



St Helena  
Government



# St Helena Equality & Human Rights Commission

## FRAMEWORK DOCUMENT

April 2020

## VERSION CONTROL

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# 1. Introduction

## Status of this document

1.1. The Equality & Human Rights Commission for St Helena (EHRC) has drawn up this framework document, in consultation with the St Helena Government (SHG). This document sets out the broad framework within which the EHRC will operate. This document does not convey any legal powers and responsibilities.

1.2. The document will normally be reviewed by the EHRC and SHG every three years. The next document review will take place in 2023.

1.3. The document may, however, be reviewed at any other time. EHRC will manage the provision of amendments, which will be agreed with SHG.

1.4. The document is signed and dated by SHG and the EHRC. Copies of the document and any subsequent amendments should be placed on the EHRC's website.

## 2. Founding legislation and role of the EHRC

### Founding legislation and classification

2.1 The EHRC is a non-departmental public body (NDPB), established under the Commission for Equality and Human Rights Ordinance 2015. Its duties stem from the Constitution of St Helena, Ascension and Tristan da Cunha 2009 and its powers from the Commission for Equality & Human Rights Ordinance 2015.

2.2 The EHRC is to be recognised at the United Nations as operating in compliance with the General Assembly resolution 48/134 (the 'Paris Principles'). The 'Paris Principles' (*Appendix 2*) list requirements to be met by a national human rights institution. This includes having an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence. A national institution must be vested with competence to promote and protect human rights. It should retain as broad a mandate as possible, which must be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, must be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights. In order to ensure a stable mandate for the members of the national institution, without

which there can be no real independence, their appointment must be effected by an official act which establishes the specific duration of the mandate.

## **Role**

2.3 The EHRC is provided for in the Commission for Equality & Human Rights Ordinance 2015 and was formally established on 10<sup>th</sup> December 2015 to promote understanding of the importance of human rights, equality and diversity, to monitor the effectiveness of relevant law and practice and to advise the government what steps need to be taken to fully protect human rights in St Helena.

2.4 As the national human rights institution in St Helena, the Commission has a range of duties and responsibilities including contributing to the monitoring of international human rights treaties in St Helena. The core aspects of its daily operation are fundamental to fulfilling its mission. They are key to its compliance with the Paris Principles and the principles of ethical standards in public life. The EHRC functions include:

- Providing an opinion to the Executive Council about
  - the effectiveness of any relevant enactment;
  - the amendment, repeal, consolidation of any relevant enactment; and
  - the likely effect of a proposed change of law.
- Conducting investigations on systemic human rights issues. To do so, the EHRC may enter places of detention after receiving relevant permissions, and can compel individuals and agencies to give oral testimony or to produce documents as provided by the Commission for Equality & Human Rights Ordinance 2015;
- Promoting understanding and awareness of the importance of human rights in St Helena, and undertaking or supporting research and educational activities;
- Procuring legal advice and initiating strategic legal cases;
- Monitoring the implementation of international human rights treaties;
- Engaging with other Human Rights Institutions.

## **3. Governance and responsibilities**

### **Corporate governance**

#### *Appointments and composition*

3.1 The EHRC Commissioners are appointed by the Governor under Schedule 1 (section 4) of the Commission for Equality & Human Rights Ordinance 2015 on the recommendation of the Judicial Services Committee (JSC).

3.2 The EHRC Chair, Deputy Chair and Commissioners are appointed for a minimum period of not less than 2 years or more than 5 years but may be re-appointed by the Governor following recommendation by the Judicial Service Commission. At least 3 Commissioners constitute a quorum for meetings of the Commission.

3.3 The Chief Executive Officer (CEO), Commissioner *ex officio*, is appointed by the Commission with the approval of the Governor.

3.4 The Commission may appoint other staff with the approval of the Governor.

### **SHG Relationship Responsibilities**

3.5 All interactions between the EHRC and SHG will be guided by the Belgrade principles (*Appendix 3*) which define the relationship between EHRC and SHG.

