standards, as well as by granting the institution with powers to promote and protect human rights. In this regard, article 1.2, states that the CHRET will “independently protect human rights, in particular the right to equal treatment...” and articles 3 and 4 spell out a number of human rights-related duties.

Notwithstanding the clear expansion of the institution’s mandate *vis a vis* the 1994 Equal Treatment Act, a further elaboration in the law about the broader human rights functions of the institution is recommended in line with General Observation 1.2. that calls upon a mandate with “specific functions” to both protect and promote human rights.

In this regard, Article 3 of the ETHRC (on the Tasks of the Commission) could be further elaborated as to include key specific elements of the institution’s tasks. See table below.

Table 2. Comments on Article 3 of the draft law

Article 3	Comments	Paris Principles	General Observations
“b. to report and make recommendations on the protection of human rights”	It is recommended to clarify: -To whom the report and recommendations are to be addressed? -Are they going to be publicized? –What will be the periodicity of such recommendations? – What about reporting and recommending regarding the <u>promotion</u> of human rights”? – Which topics are likely to be covered by these recommendations? (i.e. revision of legal texts; individual/collective situations of human rights violations) - How will the NHRI follow-up those recommendations? (discussions with the government ministries or parliamentary bodies)	A. 3.a	1.6 Recommendations by NHRIs 6.7 NHRI annual report
“c. To issue advice as referred to in Article 4”	It is recommended to clarify: -What would be the difference between the recommendations and advice?	A. 3.a	1.6 Recommendations by NHRIs
“d. To provide information on human rights”	It is recommended to clarify: - To whom this information is to be provided? (to any person who may request it; to the public in general, to Government officials?) –How frequently is that information going to be provided? – By which means this information is to be provided?	A 3a iv) g) C. 3	

<p>“e. To promote education and awareness with respect to human rights”</p>	<p>-It is recommended to look at similar provisions in the laws of the Irish NHRI (see table 3, article 8 e), the NHRI of Northern Ireland (see table 4, article 69 6) a-b) and 9); and the NHRI of Australia (see table 5, article 11, g and h)</p>	<p>A 3a iv) f) and g)</p>	
<p>“f. To cooperate with social organisations and with national, European and other international institutions”</p>	<p>-The wording in this article is too general. It is advisable to make clear that the institutions with which the NHRI will cooperate are those working in the field of human rights. Something that is not clear from the text.</p> <p>- Regarding cooperation with “social organisations” it could be emphasized that the NHRI will cooperate with “civil society organizations working for the promotion and protection of human rights and related-areas” (such as combating all forms of racial discrimination). It would be recommended that civil society organizations are recognised as having a role in key institutional aspects (See Paris Principles B 1).</p> <p>-Regarding cooperation with “national institutions”, it is useful to mention key national institutions the NHRI will be cooperating with (without precluding cooperation with any other institution beyond those mentioned). For instance, this article could mention the Ombudsmen Institutions and the bodies dealing with human rights issues within the executive branch. A specific provision on cooperation with the judiciary and legislative branch is also strongly recommended.</p> <p>- With respect to “European institutions,” it is useful to make clear that –among the list of European institutions the NHRI will be cooperating with- it will cooperate with those that hold a human rights mandate, such as the European Court of Human Rights and the European Fundamental Rights Agency.</p> <p>- Regarding cooperation with “international institutions”, it is advisable to include a specific provision on cooperation with the United Nations Human Rights System. Such a provision could encompass how this cooperation will be carried out as to ensure a systematic and regular engagement with the UN Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the UN Human Rights Treaty Bodies.</p>	<p>A 3d) B 1</p>	<p>1.5 Cooperation with other human rights institutions</p> <p>1.4 Interaction with the International human rights system</p>

	-It is recommended to include a provision on the allocation of specific resources –both, human and financial- for regional and international engagement.		
“g. To promote the ratification and implementation of conventions in the field of human rights”	<p>The following functions can be added: -to ensure harmonization of national legislation, regulations and practices with the regional and international human rights instruments to which the State is a party; - to promote the removal of reservations made by the State to human rights treaties.</p> <p>This section is closely related to that of the NHRI cooperation with the UN human rights system, particularly with the treaty bodies.</p> <p>It is recommended to also include the international human rights standards (i.e. Declarations, Resolutions of the UN bodies, etc). While there is no need to seek the ratification of these instruments; they do need to be properly disseminated and implemented at the national level.</p>	A 3 b) and c)	1.3 Encouraging ratification or accession to international human rights instruments

The following examples are illustrative of legal provisions that clarify how the NHRIs carry out their specific responsibilities.

