

**Topic : Human Rights Ombudsman Institutions as GANHRI Accredited National Human Rights Institutions (NHRIs): Benefits, Challenges and Limitations**

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### Introduction

National level human rights ombudsman (HRO) institutions are one of the main types of national human rights institutions (NHRIs), along with national human rights commissions and institutes.<sup>1</sup> National HRO institutions are prevalent in Central and Eastern Europe and Latin America. In addition, they are increasing in number in Western Europe, especially as some classic-based ombudsman institutions have been transformed into HRO institutions.<sup>2</sup> Today, many of the EU member states' national ombudsman institutions are HROs.<sup>3</sup> HRO institutions are also found in some countries in Africa, Asia and the Caribbean. There are over 50 national HRO institutions located around the world.<sup>4</sup>

Over the past twenty-five years, the international human rights system has placed continually increasing importance on the establishment by states of independent NHRIs to protect and promote human rights at the domestic level, implement the state's international human rights law obligations and act as a bridge between the international and domestic human rights systems. The Global Alliance of National Human Rights Institutions (GANHRI), formerly the International Coordinating Committee of NHRIs (ICC), is the global network of NHRIs.<sup>5</sup> UN human right treaties, international soft law instruments, GANHRI's full membership and network benefits, regional NHRI networks and NGOs exert pressure on states to create or strengthen NHRIs. In particular, the UN Paris Principles are the authoritative minimum international standards for NHRIs.<sup>6</sup> This has strongly contributed to, or even caused, the establishment of more national HRO institutions, including the transformation of a growing number of classic-based ombuds into HRO institutions.<sup>7</sup>

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<sup>1</sup> Linda C Reif, "The Shifting Boundaries of NHRI Definition in the International System" ["NHRI Definition"] in Ryan Goodman and Thomas Pegram, eds, *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge: Cambridge University Press, 2012) 52 at 53 [*Assessing NHRIs*].

<sup>2</sup> Linda C Reif, "Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman" (2011) 31 *Boston College Third World Law Journal* 269 ["Human Rights Ombudsman"]. HROs in Western Europe are found in Portugal, Spain, Andorra, France, Luxembourg, Austria, Greece, Cyprus, Finland, Norway, Sweden and Denmark.

<sup>3</sup> EU member states with HRO institutions: Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. Classic-based ombudsman institutions are found in Belgium, Ireland, Malta and the UK. The Netherlands Ombudsman has a children's ombudsman attached to it. Germany and Italy do not have national ombuds institutions.

<sup>4</sup> Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Martinus Nijhoff, 2004) 11 (comprising about one-half of all national ombudsman institutions plus e.g. subsequent transformation of classic ombudsman institutions into HROs). There are also subnational HRO institutions e.g. in Argentina, Spain and the State of Victoria, Australia.

<sup>5</sup> GANHRI: <<http://nhri.ohchr.org>>. The Office of the UN High Commissioner for Human Rights (OHCHR) provides support.

<sup>6</sup> Principles Relating to the Status of National Institutions (Paris Principles), adopted by UN GA Res 48/134, UN Doc A/RES/48/134 [1993]. See e.g. Katerina Linos and Tom Pegram, "The Language of Compromise in International Agreements" (2016) 70 *Int'l Organization* 587; Gauthier de Beco and Rachel Murray, *A Commentary on the Paris Principles on National Human Rights Institutions* (Cambridge: Cambridge University Press, 2015).

<sup>7</sup> See e.g. Linda C. Reif, "The UN Guiding Principles on Business and Human Rights and Networked Governance: Improving the Role of National Human Rights Ombudsman Institutions as NHRI Remedies" ["The UN Guiding Principles and HRO Institutions"] (in submission).

This paper addresses the role of GANHRI in interpreting and applying the UN Paris Principles, especially in relation to national HRO institutions. It also discusses the benefits, challenges and limitations of GANHRI's accreditation system and network membership as applied to national HRO institutions in particular and ombuds institutions in general.

### Types of Ombudsman Institutions

Full-service public sector ombudsman institutions at national and sub-national levels of government can be classified broadly as classic-based or HRO institutions. In addition, there are thematic ("specialized") ombuds institutions at both levels of governance, including thematic human rights ombuds institutions.<sup>8</sup>

### Classic-Based Ombudsman Institutions

The classic-based ombudsman focuses mainly on the traditional ombudsman roles of investigation of maladministration by public sector authorities, defined broadly to include breach of law and/or wider extra-legal standards of just, proper or right conduct, making remedial recommendations and reporting. Today, many classic-based ombudsman institutions have multiple mandates with additional roles such as freedom of information, privacy protection, child protection, anti-corruption and health service monitoring. These mandates may give them jurisdiction over parts of the private sector. However, classic-based ombuds do not have an express human rights mandate although their work sometimes involves human rights protection in practice, including the application of international and domestic human rights obligations of their state.<sup>9</sup>