#### *SCDC Committee/Legislative Council responsibility*

3.6 The Chair of the Social & Community Development Committee (SCDC) will, on behalf of the EHRC, present EHRC's business at formal meetings of the Legislative Council (LegCo). This will include:

- the Strategic Plan and any revisions thereto; and,
- the Annual Report

3.7 The Chair of the SCDC will also:

- ensure that the SCDC Strategic Plan, Annual Report and any other Report compiled by the EHRC and submitted to the SCDC, are reviewed and considered by the SCDC and in doing so, will provide feedback to the EHRC as appropriate.
- arrange for the monthly open meeting agenda to be shared with the EHRC a week in advance. The CEO will inform the Secretary if attendance is necessary on a specific agenda item and give reasons for the same;
- support the policy and resources framework within which the EHRC operate, as agreed by the SCDC ;
- support the EHRC's request for funding to perform the statutory duties of the EHRC, as agreed by the SCDC

#### *SHG Accounting Officer's specific accountabilities and responsibilities*

3.8 The SHG Financial Secretary's responsibilities are set out in the Public Finance Ordinance. The Financial Secretary is accountable to Legislative Council for the issue of any SHG financial support to the EHRC and

administered in accordance with the agreed terms and conditions for this Public Service Provision (*Appendix 1*). The Financial Secretary, through the Medium Term Expenditure Framework (MTEF) process, advises on an appropriate budget for the EHRC in the light of SHG's overall public expenditure priorities and the contribution of the EHRC's strategic aims and objectives to the wider strategy and priorities of SHG.

3.9 Where the EHRC is engaged in activities within its remit to external providers, whether they be public sector or private providers, the Financial Secretary nonetheless retains ultimate accountability for the regularity, propriety and value for money of the application of public money.

#### *Co-operation with the SHG Administration*

3.10 The Chief Secretary will be the primary contact for the EHRC to ensure a clear understanding of the ENRC's and SHG's objectives and methods of working. The Chief Secretary shall advise the EHRC on relevant SHG policy and keep the CEO informed of any central policy developments and proposed legislation that might impact on the EHRC.

### **EHRC responsibilities**

#### *Responsibilities of the EHRC Commission*

3.11 The Commission should ensure that effective systems and arrangements are in place to provide assurance on management, governance and internal control. The Commission shall also:

- establish and take forward the strategic aims and objectives of the EHRC consistent with its overall strategic direction;
- inform the Chair of SCDC of any changes likely to impact on the EHRC's strategic direction, the attainability of its targets or the reputation of the SHG, determining the steps needed to deal with such changes;
- ensure compliance with any statutory or administrative requirements for the use of public funds;
- regularly review financial information about the management of the EHRC, ensuring they are informed in a timely manner about any concerns about the activities of the EHRC; and can assure SHG that appropriate action has been taken on such concerns;
- demonstrate high standards of corporate governance.
- appoint a CEO in accordance with Section 7 of Schedule 1 of the Commission for Equality and Human Rights Ordinance 2015. Job objectives should be linked to those of the EHRC, and remuneration should be consistent with that of similar appointees across SHG, demonstrably provide value for money in the use of public resources and be no more than is necessary to attract, retain and motivate able staff, on a sustainable basis, to deliver public functions. In order to

determine the level of salary for the CEO position, the job profile will be subject to the SHG Job Evaluation and Appeals process; and

- comply with any open government or transparency policies, initiatives and guidance issued by the SHG.

