

Draft Bill on the establishment of an Icelandic Institute for Human Rights

Written follow up to the 15 November 2023 hearing with the Icelandic Parliament Constitutional and Supervisory Committee

ENNHRI welcomes the Draft Bill for the establishment of the Icelandic Institute for Human Rights (IIHR) and the steps taken by the Icelandic national authorities towards creating a National Human Rights Institution (NHRI) in full compliance with the UN Paris Principles.

In follow up to dialogue with the Icelandic Parliament Constitutional and Supervisory Committee, ENNHRI is providing written follow up to support the Committee's work to strengthen the compliance of the draft bill with the Paris Principles. In doing so, ENNHRI basis its advice on the international standards on NHRIs, including the [UN Paris Principles, General Observations](#) of the Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs.

While the draft bill largely reflects the requirements of the Paris Principles, as discussed during ENNHRI's hearing with the Committee, specific elements of the proposed bill could be further clarified to strengthen its alignment with the international standards. In follow up to the oral hearing, ENNHRI is providing information in relation to the following key areas:

- Selection and appointment of the NHRI leadership
- Dismissal of the NHRI leadership
- Adequate funding
- Mandate in relation to access to relevant information, documents and premises
- Establishment of the NHRI under Parliament

Selection & appointment:

The process for selection and appointment of the decision-making body could be further strengthened in the draft bill. In particular, this can be done through the inclusion of provisions to ensure **broad public advertisement of vacancies**; to guarantee **consultation and participation of civil society** in the process; and to ensure

a **merit-based process** with members selected to act independently in their individual capacity.

Relevant Standards and Positive Practices

The SCA, through its General Observation (GO) 1.8, emphasizes the importance of **formalising a clear, transparent, merit-based and participatory selection and appointment process of the NHRI's decision-making body** in the relevant legislation, regulations or binding administrative guidelines.

The SCA clarifies that formalisation of a merit-based process which ensures pluralism is essential to ensure independence and effectiveness of the NHRI. This process should include requirements to:

- publicise vacancies broadly,
- maximize the number of potential candidates from a wide range of societal groups,
- promote broad consultation and/or participation of actors such as civil society, and
- select members to serve in their own individual capacity, rather than on behalf of an organisation they represent.
- assess applicants on the basis of pre-determined, objective and publicly available criteria.

Similarly, in the CM Recommendation, the Committee of Ministers states that the process of selection and appointment should be competence based, transparent and participatory, in order to guarantee the independence and pluralist representation within NHRIs.

Ensuring the **advertising of the vacancies broadly** maximises the potential number of candidates and is pivotal to promote pluralism and public confidence in the NHRI. Across Europe, the requirement to advertise vacancies broadly is met in several ways, including through specific legal provisions which require the vacancies to be publicised in the media or through NHRIs' or Parliamentary website, or requirements in the law for the vacancies to be published in the official national Gazette. In other states, this requirement is met by ensuring that the Parliament actively informs civil society and relevant human rights stakeholders at the national level of the vacancy. While there is some discretion in the way this requirement is met, the broad advertisement of vacancies is a crucial element of ensuring openness in the selection and appointment process.

Moreover, the **merit-based nature of the selection process** is an important safeguard of independence and one of the key ways of ensuring pluralism as well as effectiveness

of the NHRI leadership. The SCA's General Observation 1.8 outlines that the assessment of applicants on the basis of **pre-determined, objective and publicly available criteria** promotes the merit-based appointment of candidates, limits the capacity for undue interference in the selection process, and serves to ensure the appropriate management and effectiveness of the NHRI.

In addition, General Observation 1.7 in relation to pluralism highlights that ensuring the integrity and quality of members of the decision-making body is a key factor in the effectiveness of the NHRI. For this reason, **selection criteria** that ensure the appointment of qualified and independent members should be legislatively established and made publicly available prior to appointment. The SCA recommends that the adoption of such criteria be subject to consultation with all stakeholders, including civil society, to ensure the criteria chosen is appropriate and does not exclude specific individuals or groups.

In addition, the selection of members to **serve in their individual capacity** is a key safeguard of the NHRI's independence. The SCA explains that Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent is likely to result in an independent and professional membership body.

Across Europe, in line with the requirements of transparency and participation, the most prevalent selecting and appointing authority is the parliament rather than the executive. However, at the same time, the Paris Principles and General Observations are clear on the need for members of the decision-making body to be independent of national authorities. General Observation 1.9 clarifies that members of parliament, and including those who are members of the ruling political party or coalition, or representatives of government agencies, should not in general be represented on, nor should they participate in decision making of an NHRI, since they hold positions that may conflict with an independent NHRI.

