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Gender Equality and the Paris Principles

Global standards for the gender-based governance of national human rights institutions

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Introduction

Support for gender equality is a critical aspect of the work of national human rights institutions ('NHRIs') globally. In the Asia Pacific region, NHRIs have achieved significant progress in addressing the rights of women and girls, both in collective regional efforts and their respective national contexts. A 2024 Gender Baseline Assessment conducted by the Asia Pacific Forum of National Human Rights Institutions ('APF'), which examines the work of Asia Pacific NHRIs on gender equality, explains that:

> NHRIs are actively advocating for legislation repeal and/or development, facilitating awareness activities, receiving and addressing complaints, working alongside civil society organisations, and engaging with the international human rights community.[1]

This work is often anchored in the framework of the international human rights system, including the *Convention on the Elimination of All Forms of Discrimination Against Women*,[2] among other international and regional human rights instruments. The approach of NHRIs on gender diversity and representation is also guided by the United Nations Principles relating to the status of national institutions,[3] known popularly as the 'Paris Principles', which are the international standards for the mandate and performance of NHRIs.

This paper will consider how the Paris Principles standards have evolved to support and address gender equality and related human rights in the structures, mandates, and practice of NHRIs in the Asia Pacific region. The international accreditation of NHRI compliance with the Paris Principles, which is undertaken by the Global Alliance of National Human Rights Institutions ('GANHRI') and its subcommittee on accreditation ('SCA'), offers insight into the application and development of the Paris Principles standards in practice. This paper will also consider the jurisprudence of the SCA in its assessment of gender-based standards in the Paris Principles, highlighting examples of positive impact on gender performance in different national contexts, while at the same time identifying space for further improvements.

Gender and the Paris Principles

The Paris Principles are a unique instrument in the international human rights framework. Unlike most international human rights treaties and soft law instruments, the Paris Principles standards began their development with limited state or government involvement. They were established in 1991 by representatives of NHRIs to define what those NHRIs considered to be the essential ingredients of an independent and effective national institution for the protection and promotion of human rights.[4] The Paris Principles' legal authority arises from their subsequent appearance as an annex to the 1993 United Nations General Assembly Resolution 48/134, which followed their adoption (unamended) at the 1993 World Conference on Human Rights.[5] The relative absence of state involvement in the initial development of the Paris Principles affirms their institutional

[1] Asia Pacific Forum of National Human Rights Institutions, *Gender Baseline Assessment of National Human Rights Institutions in the Asia Pacific Region* (July 2024) ('Gender Baseline Assessment') 6.
[2] *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 1 March 1980, 1249 UNTS 13 (3 September 1981); see also ibid 15.
[3] *National institutions for the promotion and protection of human rights*, GA Res 48/134, UN Doc A/RES/48/134 (20 December 1993), annex ('Principles relating to the status of national institutions').
[4] For further background on the International Workshop on National Institutions for the Promotion and Protection of Human Rights, see: Gauthier de Beco and Rachel Murray, *A Commentary on the Paris Principles on National Human Rights Institutions* (Cambridge University Press, 2014) 3-19; Brian Burdekin and Jason Naum, *National Human Rights Institutions in the Asia Pacific Region* (Martinus Nijhoff, 2007).
[5] *Vienna Declaration and Programme of Action*, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, UN Doc A/CONF.157/24, page 30, para 36.

ownership by NHRIs. However, General Assembly Resolution 48/134 also signifies a measure of commitment among states to the Paris Principles standards.

As the Paris Principles are designed to guide the mandate, structure, and performance of NHRIs, they provide a more operational framework and say little about specific thematic issues within the human rights movement. For example, they require that an NHRI 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'.[6] While the requirement to have 'as broad a mandate as possible' may be considered to require a legal mandate that includes specific human rights, including on gender, the Paris Principles do not themselves prescribe that NHRIs must have a mandate to address any specific human rights or categories of rights.