#### *The Chair of Commissioners' personal responsibilities*

3.12 The Chair of Commissioners shall be accountable to the Governor. He or she should ensure that the EHRC's policies and actions are consistent with its statutory functions and remit, comply with SHG's financial management policies and that the EHRC's affairs are conducted with probity. Where appropriate, these policies and actions should be clearly communicated and disseminated throughout the EHRC. In addition, the Chair of Commissioners is responsible for the CEO and in consultation with the CEO has supervision for:

- formulating the EHRC's strategy;
- promoting the efficient and effective use of staff and other resources;
- delivering high standards of regularity and propriety;
- representing the views of the Commission to the general public; and
- the work of the Commission and its members

3.13 The Chair of Commissioners shall also ensure that:

- the Commission has a balance of skills appropriate to directing the EHRC's business, as set out in the Commission for Equality and Human Rights Ordinance 2015 and SHG's Public Service Provision Terms and Conditions (Appendix 1);
- Commission members are fully briefed on terms of appointment, duties, rights and responsibilities and receive appropriate training on financial management and reporting requirements;
- the Judicial Services Committee is advised of EHRC needs when Commissioner vacancies arise;
- assessments of individual Commission members are carried out at least once a year throughout the term of appointment to ensure an individual continues to develop and add value to the organisation;
- annual appraisals are conducted for the CEO. Assessments will be linked to objectives for each year of the appointment and to the performance of the EHRC; and
- there is a code of ethics for Commission members in place.

#### *Individual Commission member responsibilities*

3.14 Individual Commission members should:

- engage fully in collective consideration of all issues;
- comply at all times with their terms of appointment;

- comply with the EHRC’s code of ethics and with the rules relating to the use of public funds and to conflicts of interest; and
- act in good faith and in the best interests of the EHRC.

### *Responsibilities of the CEO*

3.15 Communications between the EHRC and the SCDC should normally be through the CEO.

3.16 As the designated Accounting Officer for the EHRC, the CEO’s responsibilities are set out in the EHRC’s Financial Policy and Procedures. The CEO is personally responsible for safeguarding the public funds for which he or she has charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of the EHRC. In addition, he or she should ensure that the EHRC as a whole is run on the basis of the standards, in terms of governance, decision-making and financial management that are set out in the Commission for Equality and Human Rights Ordinance 2015, EHRC’s Financial Policy and Procedures, the Strategic Plan and this framework document.

3.17 Where the EHRC has decided to delegate activities within its remit to external providers, whether they be public sector or private providers, the CEO shall ensure that such delegation is subject to a robust governance regime, evidenced in a statement of accountability, seeking to provide the following:

- clearly defined outcomes for the activity in question;
- robust and transparent mechanisms for information about performance and financial management which permit the provider to be held to account for the regularity, propriety and value for money of the activity delegated;
- where appropriate, a single, recognised Senior Responsible Owner for the activity delegated with a reporting line to the EHRC’s CEO;
- clear decision making lines, allocating authority appropriately in the context of the CEO’s responsibility to the;
- a clear system for dealing promptly with failure, including the advance definition of the triggers for intervention; and,
- a funding allocation process that is explicit and independently audited, supported by a thorough evaluation of outcomes.

3.18 In providing the above, the CEO shall ensure that any such regime is supported by a process of regular review and monitoring, to ensure that governance arrangements are current and fit for purpose and comply with government accounting principles.

### *Delegation of duties of the CEO*

3.19 The CEO may delegate the day-to-day administration of his/her Accounting Office duties to other employees in the EHRC. However, he or she

cannot assign absolutely to any other person any of the responsibilities set out in this document.

*Responsibilities for accounting to Legislative Council*

3.20 The CEO's responsibilities to the Legislative Council include:

- ensuring that the EHRC operates within the legislation governing its operations;
- signing the accounts and ensuring they are prepared according to section 4 of this document;
- publication and signature of an annual report and accounts prepared in compliance with the directions of the Financial Secretary;
- ensuring that effective procedures for handling complaints about the EHRC are established and made widely known within the EHRC and published;
- acting in accordance with the terms of this document, SHG's Public Service Provision terms and conditions and other instructions and guidance issued from time to time by SHG, and EHRC's internal policies and procedures;
- giving evidence, normally when summoned before the Public Accounts Committee on the EHRC's stewardship of public funds; and
- implementing the EHRC strategic plan

*Responsibilities to the Social and Community Development Committee (SCDC)*

3.21 The EHRC should meet regularly with the SCDC, which has a portfolio responsibility for human rights, and maintain a constant dialogue in order to strengthen the exchange of information and identify areas of possible collaboration in the protection and promotion of human rights. Through this Committee the EHRC will inter alia:

- advise and/or make recommendations to Government on issues related to human rights, including SHG's international human rights obligations;
- provide information and advice to SCDC to assist in the exercise of its oversight and scrutiny functions;
- ensure SCDC is provided with timely forecasts and monitoring information on performance and finance and notified of likely over or under spends (and of corrective action taken) or of any other significant financial or other problems; and
- notify SCDC at the earliest opportunity if there is a risk of legal challenge against the EHRC.