### HRO Institutions

In contrast, HRO institutions have explicit human rights protection and, increasingly, also human right promotion mandates in their legal framework. They may also have additional other mandates, in particular the classic maladministration fighting role, and e.g. environmental protection. Further, some HRO institutions have been given human rights preventive and monitoring roles required by UN human rights treaties and soft law instruments (that call for the use of Paris Principles compliant institutions) and EU law.<sup>10</sup> For example, a considerable number of national HRO institutions, especially in Europe, have been designated as National Preventive Mechanisms (NPMs) under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).<sup>11</sup> Also, the UN Convention on the Rights of Persons with Disabilities (CRPD) obligates CRPD states to protect disability rights, and Article 33 (2) requires them to designate independent domestic frameworks to promote, protect and monitor the implementation of the CRPD (also called national monitoring mechanisms (NMMs)).<sup>12</sup> National HRO institutions in some states have been included in CRPD NMMs. On this basis, I consider that those classic ombudsman institutions that have been designated as OPCAT NPMs and/or CRPD NMMs have been transformed into HRO institutions, e.g. New Zealand's Ombudsman.<sup>13</sup>

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<sup>8</sup> Thematic ombuds institutions without explicit human rights mandates include defence force, police and prisons ombuds institutions.

<sup>9</sup> Reif, *The Ombudsman, Good Governance and the International Human Rights System*, *supra* note 4.

<sup>10</sup> For the EU see equality bodies required by EU anti-discrimination directives and designation of some HRO institutions as the equality body for their state see Bruno de Witte, "New Institutions for Improving Equality in Europe: Legal Transfer, National Bricolage and European Governance" (2012) 60 *American J of Comparative Law* 49; Equinet: <<http://www.equineteurope.org>>. See also Commentary to UN Guiding Principles on Business and Human Rights (GPs) calling for use of NHRIs fully compliant with the Paris Principles to implement the GPs, Reif, "The UN Guiding Principles and HRO Institutions", *supra* note 7.

<sup>11</sup> HRO institutions designated as OPCAT NPMs alone or as one of multiple entities, are those in Costa Rica, Ecuador, Nicaragua, Peru, Uruguay, New Zealand, Albania, Armenia, Austria, Azerbaijan, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Greece, Hungary, Kazakhstan, Lithuania, Luxembourg, Macedonia, Moldova, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Sweden and Ukraine, Association for the Prevention of Torture, OPCAT Database, <[www.apt.ch](http://www.apt.ch)> (August 10, 2016); Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), 2375 UNTS 237 (in force June 22, 2006), art 18.

<sup>12</sup> Convention on the Rights of Persons with Disabilities (CRPD), UN GA Res 61/106, UNGAOR, 61st Sess, UN Doc A/RES/61/106 (in force 2008), e.g. arts 4(b),(e), 5, 8, 16.

<sup>13</sup> *Supra* note 11. The New Zealand Ombudsman has been designated as one of three bodies comprising New Zealand's NPM and is also part of the country's CRPD NMM. See New Zealand Ombudsman: <<http://www.ombudsman.parliament.nz/what-we-do>>; Linda C. Reif, "Ombudsman Institutions and Article 33(2) of the United Nations Convention on the Rights of Persons with Disabilities" (2014) 65 *University of New Brunswick Law J* 213 at 230.

Some national HRO institutions only have traditional ombudsman powers of investigation (on receipt of a public complaint and own-motion), recommendation and reporting, while many others have additional powers such as bringing actions before constitutional courts and other tribunals, prosecutions, and inspections and monitoring of facilities where persons are involuntarily detained e.g. prisons, detention centres and mental health care facilities, which may be mandated by their UN human rights treaty obligations.<sup>14</sup> Also, as described further below, a growing number of national HRO institutions also have human rights promotion functions.

### Thematic or Specialized Human Rights Ombudsman Institutions

Thematic human rights ombudsman institutions are also found at national and subnational governance levels. They focus on one vulnerable population or thematic area. They include children's ombudsman and equality ombudsman institutions.<sup>15</sup> While great importance is placed on the independence of full service public sector ombudsman institutions via their links to the legislative branch, some thematic human rights ombuds institutions are linked to the executive. Further, some do not have complaints-handling powers and are oriented more to human rights protection.

### The Paris Principles, the Global Alliance of National Human Rights Institutions (GANHRI) and National HRO Institutions

The consensus of the international human rights community - comprising states, international organizations and civil society actors - is that only NHRIs in full compliance with the UN Paris Principles should be used by states to protect and promote human rights at the domestic level. Further, as I will explain below, only national human rights commissions/institutes and national HRO institutions can be classified as NHRIs and are capable of achieving full compliance with the Paris Principles.

GANHRI has interpreted the Paris Principles through its General Observations (GOs) and applies both in an accreditation process.<sup>16</sup> GANHRI accredits NHRIs as having A-status (denoting full compliance with the Paris Principles) or B-status (only partial Paris Principles compliance). The C-designation denotes "no status". GANHRI accreditation serves as a gatekeeper mechanism that permits only A-status NHRIs to participate fully in the UN human rights system and, since UN General Assembly Resolution 70/163 of December 2015, increasingly in other UN procedures and processes.<sup>17</sup> The GANHRI accreditation system also has reputational consequences in addition to the negative connotations linked with exclusion from UN processes and procedures. It engages forms of state and NHRI peer evaluation. This peer pressure sometimes plays out more strongly intra-regionally rather than globally. Associated with this, regional NHRI networks also increase the pressure for full compliance with the Paris Principles.<sup>18</sup> GANHRI and regional networks condition full membership, participation and network benefits on A-status accreditation.<sup>19</sup>

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<sup>14</sup> Reif, "Human Rights Ombudsman", *supra* note 2 at 302-307.