Finally, the SCA has reiterated that **ensuring broad consultation and/or participation** of civil society organisations and other relevant actors in the application, screening, selection and appointment process is a key safeguard of transparency, pluralism and public confidence in the process as well as the successful candidate and NHRI. A participatory process is considered an important marker of independence.

There is discretion in the way this participation can be guaranteed in practice. The participatory nature of the process is most far-reaching when selection committees are composed of different strands of civil society that together develop a list with merit-based candidates from which relevant state authorities can appoint candidates. In contrast, the minimum required by the SCA appears to be the possibility for civil society actors to attend and participate in public hearings on the selection of leadership, for

instance before relevant parliamentary committees. Other ways that the requirement can be met includes through seeking the advice and input of CSOs on a list of candidates, or actively circulating the vacancy with a variety of civil society actors to encourage nomination and participation, among others.

In this context, a good example in place is Bulgaria, where the law explicitly allows not-for-profit organisations to nominate candidates for the Ombudsperson and Deputy Ombudsperson, in addition to members of parliament and their parliamentary groups. This is further enhanced by the practice of the Bulgarian NHRI to publicly encourage nominations from civil society.

Dismissal of NHRI leadership

The draft bill can be brought into closer compliance with the Paris Principles by ensuring an independent and objective process for dismissal of members of the decision-making body. This includes fair procedures ensuring objectivity and impartiality, and clearly defined grounds for dismissal that would be confined to only those that would impact adversely on members' ability to fulfil their mandate..

Relevant Standards and Positive Practices

In line with the SCA General Observation 2.1, the enabling legislation of an NHRI must contain an independent and objective dismissal process for the decision-making body, similar to that accorded to members of other independent state agencies. This is of key importance to address the Paris Principles requirement for a stable mandate and a guarantee of the security of tenure of the members of the governing body, which are important to reinforcing independence. This requirement is essential to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

General Observation 2.1 clarifies that members of an NHRI can only be dismissed in accordance with **fair procedures ensuring objectivity and impartiality**. These processes should be clearly defined in the national law. The **grounds for dismissal** must be clearly defined and appropriately confined to actions which impact adversely on the capacity of members to fulfil their mandate. Members may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the national law.

In addition, the General Observations indicate that, where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction.

Furthermore, the SCA has outlined that any dismissal process must be made in **strict conformity with all the substantive and procedural requirements as prescribed by law**. Dismissal should not be allowed based solely on the discretion of appointing

authorities. In this regard, the General Observations highlight that NHRI members must be able to undertake their responsibilities without fear and without inappropriate interference from the State or other actors. These safeguards are important to avoid that a dismissal process is used for arbitrary or political reasons.

Across the region, some of the ways that NHRIs meet the requirement to ensure fair, objective and impartial procedures have been the confirmation of the grounds by an independent body or allowing the possibility to appeal before a relevant court. An illustration can be Germany where the dismissal of the Board members is subject to scrutiny by an independent labour court.

In addition, the requirement to safeguard against arbitrary dismissal is met in some countries through a requirement that, where dismissal is done by parliament, it should require an absolute or qualified majority for the dismissal to be proposed and/or approved. This is the case for example, in Spain, where the head of institution can only be dismissed after a qualified, three-fifths majority is reached before both chambers, following a debate and prior hearing with the head of institution.

Adequate funding and financial autonomy

The need to ensure NHRIs are given adequate funding to carry out the full breath of their mandate is well-rooted in international and regional standards. The compliance of the draft bill with the Paris Principles could be strengthened by including provisions that would ensure this institution enjoys an adequate level of funding to fulfil the entirety of its mandate.

An NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. The budget allocation process should be prescribed by law, include consultation with the NHRI, and should be allocated through a separate budget line applicable only to the NHRI.

Relevant Standards and Positive Practices

The UN Paris Principles and General Observations of the SCA establish adequate funding of NHRIs as an essential requirement of the Paris Principles and of the NHRI being able to independently and effectively fulfill its mandate.

The SCA General Observation 1.10 clarifies the requirements related to an adequate funding for NHRIs. It highlights that an NHRI must be provided with an **appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities**. Moreover, to a reasonable degree, adequate funding should ensure the gradual improvement of the NHRI's operations and the fulfilment of its mandate.

The allocation of funding to NHRIs must be based on objective criteria. The provision of adequate funding by the state should, as a minimum, include the allocation of funds for accessible premises, staff salaries and benefits that are comparable to those of civil servants performing similar tasks in other independent institutions, and sufficient resources for the NHRI to perform all its mandated activities.