*Responsibilities to the Legislative Council (LegCo)*

3.22 The EHRC will in accordance with statutory requirements provide:

- 3 year strategic plan and any revisions to the Legislative Council;
- 6 months after the end of the financial year, an annual report indicating to what manner and what extent the EHRC performance has corresponded to the strategic plan.

### *Chief Executive Officer's Responsibilities to the Commission*

3.23 The CEO is responsible for:

- advising the Commission on the discharge of the EHRC's responsibilities as set out in this document, the founding legislation or in any other relevant instructions and guidance that may be issued from time to time;
- advising the Commission on the EHRC's performance against its aims and objectives;
- assisting the Commission in the development of, and oversight of, the EHRC's strategic direction.
- ensuring that the Commission has a Strategic Plan in place setting out annual objectives and in-year targets.
- ensuring that financial considerations are taken fully into account by the Commission at all stages in reaching and executing its decisions, and that financial appraisal techniques are followed;
- taking appropriate action if the Commission, or its Chairperson, is contemplating a course of action involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration, efficiency or effectiveness, questionable feasibility, or is unethical.

3.24 The EHRC is subject to the jurisdiction of the Legislative Council. Responsibility for handling any matters concerning the EHRC's services will fall to the EHRC CEO. Contentious cases should be brought to the attention of the Commission at an appropriate stage.

### *Sustainable development*

3.25 The EHRC will comply with policies and guidance issued by the SHG, or other relevant bodies in relation to sustainable development.

## **4. Financial planning and reporting**

### **SHG requirements**

4.1 EHRC will provide information and evidence requested by SHG to enable Legislative Council to make informed and evidenced based decisions

on the level of funding required by the EHRC, to perform the statutory functions in accordance with the Commission for Equalities and Human Rights Ordinance. EHRC will apply SHG funding to the purposes provided and evidence the proper use of funds through mandatory performance reporting. A list of current guidance and instructions with which the EHRC should comply is attached at Appendix 1.

### **SHG Financial Support**

4.2 SHG will notify EHRC of the annual funding total approved by Legislative Council as close to the beginning of the new financial year as possible, providing a formal statement of the annual budgetary provision. While the EHRC remains an NDPB this cash payment will be made in the form of SHG financial support.

4.3 SHG funding will normally be paid in quarterly instalments on the basis of written applications showing evidence of need. The EHRC will comply with the general principle that there is no payment in advance of need. Cash balances accumulated during the course of the year from the SHG financial support shall be kept to a minimum level consistent with the efficient operation of the EHRC.

4.4 In the event that SHG provides the EHRC separate grants for specific (ring-fenced) purposes, it will issue the grant as and when the EHRC needs it on the basis of a written request. The EHRC will provide evidence that the grant will be used for the purposes authorised by the SHG.

4.5 The EHRC shall have authority to incur expenditure approved in the budget without further reference to the SHG, on the following conditions:

- the EHRC shall comply with SHG's Public Service Provision Terms and Conditions for the release of funding;
- inclusion of any planned and approved expenditure in the budget shall not remove the need to seek formal SHG approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed;
- the EHRC shall provide the SHG with such information about its expenditure as the SHG may reasonably require.

4.6 SHG will consider but does not guarantee the award of additional funding during the course of the financial year. Applications for funding must be made in the format agreed by the Financial Secretary and provide justification for immediate needs and risks presented if funds are not approved.