There is also no express reference to gender or women in the Paris Principles.[7] Rather, the more general principle of 'pluralism' is explained at various points as a fundamental aspect of an NHRI's mandate and performance. The 'pluralist representation of social forces' on the NHRI is defined in the Paris Principles to include:

> (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).[8]

As a 'method of operation' under the Paris Principles, NHRIs are also expected to:

> 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.[9]

Gender is a remarkable absence in the above aspects of the Paris Principles. Women and girls are not defined as a group that may be the subject matter focus of a non-government organisation working in human rights, nor are women included in the list of social forces that should be represented on the NHRI. However, as will be demonstrated below, the concept and applicable standards of pluralism have been subsequently interpreted to include gender diversity and the equitable representation of women in the NHRI, most notably through the global accreditation of NHRI compliance with the Paris Principles.

GANHRI Accreditation and the *General Observations*

A venue for the practical application of the Paris Principles standards is the international accreditation of NHRIs undertaken by GANHRI. GANHRI is a member-based international human rights organisation comprised of NHRIs and according to its founding statute 'promotes the role of NHRIs worldwide, provides a forum for its members to interact and exchange, and facilitates their

[6] Paris Principles (n 3), page 4.
[7] It should be noted, however, that the report from the International Workshop on National Institutions for the Promotion and Protection of Human Rights does record some discussion on gender equality in the composition of NHRI leadership and the practice of NHRIs: Commission on Human Rights, 48th session, *Report of the International Workshop on National Institutions for the Promotion and Protection of Human Rights*, UN ESCOR, UN Doc E/CN.4/1992/43 (16 December 1991) paras 55-58, 67, 102, 133, 143, 231.
[8] Paris Principles (n 3), pages 5-6.
[9] Ibid.

engagement with international organizations'.[10] The Paris Principles standards are also a critical foundation for the existence of GANHRI, whose formal objective is to 'promote and strengthen NHRIs to operate in line with the Paris Principles' through the accreditation of NHRI compliance with the Paris Principles, among other functions.[11]

Paris Principles accreditation confers formal rights and privileges on NHRIs. This includes membership of GANHRI as well as other NHRI networks like the APF,[12] but also the right to participate in sessions of the United Nations Human Rights Council and some other United Nations treaty bodies.[13] NHRIs accredited with GANHRI receive either an 'A' status, which indicates full compliance with the Paris Principles, or 'B' Status, which indicates partial compliance with the Paris Principles.[14]

GANHRI has established the SCA to undertake the function of Paris Principles accreditation. Meeting biannually in Geneva, the SCA considers applications from NHRIs and makes recommendations on accreditation status. The SCA's recommendations are published in a report from each session and also include a list of issues on Paris Principles compliance identified for each NHRI under review.[15] These public reports are important sources of jurisprudence from the SCA and provide evidence of how GANHRI applies the Paris Principles standards in practice in a variety of diverse national contexts. The SCA has also developed the *General Observations of the Sub-Committee on Accreditation*,[16] which are authoritative and detailed interpretations of the Paris Principles that are considered and applied by the SCA during its accreditation of NHRIs. They are also designed to '[i]nstruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance'.[17]

The *General Observations* follow a similar approach to the general comments and general recommendations issued by United Nations treaty bodies, as instruments of interpretation of particular human rights treaties. However, the *General Observations* are notably shorter in substance and do not reference the SCA's jurisprudence, among a few other differences.[18] The *General Observations* mainly offer an elaboration of the structural and operational requirements of the Paris Principles. While at present there is no standalone general observation that deals with gender or the rights of women and girls under the Paris Principles, there is some direction on the role of gender in in the internal structures and operational aspects of NHRIs.

Pluralism and gender

General Observation 1.7 on *Ensuring pluralism of the NHRI* contains overarching guidance for NHRIs on gender diversity under the rubric of 'pluralism', which is a concept addressed explicitly