<sup>15</sup> See e.g. Linda C. Reif, "Independent Children's Rights Institutions" in Martin Ruck, Michele Peterson-Badali and Michael Freeman, eds., *Handbook of Children's Rights: Global and Multidisciplinary Perspectives* (in press, Taylor & Francis, 2017) 398; Linda C. Reif, "The Future of Thematic Children's Rights Institutions in a National Human Rights Institution World: The Paris Principles and the UN Committee on the Rights of the Child" [2015] 37 *Houston J of Int'l Law* 433 ["The Future of Thematic Children's Rights Institutions in a National Human Rights Institution World"]; de Witte, *supra* note 10.

<sup>16</sup> Revised in 2013, see GANHRI: <<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>>; *Report and Recommendations of the Session of the Sub-Committee on Accreditation* (Geneva: November 18-22, 2013), Annex III [GANHRI GOs]. General Observations and accreditation recommendations are issued by the GANHRI Sub-committee on Accreditation (SCA), but all reference in this paper are to GANHRI. See generally de Beco and Murray, *supra* note 6.

<sup>17</sup> UN GA Res 70/163 (December 17, 2015), UN Doc A/RES/70/163 (February 10, 2016) para 16 (encourages all relevant UN mechanisms and processes to enhance participation of NHRIs compliant with the Paris Principles); UN Human Rights Council, "NGOs and NHRIs": <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx>>; Chris Sidoti, "National Human Rights Institutions and the International Human Rights System", in *Assessing NHRIs*, *supra* note 1 at 93.

<sup>18</sup> Network of African NHRIs (NANHRI), Network of NHRIs of the Americas, Asia-Pacific Forum (APF) and European Network of NHRIs (ENNHRI).

<sup>19</sup> For more detail see Reif, "The UN Guiding Principles and HRO Institutions," *supra* note 7.

Most regional organizations have also adopted full compliance with the Paris Principles as an evaluative standard.<sup>20</sup> Thus, GANHRI A-status accreditation, denoting full compliance with the Paris Principles, has multiple benefits while there are increasingly negative perceptions attached to B-status, C-status or unaccredited NHRIs.

As at August 2016, 43 HRO institutions had been accredited by GANHRI, of which 33 have A-status accreditation and 10 have B-status.<sup>21</sup> Fifteen A-status HROs are found in Europe, thirteen are located in the Americas (mainly in Latin America), three are in Africa and two are located in the Asia Pacific region.<sup>22</sup> Of the HRO institutions with B-status, one is in the Americas, three are in Central Asia and six are in Europe.<sup>23</sup> Three classic ombudsman institutions without express human rights mandates have C-designations, denoting no status.<sup>24</sup>

Some national HRO institutions have not applied for accreditation and / or cannot get accredited. Pursuant to GANHRI GO 6.6, it is almost impossible for more than one NHRI in a state to be accredited, with the result that some national HRO institutions are not eligible for accreditation due to the earlier accreditation of its country's human rights commission or other national institution.<sup>25</sup> For this reason, national HRO institutions such as Greece's Ombudsman, France's Defender of Rights, Slovakia's Public Defender and Sweden's Parliamentary Ombudsman currently cannot get GANHRI accreditation.<sup>26</sup>

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<sup>20</sup> Reif, "NHRI Definition", *supra* note 1 at 58-61. More recently, Europe has increasingly adopted this approach, e.g. work of EU Fundamental Rights Agency (FRA) and the Council of Europe (COE) Parliamentary Assembly Res 1959, "Strengthening the institution of ombudsman in Europe" (2013) art 4.5 [Assembly calls on COE member states with ombudsman institutions to consider seeking their accreditation at the ICC [now GANHRI] in light of the Paris Principles].

<sup>21</sup> GANHRI, *Chart of the Status of National Institutions Accredited by the Global Alliance of National Human Rights Institutions* (August 5, 2016) [GANHRI Accreditation Chart]. In addition, Paraguay's HRO resigned in 2014 and is suspended.

<sup>22</sup> *Ibid.* Europe: Albania People's Advocate, Armenia Human Rights Defender, Azerbaijan Human Rights Commissioner, Bosnia and Herzegovina Institute of Human Rights Ombudsmen, Croatia Ombudsman, Finland NHRI (Parliamentary Ombudsman and Human Rights Centre), Georgia Public Defender's Office, Hungary Commissioner for Fundamental Rights, Latvia Ombudsman, Poland Human Rights Defender, Portugal *Provedor de Justiça*, Russian Federation Commissioner for Human Rights, Serbia Protector of Citizens, Spain *Defensoría del Pueblo*, Ukraine Parliament Commissioner for Human Rights; Americas: Argentina *Defensoría del Pueblo*, Bolivia *Defensoría del Pueblo*, Colombia *Defensoría del Pueblo*, Costa Rica *Defensoría de los Habitantes*, Ecuador *Defensoría del Pueblo*, El Salvador Procuraduría para la Defensa de los Derechos Humanos, Guatemala Procuraduría de los Derechos Humanos, Haiti Office for the Protection of Citizens, Nicaragua Procuraduría para la Defensa de los Derechos Humanos, Panama *Defensoría del Pueblo*, Peru *Defensoría del Pueblo*, Uruguay National Human Rights Institution and Defensor del Pueblo, Venezuela *Defensoría del Pueblo*; Africa: Ghana Commission on Human Rights and Administrative Justice, Namibia Office of the Ombudsman, Tanzania Commission for Human Rights and Good Governance; Asia-Pacific: Samoa Office of the Ombudsman and Timor-Leste Provedoria for Human Rights and Justice.