4.7 Should the EHRC be eligible for additional funding from an organisation that sits outside the public sector they shall inform SHG who may request the submission of a business case so that the Financial Secretary can take assurance of the nature and scope of the funding.

## **Cash holding**

4.8 The EHRC will use the services of the Bank of St Helena and will retain only those funds necessary for the efficient operation of the EHRC.

## **Procurement**

4.9 The EHRC shall ensure its procurement policies are consistent with SHG procurement guidelines and policies.

## **Strategic and Action plans**

4.10 The EHRC shall submit to the Legislative Council a Strategic Plan covering three years as set out in section 6 of the Commission for Equality and Human Rights Ordinance 2015. The plan shall reflect and demonstrate how the EHRC will achieve its statutory duties. The plan must be reviewed at least once in the three years and at such other times as the Commission thinks appropriate. The plan and any revisions must be sent to Legislative Council for their information and published as required.

4.11 The Strategic Plan, amplified as necessary, shall form an annual plan. The plan shall include key targets and milestones for each year of the Strategic Plan and shall be linked to budgeting information so that resources allocated to achieve specific objectives can readily be identified by the SHG. Subject to any commercial considerations, the Strategic and Action Plans should be published by the EHRC on their website and separately made available to staff. Copies should also be made available in line with the EHRC's publication scheme and any statutory duty to publish.

4.12 The following key matters must be included in the plans:

- key objectives and associated key performance targets and the strategy for achieving those objectives;
- key non-financial performance targets;
- the current budget and the budget for the previous year;
- an assessment of the context in which the Commission will operate including risk factors that may significantly affect the execution of the plan but that cannot be accurately forecast; and
- other matters as agreed by the SHG and the EHRC.

## **Risk management**

4.13 The EHRC shall adopt and implement policies and practices to safeguard itself against fraud and theft including (but not limited to) Professional Indemnity Insurance and liability cover.

## **EHRC/SHG communication arrangements**

4.14 Both parties agree to communicate openly and often on an informal basis, ensuring 'no surprises' in their dealings with each other. Arrangements for dealing with urgent issues and problems will be agreed between the SHG and the EHRC.

## **Audit**

4.15 The Chief Auditor (CA) audits the EHRC annual accounts as per Schedule 1 section 14 of the Commission for Equality and Human Rights Ordinance 2015.

## **Rights of access**

4.16 The SHG has the right of access, subject to legal privilege and data protection requirements, to all EHRC financial records subject to EHRC being able to comply with its confidentiality obligations.

# **5. Organisation management**

## **Broad responsibilities for EHRC staff**

5.1 Subject to the provisions of the Commission for Equality and Human Rights Ordinance 2015 and within the arrangements approved by the Commission, the EHRC is responsible for the recruitment, retention and motivation of its staff. To this end the EHRC will ensure that:

- the rules for recruitment and management of staff create an inclusive culture in which diversity is fully valued; appointment and advancement is based on merit; there is no discrimination on grounds of age, disability, gender or sexual orientation, marriage and civil partnership, pregnancy and maternity, race, religion and belief, political opinion or community background and trade union or non-membership;
- there is an effective equality and diversity policy and statement in place. Equality must be embedded into business planning processes and must demonstrate how the EHRC is meeting the legal responsibilities to pay due regard to the public sector equality duty including carrying out proportionate equality impact assessments where appropriate;
- it complies with the all relevant statutory requirements to publish information and set equality objectives;
- the level and structure of its staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness;
- the performance of its staff at all levels is satisfactorily appraised and the EHRC performance measurement systems are reviewed from time to time;

- its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the EHRC's objectives;
- proper consultation with staff takes place on key issues affecting them;
- adequate grievance and disciplinary procedures are in place;
- whistle-blowing procedures consistent with the EHRC's internal policies: and
- standards of conduct for staff are in place.

#### *Staff costs*

5.2 Subject to its delegated authorities, the EHRC shall ensure that the creation of any additional posts does not incur forward commitments that will exceed its ability to pay for them and in compliance with the requirements of the Commission for Equality and Human Rights Ordinance 2015.