[10] *Statute of the Global Alliance of National Human Rights Institutions*, adopted by the General Assembly of the Global Alliance of National Human Rights Institutions 15 March 2023 <https://www.ohchr.org/sites/default/files/documents/countries/nhri/ganhri/EN_GANHRI_Statute_adopted_15032023.pdf > ('GANHRI Statute'), preamble.
[11] Ibid arts 5 and 7(b).
[12] See Constitution of the Asia Pacific Forum of National Human Rights Institutions, adopted at the APF 22 meeting on 29 November 2017 and effective 1 January 2018, rules 11.2 – 11.3.
[13] See, eg, *Institution-building of the United Nations Human Rights Council*, Human Rights Council Resolution 5/1, UN Doc A/HRC/RES/5/1, 18 June 2007, annex ('VII. Rules of Procedure') rule 7.
[14] GANHRI Statute (n 10) arts 24.1–24.2.
[15] See, eg, Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Online, 26-28 March 2024, Geneva, 29 April – 3 May 2024 <https://www.ohchr.org/sites/default/files/documents/countries/nhri/ganhri/SCA-Report-Second-Session-2024-EN.pdf> ('May 2024 SCA Report').
[16] Global Alliance of National Human Rights Institutions, *General Observations* of the Sub-Committee on Accreditation, 21 February 2018 <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf> ('*General Observations*').
[17] Ibid 2.
[18] For further commentary on the *General Observations*, see David Langtry and Kirsten Roberts Lyer, *National Human Rights Institutions: Rules, Requirements, and Practice* (Oxford University Press, 2021) 49-51.

under the Paris Principles to also include the representation of other vulnerable and marginalised groups. General Observation 1.7 explains that:

> Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity or minority status. This includes, for example, ensuring the equitable participation of women in the NHRI.[19]

General Observation 1.7 does not prescribe any particular structural or practical mechanism for an NHRI to address the pluralism requirements of the Paris Principles, noting rather that there are 'diverse models for ensuring the requirement of pluralism in the composition of the NHRIs'.[20] This is due, in part, to the various models of NHRI that are permitted under the Paris Principles, including Ombudsperson bodies or other single-member NHRIs.[21] For these NHRIs, it would not be possible to have a diverse composition of its leadership body with an equitable proportion of women members. Allowing for some flexibility of application, General Observation 1.7 provides some examples of different measures that support pluralism under the Paris Principles:

a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow and restrict the diversity and plurality of the composition of the NHRI's membership should be avoided;
b) Pluralism through the appointment procedures of the governing body of the NHRIs for example, where diverse societal groups suggest or recommend candidates;
c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
d) Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member NHRIs, such as an Ombudsperson.[22]

The above should be considered as a non-exhaustive list of the mechanisms and practices considered by the SCA and will also be applied in the context of pluralism more broadly, not only in support of gender representation and diversity. These examples are also structural and procedural mechanisms, indicating that the SCA does not consider the quality or thematic focus of an NHRI's substantive programs when reviewing compliance with the pluralism standards of the Paris Principles. There are some exceptions to this approach, which will be addressed in further detail below.

Gender representation in NHRI leadership

The criteria and process for the appointment to the decision-making body of the NHRI are critical measures to support gender diversity and representation in the NHRI under the Paris Principles. General Observation 1.8 on the *Selection and appointment of the decision-making body of NHRIs* establishes standards for the appointment of NHRI leadership that include aspects relevant to gender diversity and representation. While the NHRI 'decision-making body' is not defined in the Paris Principles or *General Observations*, the SCA considers this to be the individual or group of NHRI leadership appointed under the institution's enabling law and authorised to represent and make decisions on behalf of the institution. This includes, for instance, a board of commissioners at a human rights commission, or the Ombudsperson or Defensor at a single-member NHRI.[23]

[19] *General Observations* (n 16) 20.
[20] Ibid.
[21] For an in-depth discussion on the different models of NHRI, see *A Manual on National Human Rights Institutions* (Asia Pacific Forum on National Human Rights Institutions, 2018) 29-34, 66.
[22] *General Observations* (n 16), 20.
[23] The SCA has also considered the deputies of an Ombudsman to be part of the 'decision-making body' and thus subject to the requirement to ensure pluralism in NHRI leadership: March 2022 SCA Report (n 37) 39-40 (El Salvador).

Referencing a general requirement that the process 'ensures pluralism', General Observation 1.8 also explains that the NHRI selection and appointment process should include requirements to:

a) Publicize vacancies broadly;
b) Maximize the number of potential candidates from a wide range of societal groups;
c) Promote broad consultation and/or participation in the application, screening, selection and appointment process;
d) Assess applicants on the basis of pre-determined, objective and publicly available criteria; and
e) Select members to serve in their own individual capacity rather than on behalf of the organization they represent.[24]

In the same manner as General Observation 1.7, General Observation 1.8 does not expressly address gender diversity and representation in the selection and appointment process, but refers to pluralism more broadly. In practice at the SCA there is a notably strong focus on the requirement to promote 'broad consultation and/or participation' in the selection process, especially among civil society organisations ('CSOs'),[25] although this rarely covers considerations of gender or consultations with CSOs that focus on gender-related human rights.