Table 3. Enabling Law of the NHRI of Ireland⁴ - Provisions on the NHRI mandate and functions

<p>Functions of Commission - Section 8</p> <p>The functions of the Commission shall be-</p> <p>(a) to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights,</p> <p>(b) if requested by a Minister of the Government, to examine any legislative proposal and report its views on any implications of such proposal for human rights, (c) to consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it sees fit,</p> <p>(d) either of its own volition or on being requested to do so by the Government, to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights in the State,</p> <p>(e) to promote understanding and awareness of the importance of human rights in the State and, for those purposes, to undertake, sponsor or commission, or provide financial or other assistance for, research and educational activities,</p> <p>(f) to conduct enquiries under and in accordance with <i>section 9</i>,</p> <p>(g) to prepare and publish, in such manner as it thinks fit, reports on any research undertaken, sponsored, commissioned or assisted by it under <i>paragraph (e)</i> or in relation to enquiries referred to in <i>paragraph (f)</i>,</p>
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⁴ Human Rights Commission Act, 2000.

- (h) to apply to the High Court or the Supreme Court for liberty to appear before the High Court or the Supreme Court, as the case may be, as *amicus curiae* in proceedings before that court that involve or are concerned with the human rights of any person and to appear as such an *amicus curiae* on foot of such liberty being granted (which liberty each of the said courts is hereby empowered to grant in its absolute discretion),
- (i) to take whatever action is necessary to establish and participate in the joint committee of representatives referred to in paragraph 10 of the section entitled "Rights, Safeguards and Equality of Opportunity" of the Agreement Reached in the Multi-Party Talks,
- (j) to provide assistance of the kind referred to in *section 10* to persons under and in accordance with that section,
- (k) to institute proceedings under and in accordance with *section 11*.

Table 4. Enabling Law of the NHRI of Northern Ireland⁵ – Provisions on the NHRI mandate and functions

<p>The Commission's functions</p> <p>69. - (1) The Commission shall keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights.</p> <p>(2) The Commission shall, before the end of the period of two years beginning with the commencement of this section, make to the Secretary of State such recommendations as it thinks fit for improving-</p> <p>(a) its effectiveness;</p> <p>(b) the adequacy and effectiveness of the functions conferred on it by this Part; and</p> <p>(c) the adequacy and effectiveness of the provisions of this Part relating to it.</p> <p>(3) The Commission shall advise the Secretary of State and the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights-</p> <p>(a) as soon as reasonably practicable after receipt of a general or specific request for advice; and</p> <p>(b) on such other occasions as the Commission thinks appropriate.</p> <p>(4) The Commission shall advise the Assembly whether a Bill is compatible with human rights-</p> <p>(a) as soon as reasonably practicable after receipt of a request for advice; and</p> <p>(b) on such other occasions as the Commission thinks appropriate.</p> <p>(5) The Commission may-</p> <p>(a) give assistance to individuals in accordance with section 70; and</p> <p>(b) bring proceedings involving law or practice relating to the protection of human rights.</p> <p>(6) The Commission shall promote understanding and awareness of the importance of human rights in Northern Ireland; and for this purpose it may undertake, commission or provide financial or other assistance for-</p> <p>(a) research; and</p> <p>(b) educational activities.</p>
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⁵ Northern Ireland Act, 1998

(7) The Secretary of State shall request the Commission to provide advice of the kind referred to in paragraph 4 of the Human Rights section of the Belfast Agreement.