<sup>23</sup> *Ibid.* Americas: Honduras National Commissioner for Human Rights; Central Asia: Kazakhstan Commissioner for Human Rights, Kyrgyzstan Ombudsman, Tajikistan Human Rights Ombudsman; Europe: Austria Ombudsman Board,

<sup>24</sup> *Ibid.* Ombudsman institutions in Antigua and Barbuda, Barbados and Puerto Rico.

Bulgaria Ombudsman, Cyprus Commissioner for Administration and Human Rights, Macedonia Ombudsman, Montenegro Protector of Human Rights and Freedoms, Slovenia Human Rights Ombudsman.

<sup>25</sup> GANHRI GO 6.6, *supra* note 16: only in exceptional circumstances will more than 1 NHRI in a country be accredited, GANHRI "acknowledges and encourages the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive national human rights institution." While the Paris Principles are silent on whether there can be more than 1 NHRI in a country, arguably they implicitly support only 1 NHRI given the focus on the breadth of a NHRI's mandate. Prior to 2013, the ICC did make an exception for the UK: the human rights commissions in Great Britain, Scotland and Northern Ireland were all given and retain separate A-status accreditations, GANHRI Accreditation Chart, *supra* note 21.

<sup>26</sup> GANHRI Accreditation Chart, *supra* note 21. France's National Consultative Commission on Human Rights has A-status accreditation, Greece's National Commission for Human Rights has A-status, Slovakia's National Centre for Human Rights has B-status and Sweden's Equality Ombudsman (EO) has B-status. Given its limited thematic mandate, based on the current interpretation, Sweden's EO cannot get A-status as it stands.

The Paris Principles are based on an advisory human rights commission template. The independence of a NHRI is essential.<sup>27</sup> A NHRI must also have broad human rights protection and promotion mandates that cover all human rights.<sup>28</sup> The Paris Principles are heavily focused on human rights *promotion* responsibilities. A NHRI must: advise government on ratification and implementation of human rights treaties and domestic law reform to ensure harmonization of domestic law with the state's international human rights obligations; engage in human rights research, education, training and public awareness-raising; recommend new laws, measures and ways to end human violations; and interact with the international and regional human rights systems.<sup>29</sup> GANHRI has underlined this, and states that human rights promotion includes "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."<sup>30</sup>

The human rights *protection* mandate is interpreted widely by the Paris Principles and GANHRI to include responsibilities that seek to prevent and address actual human rights violations, including monitoring, inquiries, own-motion investigations, bringing court actions and use of ADR, but complaints investigation is not required.<sup>31</sup>

Although the Paris Principles do not explicitly refer to private sector jurisdiction, based on Paris Principles language that a NHRI should possess "as broad a mandate as possible", GANHRI GO 1.2 states that NHRI mandates "should...extend to the acts and omissions of both the public and private sectors."<sup>32</sup>

### Exclusion of Classic, Thematic and Subnational Human Rights Ombudsman Institutions

National level HRO institutions can be classified as NHRIs, whether they are accredited or not. From the ombudsman perspective, a disadvantage of the Paris Principles as interpreted by GANHRI is the exclusion of all other ombudsman institutions from the NHRI definition. Classic-based ombudsman, thematic human rights ombudsman and subnational human rights ombudsman institutions are not considered to be NHRIs. Rather, they are classified by the Paris Principles as "other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions)."<sup>33</sup> GANHRI makes this exclusion clear in GO 1.5.<sup>34</sup> Also, the "national" in NHRI is interpreted to mean only a national-level institution and not "domestic" human rights institutions more generally. Consequently, classic ombudsman, subnational human rights ombudsman and thematic human rights ombudsman institutions can never achieve full compliance with the Paris Principles.<sup>35</sup> The few that have applied have either received C-status, i.e. no status (in the case of classic-based ombuds institutions) or B-status (mainly thematic human rights institutions).

National classic-based ombudsman institutions only have a possibility of GANHRI B- or A-status accreditation if (1) they are transformed to the degree that they are given explicit human rights promotion and protection mandates, thereby becoming a HRO/NHRI, and (2) another NHRI in the country has not already received GANHRI accreditation.

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<sup>27</sup> Paris Principles, "Composition and guarantees of independence and pluralism", paras 2-3, *supra* note 6; various GANHRI GOs e.g. 1.1, 1.8-1.10, *supra* note 16.

<sup>28</sup> GANHRI GOs 1.2-1.5, *ibid*; Paris Principles, "A. Competence and responsibilities", para 3, *ibid*.

<sup>29</sup> GANHRI GO 1.2, *ibid*; Paris Principles, "A. Competence and responsibilities", paras 1-2, *ibid*.