#### *Pay and conditions of service*

5.3 EHRC staff are subject to levels of remuneration and terms and conditions as agreed by the Commission and approved by the Governor in accordance with section 6 of schedule I of the Commission for Equality and Human Rights Ordinance 2015.

5.3 Staff must receive a statement of their main terms and conditions of employment.

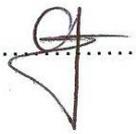
#### *Pensions, redundancy and compensation*

5.4 Upon successful completion of any probationary period and after the staff member or commissioner has provided evidence of having joined a recognised pension scheme, the EHRC will make payment of a pensions contribution up to 10% of gross annual salary to the individual's account with the recognised pension scheme.

#### **Complaints**

5.5 Complaints will be dealt with under the relevant SHG or EHRC policies.

5.6 The EHRC will manage professional indemnity or litigation arising from its operational activities, involving lawyers and other officials at the earliest appropriate stage.

Signed .....  .....

Date 27<sup>th</sup> April 2020.

(On behalf of the EHRC)

Signed .....  .....

Date 27.04.20

(On behalf of the SHG)

## **APPENDIX 1**

### **SHG PUBLIC SERVICE PROVISION TERMS AND CONDITIONS**

The EHRC is considered to be a Public Service Provision. A Public Service Provision is a statutory or public service institution that delivers services to the public, community or provides a statutory service under law where funding is provided by SHG.

The following terms and condition must be complied with for the release of funding by SHG:

1. Submit quarterly Management Accounts in a form agreed with Corporate Finance showing clearly total revenue and expenditure against budget, surplus or deficit, cash flow and cash holdings, and accumulated financial position. To be submitted before the release of the next quarters funding;
2. Submit a Mid Year Report on performance by the end of November and a detailed Annual Report that sets out how the subsidy was used to deliver the Strategic Plan with supporting evidence within the six months in accordance with Schedule 1 (section 6) of the Commission for Equality & Human Rights Ordinance 2015;
3. Submit audited (or independently examined) financial statements for the previous year with no issues of fraud or irregularity identified by the end of quarter 3;
4. Confirm compliance with all applicable laws including employment and tax laws;
5. Confirm compliance with all terms and conditions of previously awarded SHG funding;
6. Provide evidence that the organisation has an adequate level of public liability insurance;
7. Confirm that the organisation has obtained satisfactory Vetting Certificates and appropriate clearances for any staff member who engages with vulnerable people including children in the course of their work;
8. Confirm that policies around safeguarding, whistle blowing and health and safety are implemented; and

9. Ensure that funding is used for the purposes for which the funding was provided as detailed in the funding application.

## **APPENDIX 2**

### **Paris Principles**

#### **Principles relating to the status of national institutions**

##### **Competence and responsibilities\***

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of measures;
    - (ii) Any situation of violation of human rights which it decides to take up;
    - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
  - (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

### **Composition and guarantees of independence and pluralism**

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

### **Methods of operation**

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, 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.

### **Additional principles concerning the status of commissions with quasi-jurisdictional competence**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations.

In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

\* *Paris Principles* defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

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## APPENDIX 3

### BELGRADE PRINCIPLES

#### BELGRADE PRINCIPLES ON THE RELATIONSHIP BETWEEN NATIONAL HUMAN RIGHTS INSTITUTIONS AND PARLIAMENTS

**(Belgrade, Serbia 22-23 February 2012)**

*The 2012 International Seminar on the relationship between National Human Rights Institutions (NHRIs) and Parliaments<sup>1</sup>, organised by the Office of the United Nations High Commissioner for Human Rights, the International Coordinating Committee of National Institutions for the promotion and protection of human rights, the National Assembly and the Protector of Citizens of the Republic of Serbia, with the support of the United Nations Country Team in the Republic of Serbia,*