(8) For the purpose of exercising its functions under this section the Commission may conduct such investigations as it considers necessary or expedient.

(9) The Commission may decide to publish its advice and the outcome of its research and investigations.

(10) The Commission shall do all that it can to ensure the establishment of the committee referred to in paragraph 10 of that section of that Agreement.

(11) In this section-

(a) a reference to the Assembly includes a reference to a committee of the Assembly;

(b) "human rights" includes the Convention rights.

Table 5. Enabling Law of the NHRI of Australia⁶ – Provisions on the NHRI mandate and functions

11 Functions of Commission

(1) The functions of the Commission are:

(a) such functions as are conferred on the Commission by the *Age Discrimination Act 2004*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* or any other enactment;

(aa) to inquire into, and attempt to conciliate, complaints of unlawful discrimination;

(ab) to deal with complaints lodged under Part IIC;

(b) such functions as are to be performed by the Commission pursuant to an arrangement in force under section 16;

(c) such functions as are expressed to be conferred on the Commission by any State enactment, being functions in relation to which the Minister has made a declaration under section 18;

(d) the functions conferred on the Commission by section 31;

(e) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments, as the case may be, are, or would be, inconsistent with or contrary to any human right, and to report to the Minister the results of any such examination;

(f) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and:

(i) where the Commission considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and

(ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement—to report to the Minister in relation to the inquiry;

(g) to promote an understanding and acceptance, and the public discussion, of human rights in Australia;

(h) to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting human rights, and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;

(j) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth,

⁶ Human Rights and Equal Opportunity Commission Act 1986

on matters relating to human rights;

(k) on its own initiative or when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument;

(m) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;

(n) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of acts or practices of a kind in respect of which the Commission has a function under paragraph (f);

(o) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve human rights issues; and

(p) to do anything incidental or conducive to the performance of any of the preceding functions

....

2. Independence from the Government

Independence is a fundamental pillar of the Paris Principles. These Principles emphasise the linkage between independence and institutional aspects as diverse as the institution's composition, the member's appointment, the guarantees to ensure pluralism, the institution's infrastructure, the funding and mandate. and the NHRI's role in contributing to the procedures for the examination of the reports which States are required to submit to UN bodies and Committees. (See Paris Principles A 3 d; and B).

Therefore, the Paris Principles regard independence as an intrinsic element of all the powers and functions of an NHRI. Thus, if the founding law regards the independence of an NHRI as one isolated concept it may result in limitations on the independence of the NHRI as required by the Paris Principles.

Beyond article 1.2 of the CHRET draft law, which states that the institution will "independently protect human rights", there is no further reference in the text as to how such an independent mandate is to be undertaken. It is uncertain whether this single mention of the independent nature of the NHRI in the enabling law will in practice lead to an independent institution.

- **It is recommended that the law clearly states that the NHRI is independent in all its activities, its composition, and the exercise of its powers and functions.**

In this regard, it is advisable to look at the enabling legislation of the NHRI of Portugal, which provides for a comprehensive approach towards the notion of independence. A remarkable characteristic of such institution is the way it articulates independence with a number of other aspects, such as the NHRI functions; nomination and tenure of the NHRI members; and NHRI financial, administrative and judicial autonomy.