The SCA's main lever to address gender diversity under the *General Observations* is to recommend structural mechanisms that support the participation and representation of women in the leadership of the NHRI. For human rights commissions and other NHRI types with multiple-member decision-making bodies, this will ordinarily include measures in law or policy that actively support the representation of women on the decision-making body. For all NHRIs, the SCA will also consider whether the criteria for appointment may inadvertently or indirectly discriminate against prospective female candidates.

On criteria for appointment to the NHRI, the SCA has expressed concern on multiple occasions with a requirement that a commissioner or Ombudsperson be a former judge or senior legal practitioner, especially in contexts where there is a legacy of gender discrimination or limited representation of women in the legal profession or judiciary. In its November 2016 review of the NHRI of India, the SCA remarked that:

> the [statutory] requirement that the Chair be a former Chief Justice of the Supreme Court and the majority of members be recruited from the senior judiciary severely restricts the potential pool of candidates, particularly as it relates to the representation of women in the governing body of the [National Human Rights Commission].[26]

The SCA formed the same opinion in its March 2019 review of the NHRI of Ghana, noting that 'eligibility for appointment as Commissioner or Deputy Commissioner is restricted to lawyers, which may unduly restrict the diversity of the [Commission on Human Rights and Administrative Justice]'.[27] This approach presents a particular challenge for NHRIs with leadership positions that have prescribed legal or judicial functions under their enabling legislation, as is the case with the

[24] *General Observations* (n 16) 22.
[25] See, eg, October 2021 SCA Report (n 34) 13 (Mongolia).
[26] Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, 14-18 November 2026 < https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Final_Report_-_Nov_2016_-_English.pdf> ('November 2016 SCA Report') 24.
[27] Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, 17-21 March 2014 < https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_MARCH_2014_FINAL_REPORT_-_ENGLISH.pdf> ('March 2014 SCA Report') 12. Note that the SCA reiterated the same position to the Ghanaian NHRI in 2019: Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, 11-15 March 2019 < https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_March_2019_-_EN_.pdf> ('March 2019 SCA Report') 23.

NHRI of India.[28] However, the requirement to support pluralism through a gender diverse leadership body is an essential requirement of the Paris Principles and thus more important to address than conferring the NHRI with 'quasi-judicial' functions, which are covered by the *General Observations* but are not considered a mandatory requirement of the Paris Principles.[29]

The SCA frequently considers the representation of women on an NHRI's decision-making body, examining both representation in practice and mechanisms in law and policy to promote equitable representation. As a minimum, the SCA will expect some form of general provision applicable to appointing authorities to encourage the representation of women on the NHRI decision-making body. While there is nothing in the *General Observations* to indicate that such a provision should be in the principal enabling legislation of the NHRI, the SCA's reporting suggests that in practice there is an expectation that any requirement be established in law.[30]

An alternative approach to supporting gender representation is for the institution's legal framework to establish a minimum number or proportion of women members on the NHRI's decision-making body. This ostensibly provides a stronger guarantee of equitable gender representation, although minimum quotas have caused accreditation problems for some NHRIs where the number of appointed female commissioners in practice is below the quota prescribed by law.[31] There are various examples of NHRI legislation from the Asia Pacific region that establish prescribed gender representation on the NHRI's decision-making body. For instance, article 12.9 of the Law on the National Human Rights Commission of Mongolia provides that the '[a]ppointment of the Commissioners shall consider gender equality and forty percent of the Commissioners provided in Article 12.1 of this Law shall be representation from one of sexes'.[32] Article 5(7) of the National Human Rights Commission of Korea Act also provides that '[t]he number of commissioners of any gender shall not exceed 6/10 of the total number of commissioners'.[33]