*In accordance with the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations General Assembly Resolutions 63/169 and 65/207 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, 63/172 and 64/161 on National Human Rights Institutions for the promotion and protection of human rights and the Human Rights Council Resolution 17/9 on National Human Rights Institutions for the promotion and protection of human rights.*

*Recognising that the principles relating to the status of national institutions (the Paris Principles, adopted by United Nations General Assembly Resolution 48/134) state that NHRIs shall establish an “effective cooperation” with the Parliaments,*

*Noting that NHRIs and Parliaments have much to gain from each other in performing their responsibilities for the promotion and protection of human rights,*

*And recalling the need to identify areas for strengthened interaction between NHRIs and Parliaments bearing in mind that the different institutional models of NHRIs should be respected,*

*Adopts the following principles aimed at providing guidance on how the interaction and cooperation between NHRIs and Parliament should be developed:*

## **1. Parliament's role in establishing a National Human Rights Institution (NHRI) and securing its functioning, independence and accountability**

### **A) Founding Law**

- 1) Parliaments while deliberating the draft legislation for the establishment of a national human rights institution should consult widely with relevant stakeholders.
- 2) Parliaments should develop a legal framework for the NHRI which secures its independence and its direct accountability to Parliament, in compliance with the Principles related to national institutions (Paris Principles) and taking into account the General Observations of the International Coordinating Committee of national institutions for the promotion and protection of human rights (ICC) and best practices.
- 3) Parliaments should have the exclusive competence to legislate for the establishment of a NHRI and for any amendments to the founding law.
- 4) Parliaments, during the consideration and adoption of possible amendments to the founding law of a NHRI, should scrutinise such proposed amendments with a view to ensuring the independence and effective functioning of such institution, and carry out consultation with the members of NHRIs and with other stakeholders such as civil society organisations.
- 5) Parliaments should keep the implementation of the founding law under review.

### **B) Financial independence**

- 6) Parliaments should ensure the financial independence of NHRIs by including in the founding law the relevant provisions.
- 7) NHRIs should submit to Parliaments a Strategic Plan and/or an Annual Programme of activities. Parliaments should take into account the Strategic Plan and/or Annual Programme of activities submitted by the NHRI while discussing budget proposals to ensure financial independence of the institution.
- 8) Parliaments should invite the members of NHRIs to debate the Strategic Plan and/or its annual programme of activities in relation to the annual budget.
- 9) Parliaments should ensure that NHRIs have sufficient resources to perform the functions assigned to them by the founding law.

### **C) Appointment and dismissal process**

10) Parliaments should clearly lay down in the founding law a transparent selection and appointment process, as well as for the dismissal of the members of NHRIs in case of such an eventuality, involving civil society where appropriate.

11) Parliaments should ensure the openness and transparency of the appointment process.

12) Parliaments should secure the independence of a NHRI by incorporating in the founding law a provision on immunity for actions taken in an official capacity.

13) Parliaments should clearly lay down in the founding law that where there is a vacancy in the composition of the membership of a NHRI, that vacancy must be filled within a reasonable time. After expiration of the tenure of office of a member of a NHRI, such member should continue in office until the successor takes office.

### **D) Reporting**

14) NHRIs should report directly to Parliament.

15) NHRIs should submit to Parliament an annual report on activities, along with a summary of its accounts, and also report on the human rights situation in the country and on any other issue that is related to human rights.

16) Parliaments should receive, review and respond to NHRI reports and ensure that they debate the priorities of the NHRI and should seek opportunities to debate the most significant reports of the NHRI promptly.

17) Parliaments should develop a principled framework for debating the activities of NHRIs consistent with respect for their independence.

18) Parliaments should hold open discussions on the recommendations issued by NHRIs.

19) Parliaments should seek information from the relevant public authorities on the extent to which the relevant public authorities have considered and responded to NHRIs recommendations.

## **II. Forms of co-operation between Parliaments and NHRIs**

20) NHRIs and Parliaments should agree the basis for cooperation, including by establishing a formal framework to discuss human rights issues of common interest.

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21) Parliaments should identify or establish an appropriate parliamentary committee which will be the NHRI's main point of contact within Parliament.