Table 6. Enabling Law of the NHRI of Portugal⁷ – Provisions on Independence

<p>CHAPTER I General principles</p> <p>Article 1 Functions</p> <p>1 - Under the terms of the Constitution, the Ombudsman is an organ of the State elected by the Parliament whose main functions shall be to defend and promote the rights, freedoms, safeguards and legitimate interests of the citizens, and secure through informal means that the exercise of public powers shall abide by justice and the law.</p> <p>2 - <u>In exercising his functions, the Ombudsman shall enjoy total independence.</u></p> <p>CHAPTER II Statute</p> <p>Article 3 Nomination</p> <p>1 - The Ombudsman shall be appointed by the Parliament, by a two thirds' majority of the Members present where that majority is larger than the absolute majority of the Members entitled to vote.</p> <p>2 - The appointment may only fall upon a citizen who fulfils the conditions required to be elected a Member of the Parliament and who <u>enjoys a well-established reputation for integrity and independence.</u></p> <p>3 - The Ombudsman shall take up functions before the Speaker of the Parliament</p> <p>Article 4 Autonomy</p> <p>The Ombudsman may also act on his own initiative; his activities <u>shall be carried out independently of judicial administrative or remedies provided for in the Constitution and in law.</u></p> <p>Article 7 Independent and irremovable nature of the office</p> <p>Once appointed, <u>the Ombudsman shall be independent and irremovable</u>; his functions shall not be discontinued before the end of his term of office, save where otherwise provided in this law.</p> <p>Article 16 Deputy Ombudsmen</p> <p>1 - The Ombudsman shall have the power to appoint and to dismiss two deputies; he shall use as criteria when selecting his deputies, <u>a well-established reputation for integrity and independence</u> and adequate university qualifications.</p> <p>CHAPTER V Office of the Ombudsman</p> <p>Article 40 Aim, autonomy and seat</p> <p>1 - The purpose of the Office of the Ombudsman shall be to provide the technical and</p>
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⁷ Law n. 9/91, of 9 April 1991 (modified by Law n. 30/96, of 14 August 1996)

administrative support that is necessary for the Ombudsman to carry out the functions provided in this law.

2 - The Office of the Ombudsman shall enjoy administrative and financial autonomy.

3 - The Office of the Ombudsman shall have a seat of its own.

3. Selection and appointment process

Closely related to the issue of independence is the selection and appointment process of the NHRI governing body. In this regard, the SCA has pointed out the critical importance of such a process “in ensuring the pluralism and independence of the National Institution”.⁸

This issue has been raised by the SCA in connection to the Dutch NHRI since 2004. In 2010 it reiterated its concern “regarding the lack of independence of the ETC from the Ministry of Justice with respect to sections 16.3 and 17.2 of its founding law which leave the appointment, promotion and dismissal of the Centre’s members and staff mainly in the hands of the Ministry of Justice ...”

A number of articles in chapter 3 of the draft law deal with the appointment and selection of members and staff of the NHRI. As drafted, these provisions still allow for a selection process strongly driven by the Minister of Justice. This situation could undermine the independence of the institution.

- **It is recommended to review Chapter 3, particularly articles 10.3, 11.2 and 12.1, of the current draft law in light of SCA General Observation 2.2 “Selection and appointment of governing body”, 2.4 “Staffing by secondment” and 2.9 “Guarantee of tenure for members of governing bodies”**

Table 7. Enabling law of the NHRI of Scotland – Provisions on the selection and appointment process and independence⁹

SCHEDULE 1

Membership

1 (1) The Commission consists of the following members—

(a) a member appointed to chair the Commission, and

(b) not more than 4 other members.

(2) The member appointed to chair the Commission is to be an individual appointed by Her Majesty on the nomination of the Scottish Parliament.

⁸ See SCA General Observation 2.2.

⁹ Scottish Commission for Human Rights Act 2006.

(3) The other members are to be individuals appointed by the Parliamentary corporation.

Status

2 The Commission—

- (a) is not a servant or agent of the Crown, and
- (b) has no status, immunity or privilege of the Crown.

Independence

3 (1) The Commission, in the exercise of its functions, is not to be subject to the direction or control of—

- (a) any member of the Parliament,
- (b) any member of the Scottish Executive, or
- (c) the Parliamentary corporation.

(2) Sub-paragraph (1) is subject to section 15(3), paragraphs 8(2)(b), 10, 11 and 15(1) of this schedule and paragraph 5 of schedule 2.

3.1 Establishment of an independent selection committee

The appointment process is one of the most important ways to guarantee the NHRI's independence. It should be noted that in order to be successful, the establishment of a NHRI needs to enjoy public support and credibility. This can be achieved when the members of the institution are appointed as the result of a consultative, inclusive and transparent process, informing and involving relevant constituencies in the country (especially civil society).