The SCA's jurisprudence on gender representation in the composition of the NHRI's decision-making body confirms that there is no clear proportion or threshold that is universally applicable in any context. On multiple occasions the SCA has remarked that only having a single female commissioner on a large commission with five or more members will not be sufficient gender representation.[34] In its most recent reviews of the NHRIs of Qatar and Oman, the SCA highlighted

[28] See, eg, *Protection of Human Rights Act 1993* (India), section 13, according to which the NHRI shall 'while inquiring into complaints under this Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure. See also *Ombudsman (Komesina 0 Sulufaiga) Act 2013* (Samoa) sch 3 s 6, which requires that candidates for appointment as Ombudsman be 'qualified for appointment as a judge of the District Court'.

[29] General Observation 2.9 on *The quasi-judicial competency of NHRIs* (complaints-handling) acknowledges that '[t]he Paris Principles do not require that an NHRI have the ability to receive complaints or petitions from individuals or groups regarding the alleged violation of their human rights': *General Observations* (n 16) 50.

[30] The SCA has made recommendations for NHRIs to advocate for such a provision in their 'enabling law' on many occasions: Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, 13-17 November 2017 < https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_November_2017_-_ENG.pdf> ('November 2017 SCA Report') 28 (Poland) and 47 (Nicaragua); Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, 14-18 May 2018 < https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_May_2018-Eng.pdf> ('May 2018 SCA Report') 32 (Nicaragua) May 2018. See also David Langtry and Kirsten Roberts Lyer (n 18) 100-101.

[31] See, eg, May 2024 SCA Report (n 15) 21 (Cameroon).

[32] *Law on the National Human Rights Commission of Mongolia 2020* (Mongolia) [translation Legal Institute of Mongolia <https://legalinfo.mn/en/edtl/16532053985811>] art 12.9.

[33] *National Human Rights Commission of Korea Act* (Korea) [translation National Human Rights Commission of Korea <https://www.humanrights.go.kr/template/resources_eng/file/National%20Human%20Rights%20Commission%20Act.pdf >] art 5(7).

[34] See, eg, Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, 13-17 March 2017 < https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Final_Report_-_March_2017-_English.pdf> ('March 2017 SCA Report') 12 (Niger); Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, 3-7 October 2022 <https://www.ohchr.org/sites/default/files/documents/countries/nhri/ganhri/2022-11-08/SCA-

that only three of 14 members of both NHRIs were women, although in both cases the SCA's report did not expressly note that this proportion was insufficient to meet the Paris Principles standards.[35] In the case of Oman, notwithstanding the reference to the proportion of female members, the SCA also acknowledged that the institution was 'advocating for an amendment to [its enabling law] to provide for an increased quota of female representation' and encouraged the NHRI to continue with this advocacy.[36] In its March 2022 review of the NHRI of Austria, the SCA noted that there were no legal requirements to support diversity on the NHRI's board and that all three members of the NHRI's board being male, yet despite these concerns the SCA reaccredited the NHRI with A status.[37]

At first inspection, the above examples indicate some inconsistency across SCA jurisprudence on gender representation in the NHRI decision-making body. However, the different approaches also highlight some challenges with the SCA's reporting process and why caution is warranted when seeking to discern a clear standard that the SCA applies across all contexts. The SCA is always dealing with a question of thresholds – such as whether an institution is considered an A- or B-status – with a range of different issues impacting on whether an NHRI surpasses that particular threshold. Whether a single issue, such as insufficient gender diversity on the NHRI decision-making body, will lead to an adverse accreditation outcome is a question of degree and considered among a range of matters of Paris Principles compliance, not all of which are listed in the SCA's public report.

NHRIs with an adverse recommendation on gender diversity in its leadership also face the challenge that the procedures which define the composition of its decision-making body and the appointment of members are outside of the direct control of the NHRI. While the absence of state involvement in the accreditation of NHRIs serves to inhibit political interference and lends the process its peer-review character, it also limits the scope of recommendations available to the SCA, which can only direct its recommendations to NHRIs. Accordingly, the SCA lacks the mandate to expressly direct its recommendations to governments or states. The only response available to NHRIs in such cases is to advocate with their national government or parliament to take action to address the SCA's recommendations, usually through legislative amendments or policy change.