<sup>30</sup> GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)* (Geneva: May 9-13, 2016) [GANHRI May 2016 Accreditation Recommendations] at 16.

<sup>31</sup> Paris Principles, "Additional principles concerning the status of commissions with quasi-jurisdictional competence", *supra* note 6 (due to translation error it should be "quasi-judicial" competence); GANHRI GOs 1.2, 2.10, *supra* note 16.

<sup>32</sup> *Ibid*.

<sup>33</sup> Paris Principles, "Methods of operation", *supra* note 6, para (f). "Jurisdictional" is a translation error: it probably should be "juridical" or "judicial".

<sup>34</sup> GANHRI GO 1.5, *supra* note 16: "NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions...."

<sup>35</sup> See also Reif, "NHRI Definition", *supra* note 1; Reif, "The Future of Thematic Children's Rights Institutions in a National Human Rights Institution World", *supra* note 15 at 463-471.

## The Paris Principles, GANHRI and National Human Rights Ombudsman Institutions

There are also challenges for some national HRO institutions in achieving A-status accreditation. As noted earlier, there are still some national HRO institutions with B-status accreditation. A review of GANHRI accreditation and reaccreditation reports indicates the weaknesses of B-status HRO institutions when held up against the Paris Principles as interpreted by GANHRI. The changes to HRO legal frameworks and operating practices necessary to fully comply with the Paris Principles and move from B- to A-status accreditation can be gleaned from these GANHRI recommendations. While GANHRI is not explicit on which issues, or how many problems, determine their decision on an A versus a B ranking, there are some Paris Principles deficiencies that are commonly cited in the decisions to give national HRO institutions B- or A-status.

This paper reviews these deficiencies in the GANHRI (re)accreditation reports involving national HRO institutions from May 2013 to May 2016, based on the 2013 revised GOs.<sup>36</sup> Other less commonly cited deficiencies, such as those pertaining to independence, are not included in the discussion. If a national HRO institution has B-status accreditation or can apply for accreditation, working to remedy these frequently cited issues can improve its chances of an A-status (re)accreditation. Those HRO institutions with only OPCAT NPM and/or CRPD NMM designations that are not barred from accreditation due to the prior accreditation of another NHRI, are likely to receive no more than B-status accreditation unless they have additional human rights promotion and protection mandates.

## Broad Human Rights Promotion Mandate Enshrined in Law

As noted above, the Paris Principles call on NHRIs to have multiple human rights promotion responsibilities. GANHRI commonly calls for NHRIs to have a broad human rights promotion mandate enshrined in legislation. HRO institutions that have a limited formal human rights protection mandate but which engage in human rights promotion in practice are not prevented from receiving A-status accreditation if there are only a small number of other minor deficiencies.<sup>37</sup> If a HRO institution lacks the formal responsibility to engage in some or all of the human rights promotion activities discussed above, GANHRI always makes recommendations to the HRO to advocate for amendments to its governing laws to add a broad range of human rights promotion responsibilities to its mandate.<sup>38</sup> For example, the Cyprus Commissioner for Administration and Human Rights (CAHR) received B-status accreditation in 2015 based on Paris Principles deficiencies which included its human rights promotion mandate. While the CAHR was given a limited human rights promotion power in law and engaged in a “wide range” of these activities in practice, GANHRI took the view that the CAHR “should be legislatively mandated with specific functions to both promote and protect human rights” and encouraged the CAHR “to advocate for appropriate amendments to its enabling law to make its promotional mandate explicit.”<sup>39</sup>

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<sup>36</sup> Information is obtained from GANHRI May 2016 Accreditation Recommendations, *supra* note 30 [Montenegro (B), Samoa (A), Honduras (B), Uruguay (A)]; ICC/GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)* [Geneva: November 16-20, 2015] [ICC/GANHRI November 2015 Accreditation Recommendations] [Cyprus (B)]; ICC/GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)* [Geneva: March 16-20, 2015] [ICC/GANHRI March 2015 Accreditation Recommendations] [Ecuador (A), Serbia (A), Uruguay (deferred), Latvia (A)]; ICC/GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)* [Geneva: October 27-31, 2014] [ICC/GANHRI October 2014 Accreditation Recommendations] [Ukraine (A), Hungary (A), Russia (A), Albania (A), Finland (A)]; ICC/GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)* [Geneva: March 17-21, 2014] [ICC/GANHRI March 2014 Accreditation Recommendations] [Ghana (A)]; ICC/GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)* [Geneva: November 18-22, 2013] [ICC/GANHRI November 2013 Accreditation Recommendations] [Albania (deferred), Hungary (deferred), Russia (deferred), Timor-Leste (A), Haiti (A)]; ICC/GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)* [Geneva: May 13-16, 2013] [ICC/GANHRI May 2013 Accreditation Recommendations] [Croatia (A), Georgia (A), Guatemala (A), Armenia (A)].

<sup>37</sup> E.g. Ecuador HRO, *ibid*.

<sup>38</sup> HROs in Montenegro, Cyprus, Ecuador, Ukraine, Albania, Croatia, Georgia and Hungary, *supra* note 36.

<sup>39</sup> *Supra* note 36 [Cyprus' HRO institution had other deficiencies].