- **It is recommended that the law provide for an open, objective and transparent selection and appointment process, which should involve broad consultations, public advertisement of vacancies and scrutinising the candidates in a transparent and objective manner.**

In practice, this might mean that an independent selection committee is established to interview and shortlist candidates. This could be stipulated in the form of a transparent interview process. The selection committee, for instance, could receive nominations directly through public vacancies or as well as from various civil society organizations and professional groups. The process could include: public advertisement of vacancies, short-listing of candidates for interview, the making of a recommendation through national Parliaments; and consideration and appointment by the majority of the Parliament.

Table 8. The Advisory Selection Committee – NHRI of Luxembourg

Following the recommendations of the SCA, the Government of Luxembourg has recently adopted a piece of regulation in order to set up a Advisory Committee regarding the selection of members of the NHRI of Luxembourg, with a view to ensure its pluralistic composition.

This Committee is composed by the presidents of the following organisations: the National Council of Women, Amnesty International -Luxembourg, Caritas - Luxembourg and Action by Christians for the Abolition of Torture – Luxembourg and the director of the Red Cross of Luxembourg.¹⁰

Table 9. Enabling Law of the NHRI of France¹¹ – Provisions on the selection and appointment of members

Art. 4. – Dans le souci d’assurer le pluralisme des convictions et opinions, la commission est composée, avec voix délibérative :

- a) De trente personnes nommément désignées parmi les membres des principales organisations non gouvernementales oeuvrant dans le domaine des droits de l’homme, du droit international humanitaire ou de l’action humanitaire et des principales confédérations syndicales, sur proposition de celles-ci ;
- b) De trente personnes choisies, en raison de leur compétence reconnue dans le domaine des droits de l’homme, y compris des personnes siégeant en qualité d’experts indépendants dans les instances internationales des droits de l’homme ;
- c) D’un député et d’un sénateur ;
- d) Du Médiateur de la République ;
- e) D’un membre du Conseil économique et social

4. Cooperation with other constituencies, especially NGOs

The draft law does not mention how the Commission will interact or cooperate with civil society organisations.

The Paris Principles insist on the need for NHRIs to develop relations with non-governmental organizations devoted to promoting and protecting human rights, including to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

- **Provisions for greater cooperation and involvement of civil society are recommended. In line with the Paris Principles, this can significantly contribute to maximising the impact and effectiveness of the CHRET’s activity.**

¹⁰ Regulations of October 28, 2009 to the Enabling Law of the NHRI of Luxembourg.

¹¹ Décret no 2007-1137 du 26 juillet 2007 relatif à la composition et au fonctionnement de la Commission nationale consultative des droits de l’homme.

Table 10. Enabling law of the NHRI of Albania – Provision on cooperation with non-governmental organizations¹²

<p style="text-align: center;">Article 30 Co-operation with Non-Governmental Organizations</p> <p style="text-align: center;">The People’s Advocate shall perform his duties in close cooperation with non-governmental organizations and shall regularly request their opinion on the human rights situation.</p> <p style="text-align: center;">The People’s Advocate, in cooperation with non-governmental organizations, shall organize, at least annually, a national activity on the situation of human rights and freedoms in the Republic of Albania.</p>

5. Reporting

From Article 16, it is not clear whether the annual report will address situations with regard to human rights in general, and on more specific matters.

These reports should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern. (See SCA General Observations 1.6 “Recommendations by NHRIs” and 6.7 “NHRI annual report”, as well as Paris Principles A, 3 a iii).

- **It is recommended to make clear that the annual reports will address the national situation with regard to human rights.**

From Article 18 it is not clear whether the NHRIs reports need to be agreed with the Ministers prior to their publication.

In this regard, according the Paris Principles (C 3), the NHRI should address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.