22) NHRIs should develop a strong working relationship with the relevant specialised Parliamentary committee including, if appropriate, through a memorandum of understanding. NHRIs and parliamentary committees should also develop formalized relationships where relevant to their work.

23) Members of the relevant specialised parliamentary committee and the NHRI should meet regularly and maintain a constant dialogue, in order to strengthen the interchange of information and identify areas of possible collaboration in the protection and promotion of human rights.

24) Parliaments should ensure participation of NHRIs and seek their expert advice in relation to human rights during meetings and proceedings of various parliamentary committees.

25) NHRIs should advise and/or make recommendations to Parliaments on issues related to human rights, including the State's international human rights obligations.

26) NHRIs may provide information and advice to Parliaments to assist in the exercise of their oversight and scrutiny functions.

### **III. Cooperation between Parliaments and NHRIs in relation to legislation**

27) NHRIs should be consulted by Parliaments on the content and applicability of a proposed new law with respect to ensuring human rights norms and principles are reflected therein.

28) Parliaments should involve NHRIs in the legislative processes, including by inviting them to give evidence and advice about the human rights compatibility of proposed laws and policies.

29) NHRIs should make proposals of amendments to legislation where necessary, in order to harmonize domestic legislation with both national and international human rights standards.

30) NHRIs should work with Parliaments to promote human rights by legislating to implement human rights obligations, recommendations of treaty bodies and human rights judgments of courts.

31) NHRIs should work with Parliaments to develop effective human rights impact assessment processes of proposed laws and policies.

#### **IV. Co-operation between NHRIs and Parliaments in relation to International human rights mechanisms**

32) Parliaments should seek to be involved in the process of ratification of international human rights treaties and should consult NHRIs in this process of ratification, and in monitoring the State's compliance with all of its international human rights obligations.

33) NHRIs should give opinions to Parliaments on proposed reservations or interpretative declarations, on the adequacy of the State's implementation of human rights obligations and on its compliance with those obligations.

34) Parliaments and NHRIs should co-operate to ensure that the international treaty bodies are provided with all relevant information about the State's compliance with those obligations and to follow up recommendations of the treaty bodies.

35) NHRIs should regularly inform Parliaments about the various recommendations made to the State by regional and international human rights mechanisms, including the Universal Periodic Review, the treaty bodies and the Special Procedure mandate holders.

36) Parliaments and NHRIs should jointly develop a strategy to follow up systematically the recommendations made by regional and international human rights mechanisms.

#### **V. Co-operation between NHRIs and Parliaments in the education, training and awareness raising of human rights<sup>2</sup>**

##### **2 In relation to the United Nations Declaration on Human Rights Education and Training**

37) NHRIs and Parliaments should work together to encourage the development of a culture of respect for human rights.

38) NHRIs and Parliaments should work together to encourage that education and training about human rights is sufficiently incorporated in schools, universities and other relevant contexts including vocational, professional and judicial training in accordance with relevant international standards.

39) NHRIs and Parliaments should work together to improve their mutual capacity on human rights and parliamentary processes.

40) NHRIs, Parliaments and all Parliamentarians should seek to work together in public awareness, education campaigns and encourage mutual participation in conferences, events and activities organized for the promotion of human rights.

#### **VI. Monitoring the Executive's response to Court and other judicial and administrative bodies' judgements concerning human rights**

41) Parliaments and NHRIs as appropriate should co-operate in monitoring the Executive's response to Judgments of Courts (national and, where appropriate, regional and international) and other administrative tribunals or bodies regarding issues related to human rights.

42) NHRIs should monitor judgements against the state concerning human rights, by domestic, regional or international courts, and where necessary, make recommendations to Parliament about the appropriate changes to law or policy.

43) Parliaments should give proper consideration to NHRIs recommendations about the response to human rights judgements.

44) Parliaments and NHRIs as appropriate should encourage the Executive to respond to human rights judgements expeditiously and effectively, so as to achieve full compliance with human rights standards.