Human rights have been interpreted broadly to cover all human rights, including economic, social and cultural rights as well as civil and political rights.<sup>40</sup> For example, Samoa's A-status HRO does not have an explicit mandate to apply the International Covenant on Economic, Social and Cultural Rights (ICESCR) but it applies economic, social and cultural rights practice, and GANHRI has encouraged it to continue to do so.<sup>41</sup>

The Paris Principles as interpreted by GANHRI call for NHRIs to cooperate and engage with and monitor the UN and regional international human rights systems through a variety of activities and in collaboration with, inter alia, other NHRIs, NGOs and civil society actors.<sup>42</sup> These activities include: the submission of shadow (parallel) reports independently of their state to UN human rights treaty bodies and other similar international bodies and processes; participation in their state's Universal Periodic Review conducted by the UN Human Rights Council; making statements during discussion and debate before these bodies; and monitoring and encouraging the domestic implementation of the recommendations made by UN and regional human rights bodies.<sup>43</sup> However, full participation in UN processes is conditioned on GANHRI A-status accreditation. Nonetheless, if a HRO has B-status or no accreditation it can still submit written reports to UN human rights and other processes, although it may be classified as a civil society actor rather than a NHRI.<sup>44</sup>

GANHRI has encouraged some national HRO institutions to start or continue a practice of interacting with the international human rights system when the HRO does not have an explicit responsibility to do so, and has also called on HRO institutions to lobby their state to add an explicit legislative provision requiring the ombudsman to interact with the international human rights system.<sup>45</sup> Several HRO institutions have been asked to develop and maintain relationships with other domestic human rights institutions and NGOs and other civil society actors.<sup>46</sup>

### **Selection and Appointment Process for the Human Rights Ombudsman**

GANHRI is firm in applying the Paris Principles provisions on the selection and appointment process for the NHRI's leadership.<sup>47</sup> This is applied to national HRO institutions even when the HRO is ultimately elected or appointed by the legislative branch. GANHRI calls for a transparent, clear, broad and participatory selection and appointment process for NHRIs/HRO institutions that is legally binding on the authorities, pluralistic and results in merit-based selection.<sup>48</sup> In particular, the HRO position must be broadly advertised publically in a way that "maximize(s) the number of potential candidates from a wide range of societal groups and educational qualifications", there must clear and uniform criteria to assess the comparative merits of applicants, there must be a process to attain "broad consultation and/or participation in the application, screening, selection and appointment process, and candidates must be assessed according to "pre-determined, objective and publicly-available criteria."<sup>49</sup>

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<sup>40</sup> Paris Principles, "Competence and responsibilities", *supra* note 6 at paras 1-3; GANHRI GO 1.2 "Human rights mandate", *supra* note 16.

<sup>41</sup> *Supra* note 36. Lack of an explicit statutory provision to apply the ICESCR did not prevent the Samoa HRO from receiving A-status.

<sup>42</sup> Paris Principles, "Competence and responsibilities", *supra* note 6 at paras (b)-(e); GANHRI GO 1.4 "Interaction with the international human rights system", *supra* note 16.

<sup>43</sup> GANHRI GO 1.4, *ibid.* E.g. Montenegro HRO, *supra* note 36.

<sup>44</sup> Reif, "The Future of Thematic Children's Rights Institutions in a National Human Rights Institution World", *supra* note 15 at 464-466.

<sup>45</sup> HROs in Russia, Hungary and Albania, *supra* note 36.

<sup>46</sup> HROs in Russia and Timor-Leste, *supra* note 36.

<sup>47</sup> Paris Principles, "Composition and guarantees of independence and pluralism", *supra* note 6 at para 1; GANHRI GO 1.8 "Selection and appointment of the decision-making body of NHRIs", *supra* note 16.

<sup>48</sup> HROs in Montenegro, Honduras, Cyprus, Serbia (covering Protector and his/her Deputies), Hungary, Albania, Ghana, Hungary, Albania, Russia, Georgia and Guatemala, *supra* note 36. The process should be contained in law, regulation or "binding administrative guidelines.

<sup>49</sup> *Ibid.* See also HROs in Russia and Ukraine, *supra* note 36.

### HRO Staff: Pluralism / Diversity and Institutional Independence in Recruitment

The Paris Principles, in applying the commission model, stipulate that the NHRI's membership must represent the pluralism of the national society in which it operates.<sup>50</sup> GANHRI has interpreted this requirement in the case of national HRO institutions with single-member leaders to mean "pluralism through staff that are representative of the diverse segments of society", and stipulates that the HRO should lobby for reform of its governing legislation to require that its staff represent this diversity.<sup>51</sup> GANHRI's view is that this diversity also promotes accessibility of the NHRI/HRO to all persons. As a result, HRO institutions must hire staff at all levels (including any deputy ombuds) that reflect the nation's diversity e.g. on the basis of gender, ethnicity, minority status, indigenous status and disability. Further, in several cases, GANHRI has criticized restrictive eligibility requirements for the HRO leader as being unduly restrictive of diversity.<sup>52</sup>

NHRIs/HROs must have independence in all aspects of hiring their own staff enshrined in their legislation; the government executive and legislative branches cannot be allowed to interfere in this process.<sup>53</sup> However, the NHRI should recruit their staff members through "an open, transparent and merit-based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfill the NHRI's mandate."<sup>54</sup> In particular, the number of secondees from the public service should not exceed 25 per cent of the total staff except in exceptional circumstances and senior level staff should not be secondees at all.<sup>55</sup>