- **It is recommended to make clear that the Commission will prepare and publish its report in an independent manner.**

¹² Law No.8454, dated 04.02.1999, amended by law no. 8600, dated 10.04.2000

Table 11. Enabling law of the NHRI of Ireland – Provisions on reporting

<p>Functions of Commission.</p> <p>8.—The functions of the Commission shall be—</p> <p>...</p> <p>(e) to promote understanding and awareness of the importance of human rights in the State and, for those purposes, to undertake, sponsor or commission, or provide financial or other assistance for, research and educational activities,</p> <p>(f) to conduct enquiries under and in accordance with <i>section 9</i>,</p> <p>(g) to prepare and publish, in such manner as it thinks fit, reports on any research undertaken, sponsored, commissioned or assisted by it under <i>paragraph (e)</i> or in relation to enquiries referred to in <i>paragraph (f)</i>,</p> <p>Annual Report</p> <p>23.—The Commission shall not later than the 31st day of March in each year prepare and submit to the Minister a report on its activities in the immediately preceding year and the Minister shall, as soon as may be, cause copies of the report to be laid before each House of the Oireachtas.</p> <p>Provision for review</p> <p>24.—The Commission shall, before the expiration of the period of two years from the establishment day, make to the Government a report containing such recommendations as it thinks fit for improving—</p> <p>(a) the effectiveness of the Commission,</p> <p>(b) the effectiveness of any of the functions conferred on it by this Act, particularly having regard to any developments in the field of human rights that have occurred in the said period of two years (whether within or outside the State).</p>

Table 12. Enabling law of the NHRI of Scotland – Provisions on reporting¹³

<p><i>Reports</i></p> <p>15 Annual report</p> <p>(1) The Commission must lay before the Parliament annually a general report on the exercise of its functions during the year to which the report relates (“the reporting year”).</p> <p>(2) The report must, in particular, include—</p> <p>(a) a summary of any inquiries conducted by the Commission during the reporting year, and</p> <p>(b) a summary of any other activities undertaken by it during that year in pursuance of its general duty.</p> <p>(3) In preparing a report under this section, the Commission must comply with any directions given by the Parliamentary corporation as to the form and content of the report.</p> <p>16 Publication of reports</p> <p>(1) The Commission must arrange for the publication of reports laid by it before the Parliament.</p> <p>(2) The Commission may publish other reports on matters relevant to its general duty.</p>
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¹³ Scottish Commission for Human Rights Act 2006.

6. Financial Autonomy

From the text of the draft law, it is not clear whether the institution will enjoy financial autonomy. As explained in section III, A) number 2, the funding issue is strongly related to the independence of an institution. An adequate and autonomously allocated funding will ensure the institutions' independence from the Government (See Paris Principles B 2).

The institution's financial autonomy ensures its ability to independently determine its priorities and activities. To ensure financial autonomy, public funds should be provided through a mechanisms that is not under direct Government control.

It is recommended to make clear that the institution will enjoy financial autonomy and that it will no be subject to financial control which might affect its independence. In practice, it can be translated into an independent budget line over which the NHRI has absolute management and control.

Table 13. Enabling law of the NHRI of Albania – Provision on Financial Autonomy

Article 36 Budget

The financial resources for the People's Advocate shall be paid by the state budget, which shall have a separate chapter [line item], for the People's Advocate.

The draft budget shall be proposed by the People's Advocate to the Standing Committee for Economic, Financial and Privatization Affairs [of the Assembly], which shall submit it to the Assembly for approval pursuant to Statute nr.8379, dated 29.7.1998, "On the drafting and implementation of the state budget".

The People's Advocate shall prepare every year his accounts pursuant to Statute no 8379, dated 29.7.1998, "On the drafting and implementation of the state budget". The financial records of the Office of the People's Advocate shall be subject to review by the High State Control.

Article 37 Acceptable donations

The People's Advocate may benefit from donations in money or in kind. The donations may not include conditions that might affect the independence, impartiality or constitutionality of the People's Advocate activity. The donations shall be declared and registered in a registry held for this purpose by the Office of the People's Advocate. The People's Advocate shall provide, by the end of the year, the High State Control and the Standing Committee for Economic, Financial and Privatization Affairs [of the Assembly] with a copy of the registry each. The registry shall include the type of donation, quantity, date [of donation], person and mode of delivery of donation. The registry shall also include the name and signature of the donor.

Geneva, Switzerland, June 2010

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