NHRIs' funding is an important area of focus in the accreditation process and in determining compliance with the Paris Principles. In exceptional circumstances, (such as in Northern Ireland) significant budget cuts have risked structurally preventing the NHRI from carrying out its mandate. This was then also reflected in the review and recommendations of the SCA.

In addition, the SCA, in its General Observations, also highlights that NHRIs shall have complete **financial autonomy**. It clarifies that national law should indicate from where the budget of an NHRI is allocated and specifies that should be through a separate budget line applicable only to the NHRI. The SCA has indicated, therefore, that it is preferred for the budgetary allocation process, including involvement of the NHRI, to be prescribed by law.

Further, the CM Recommendation on NHRIs highlights that the process for budget determination should follow a **transparent, pre-determined process, which ensures meaningful consultation with the NHRI concerned**, while respecting its financial autonomy and protecting it against an arbitrary determination of its budget.

Across Europe, there are a number of safeguards applied to ensure NHRIs have adequate funding. This includes for example the involvement of an independent authority in the definition of 'adequate funding', which is tasked with assessment of the budgetary needs of the NHRI, and uses objective benchmarks to determine an NHRI's budget. It has also been regulated through a prohibition on the reduction of an NHRI's budget below the level of the previous year (Armenia) or through provision which prevent a decrease in the budget of the institution without the consent of the head of institution (Kosovo*). Most commonly, in the region, NHRIs are consulted in the process or propose an budget which is then provided to the Parliament for a final decision.

Mandate: ensuring access to information, documents and premises

As highlighted during the hearing, provisions regarding the institution's access to all public premises, documents, equipment and assets without prior notice could be strengthened in the current draft bill to ensure the NHRI will be able to effectively carry out its mandate, and to enhance compliance with international and regional standards.

Relevant Standards and Positive Practices

In order for NHRIs to be able to carry out their mandate effectively and independently, adequate access to information and to policy makers and legislators is fundamental. Specifically, the SCA General Observation 1.2 highlights that an NHRI's mandate should encompass **unannounced and free access** to inspect and examine any public premises, documents, equipment and assets.

This is further clarified in the CM Recommendation which outlines that NHRIs should have unfettered access to relevant information, premises and individuals, in order to be able to carry out all issues covered by their mandate. Moreover, the CM Recommendation encourages states to make it an obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame.

Across the region, NHRIs access to information and documents is guaranteed in several ways. In some European countries, NHRIs' access to information and documents is safeguarded in the institutions' enabling legislation through the inclusion of enforcement measures in cases of lack of cooperation with the NHRI, outlining time frames by which authorities must provide a response to requests, as well as consequences of a failure to reply. In other states, the legislative framework of an NHRI includes a legal obligation for state authorities to provide a reasoned reply in follow up to the institution's recommendations or requests.

As highlighted in ENNHRI's [submission](#) to the public consultation, unfettered access to information for the NHRI would strengthen the Icelandic Institute's ability to monitor all human rights issues, including those involving police, coast guard, and any other security forces, an important area of an NHRI's human rights mandate, as outlined in the SCA General Observation 1.2.

Establishment of an NHRI under Parliament

Under the UN Paris Principles, states retain the mandate to select the institutional model and the appropriate legal framework for the establishment of NHRIs. However, this faculty is subject to the requirements under the UN Paris Principles, which aim to ensure the independence and effectiveness of NHRIs across the globe, both in law and in practice.

In specific, the Paris Principles require an NHRI to be independent from government and parliament in its structure, composition, decision-making, and method of operation. Therefore, it must be constituted and empowered to consider and determine its own strategic priorities, free from political interference. Additionally, an NHRI must be established in a constitutional or legislative text with sufficient detail to ensure that it has a clear mandate and independence.

The Paris Principles and SCA General Observations also specify elements of independence of NHRIs, including in relation to some of the key areas outlined above,

such as selection and appointment and dismissal which are often interlinked with the need for connection to an independent body, such as Parliament. For instance, to ensure transparency, the SCA sets a preference for the selection and appointment authority to be parliament rather than the executive. Similarly, dismissal by the executive, without further safeguards is incompatible with independence of an NHRI. Therefore, based on the SCA jurisprudence regarding the mentioned elements, the placement of an NHRI under the parliament is seen as the preferable practice.

Going forward

ENNHRI reiterates its support for the Draft Bill for the establishment of the Icelandic Institute for Human Rights (IIHR). As [outlined](#) in ENNHRI's initial opinion on the draft law, the proposed legislation includes many of the relevant elements for the creation of an NHRI with a broad mandate to promote and protect human rights.

Building on our ongoing engagement and this written follow up, ENNHRI remains available to provide further information to national authorities on relevant international and regional standards applicable to NHRIs and the importance of establishing such an institution in Iceland.