### Adequate Funding of NHRIs / HRO Institutions and Financial Autonomy

Many NHRIs, including national HRO institutions, are not provided with sufficient resources to fulfil all of their mandates effectively. This has become an acute problem as the mandates of NHRIs / HROs have been expanded in recent years. The Paris Principles, as fleshed out by GANHRI, state that NHRIs shall have adequate funding in order to be independent of government and shall not be subject to financial control.<sup>56</sup> GANHRI always addresses this effectiveness factor, calling for more resources when NHRIs are underfunded. Further, GANHRI has stated that adequate funding of the NHRI/HRO "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."<sup>57</sup> Adequate funding is defined to comprise funding of: premises that are accessible to the public, including persons with disabilities; where possible, creation of a permanent regional presence; staff salaries/benefits that are comparable to those working in similar positions in other independent public sector institutions; an effective communications system that includes internet and telephone; and the provision of sufficient resources for all of the NHRI's responsibilities.<sup>58</sup> In particular, when a HRO institution has multiple mandates (e.g. traditional ombudsman, anti-corruption agency) and is subsequently designated as an OPCAT NPM, a CRPD NMM and/or an EU anti-discrimination equality body, GANHRI stipulates that the state must increase the institution's resources to the degree that enables it to fulfil both the existing and new mandate(s) effectively.<sup>59</sup>

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<sup>50</sup> Paris Principles, "Composition and guarantees of independence and pluralism", *supra* note 6 at para 1.

<sup>51</sup> GANHRI GO 1.7 "Ensuring pluralism of the NHRI", *supra* note 16 at para d); HROs in Honduras, Cyprus, Serbia and Guatemala, *supra* note 36.

<sup>52</sup> HROs in Ecuador (requirement that Defensor hold a doctorate) and Ghana (Commissioner and Deputy must be lawyers), *supra* note 36.

<sup>53</sup> Paris Principles, "Composition and guarantees of independence and pluralism", *supra* note 6 at para 2; GANHRI GO 2.4 "Recruitment and retention of NHRI staff", *supra* note 16; HROs in Montenegro, Cyprus, Serbia and Uruguay, *supra* note 36 (including staff structure, skills required and diversity).

<sup>54</sup> Montenegro HRO, *supra* note 36.

<sup>55</sup> Uruguay HRO, *supra* note 36.

<sup>56</sup> Paris Principles, "Composition and guarantees of independence and pluralism", *supra* note 6 at para 2; GANHRI GO 1.10 "Adequate funding", *supra* note 16.

<sup>57</sup> Montenegro HRO, *supra* note 36. See also HROs in Uruguay, Honduras, Cyprus, Latvia, Serbia, Uruguay, Finland, Albania, Ukraine, Ghana, Haiti, Armenia and Croatia, *supra* note 36.

<sup>58</sup> *Ibid.* Also, where there is a decision-making body, the members should be remunerated. See also Croatia HRO, *ibid* (regional offices should be established).

<sup>59</sup> HROs in Montenegro, Cyprus, Ghana and Croatia, *supra* note 36.



The Paris Principles also require that a NHRI not be subject to financial control which may affect its independence.<sup>60</sup> The executive and legislative branches must not interfere in the financial decisions of the NHRI. GANHRI states that financial independence of the NHRI must be preserved through requiring the state budget to contain a separate budget line preserved for the NHRI alone, with the funding regularly released to the NHRI, and the NHRI independently deciding on the allocation of its finances according to its own priorities.<sup>61</sup> Also, the financial accountability rules for NHRIs must be defined clearly and should not be more stringent than the equivalent rules applied to other independent public sector bodies.<sup>62</sup>

### Influence of GANHRI Accreditation Process

GANHRI and its accreditation process are having an effect on the mandates of national ombuds institutions, their transformation into HRO institutions and their accreditation status. Examples from recent years provide supporting evidence.

Finland administratively attached a human rights promotion body (Human Rights Centre and Delegation) to its HRO, the Parliamentary Ombudsman, in 2012 to create its NHRI.<sup>63</sup> Finland's new NHRI received A-status accreditation in 2014.<sup>64</sup> In 2012, in order to strengthen its 2008 A-status accreditation, Croatia's Ombudsman received expanded human rights promotion responsibilities in its legislation.<sup>65</sup> Also in 2012, Haiti's Office for the Protection of Citizens (OPC) lobbied successfully for its legal transformation into a HRO with human rights protection and promotion powers, and it was rewarded with A-status accreditation in 2013.<sup>66</sup> The 2013 legislation changing the powers and structure of Hungary's Commissioner for Fundamental Rights, including successfully addressing GANHRI's concerns about its promotional mandate, resulted in it receiving A-status accreditation in 2014.<sup>67</sup> Samoa's classic Ombudsman was transformed into a HRO institution with explicit human rights protection and promotion powers in 2013, and it received GANHRI A-status accreditation in 2016.<sup>68</sup> Austria's Ombudsman Board was reaccredited with B-status in 2011.<sup>69</sup> In 2012 the institution was given a formal human rights protection and limited promotion mandate in the Austrian Constitution and legislation.<sup>70</sup>

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<sup>60</sup> See Paris Principles, "Composition and guarantees of independence and pluralism", *supra* note 6 at para 2.

<sup>61</sup> GANHRI GO 2.8 "Administrative regulation of NHRIs", *supra* note 16; HROs in Montenegro, Cyprus and Ghana, *supra* note 36.

<sup>62</sup> HROs in Montenegro and Cyprus, *supra* note 36. Financial accountability rules for NHRIs are acceptable if they do not interfere with the NHRI's ability to carry out its mandates independently and effectively, *ibid* at 18.

<sup>63</sup> Finland Parliamentary Ombudsman: <<http://www.oikeusasiamies.fi/Resource.php/ea/english/index.htm>> (Human Rights Centre is functionally independent).

<sup>64</sup> GANHRI Accreditation Chart, *supra* note 21.

<sup>65</sup> Croatia Ombudsman: <<http://www.ombudsman.hr/en/about-us/ombudsman-mandates?limit=3&limitstart=0>>. Croatia retained its A-status in 2013, GANHRI Accreditation Chart, *ibid*.

<sup>66</sup> GANHRI Accreditation Chart, *ibid*. It was initially based on Quebec's classic ombudsman model, the Protecteur du citoyen, Reif, The Ombudsman, Good Governance and the International Human Rights System, *supra* note 4 at 208.

<sup>67</sup> ICC/GANHRI October 2014 Accreditation Recommendations, *supra* note 36 at 9.

<sup>68</sup> GANHRI Accreditation Chart, *supra* note 21; Samoa, Ombudsman Act 2013 (Nu 12).

<sup>69</sup> GANHRI Accreditation Chart, *ibid*.

<sup>70</sup> AOB: <<http://volksanwaltschaft.gv.at/en>>; Austria Constitution [2012] ch VIII; Austria Ombudsman Act e.g. ss 1, 7, 11-18.

### Gauging Overall NHRI Effectiveness: A Limitation of the GANHRI Accreditation Process?

The Paris Principles focus on the legal architecture of a NHRI and other related areas, including resources and the behavior of the executive and legislative branches of government towards the NHRI. However, there are critics of the GANHRI accreditation process who argue that it is not reflective of the actual level of effectiveness of a particular NHRI since it does not delve in depth into other effectiveness factors such as the level of democracy in the country and the character and behavior of the NHRI leadership.<sup>71</sup>

However, in recent years GANHRI's approach has changed to some extent. For example, in 2014, GANHRI recommended the suspension of the accreditation status of Paraguay's Defensoría del Pueblo due its concerns about the HRO's effectiveness in a number of areas.<sup>72</sup> In May 2016, GANHRI recommended that Venezuela's Defensor del Pueblo accreditation be downgraded from A to B based on the overtly politically biased statements made by the Defensora and the institution's failure to act in response to serious domestic human rights issues.<sup>73</sup> This recommendation is being appealed by Venezuela and its HRO. In contrast, in the 2014 to 2015 period, GANHRI praised both Albania's People's Advocate and Serbia's Protector of Citizens for their effectiveness "despite the challenging political environment" in which they operate.<sup>74</sup> Also, Ukraine's Parliament Commissioner for Human Rights was commended for its work during the period of upheaval in Ukraine starting with the Euromaidan protests in late 2013.<sup>75</sup>

These recent developments indicate that GANHRI also scrutinizes the behavior of HRO leadership and the institution, especially when democratic protections in the country are under threat. GANHRI will examine whether a HRO institution and its leadership are politicized and unhelpful to those in need, or whether they try to protect and promote the human rights of all persons, especially those most affected by state conduct, and stand up to the other branches of government who try to hinder the HRO institution's activities. HRO institution conduct that is politicized or partial and failure to act to combat clear human rights violations will be criticized and will negatively impact the accreditation status of the NHRI/HRO institution.

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<sup>71</sup> E.g. Peter Rosenblum, "Tainted Origins and Uncertain Outcomes: Evaluating NHRIs" in *Assessing NHRIs*, *supra* note 1 at 297; de Beco and Murray, *supra* note 6 at 135-147. For various extra-legal effectiveness factors for HRO institutions see Reif, *The Ombudsman, Good Governance and the International Human Rights System*, *supra* note 4 at 397-399, 407-410.

<sup>72</sup> ICC/GANHRI October 2014 Accreditation Recommendations, *supra* note 36 at 26-27 (some connected with the dictatorship). Paraguay resigned, *supra* note 21.

<sup>73</sup> GANHRI May 2016 Accreditation Recommendations, *supra* note 36 at 51-55, based on earlier reviews in e.g. ICC/GANHRI March 2015 Accreditation Recommendations, *supra* note 36 at 24-27. Venezuela had been reaccredited with A-status in May 2013, ICC/GANHRI May 2013 Accreditation Recommendations, *supra* note 36 at 21-23.

<sup>74</sup> ICC/GANHRI October 2014 Accreditation Recommendations, *supra* note 36 at 18 (Albania); ICC/GANHRI March 2015 Accreditation Recommendations, *supra* note 36 at 20 (Serbia).

<sup>75</sup> ICC/GANHRI March 2014 Accreditation Recommendations, *supra* note 36 at 20.