Gender representation and diversity among NHRI staff

As referenced in General Observation 1.7 above, an NHRI may also address the requirement of pluralism under the Paris Principles through 'staff that are representative of the diverse segments of society'.[38] It should be emphasised, however, that pluralism through staffing measures is not an option that can displace the requirement for commission-model NHRIs to have a diverse decision-making body. The SCA will expect such institutions to ensure pluralism in both contexts. For example, in its 2021 accreditation of the NHRI of Mongolia, the SCA explicitly noted the issue of pluralism in the NHRI's leadership, staff, and also its advisory bodies.[39]

Adopted-Report-October-2022-EN.pdf> ('October 2022 SCA Report') 23-24 (Indonesia); Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation*, 18-29 October 2021 < https://www.ohchr.org/sites/default/files/2021-12/SCA-Report-October-2021_E.pdf> ('October 2021 SCA Report') 34-35 (Sri Lanka).

[35] See October 2021 SCA report, ibid 17 (Qatar); May 2024 SCA Report (n 15) 52 (Oman).

[36] May 2024 SCA Report, ibid 51 (Oman).

[37] Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation*, 14-25 March 2022 <https://www.ohchr.org/sites/default/files/2022-04/SCA-Report-March-2022_E.pdf> ('March 2022 SCA Report') 13-14 (Austria).

[38] *General Observations* (n 16) 20.

[39] October 2021 SCA Report (n 34) 13-15 (Mongolia).

General Observation 2.4 on the *Recruitment and retention of NHRI staff* focuses predominantly on mechanisms to promote independence of the NHRI in its recruitment of staff – for example, by restricting the potential for government secondees and ensuring that recruitment decisions are made independently of government. However, it also provides that NHRIs should be:

> legislatively empowered to determine the staffing structure and the skills required to fulfil the NHRI's mandate, to set other appropriate criteria (for example, to increase diversity), and to select their staff in accordance with national law.[40]

In many cases, staffing and recruitment policies may be developed at the sole discretion of the NHRI, which provides an institution with ample latitude to establish its own internal mechanisms to encourage the representation of staff at all levels. In the APF's recent Gender Baseline Assessment, 24 of the 25 Asia Pacific NHRIs surveyed indicated that gender equality is considered in their human resource management systems in some respect.[41] However, with most internal NHRI policies on recruitment and human resources not publicly available, it is difficult to assess the quality of these systems and their impact in supporting actual equality and representation in practice.

The reference in General Observation 2.4 to the selection of staff 'in accordance with national law' has been applied by the SCA to allow NHRIs to operate within the parameters of public sector regulatory schemes, which may be required under national law in some contexts. This may include through the payment of staff in accordance with generally applicable public sector salary scales, or making mandatory contributions to civil service pension funds.[42] While this may be a relevant consideration in staffing approaches more generally, there is an increasing focus at the SCA on the gender composition of staff in practice, including whether there has been an increase in the proportion of female staff since the NHRI's previous review.

The written application template for GANHRI accreditation, the Statement of Compliance with the Paris Principles, requires applicant NHRIs to explain '[w]hether and how the staff reflects the principle of pluralism' and to provide 'a list of staff' or the 'staffing structure of the NHRI', indicating the 'gender distribution' of staff.[43] This information is critical for the SCA's assessment of whether there is a sufficient proportion of female staff to meet the pluralism requirements of the Paris Principles. However, consistent with its approach to gender representation on the NHRI decision-making body, the SCA has not established a precise threshold for what it considers to be a sufficient proportion of female staff that will apply across all national contexts.

In some accreditation reviews, the SCA has acknowledged the efforts of NHRIs to strengthen internal policy frameworks to support greater gender diversity among staff. For example, in the 2014 review of the NHRI of Afghanistan, the SCA noted 'with appreciation' the institution's efforts to improve gender balance in it staff, including 'the adoption of a Gender Policy to promote greater

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[40] *General Observations* (n 16) 39

[41] Gender Baseline Assessment (n 1) 29.

[42] Note that General Observation 2.7 on the *Administrative Regulation of NHRIs* also relevantly explains that:

> The classification of an NHRI as an independent State agency has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting. Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for their use of public funds, the application of such rules or regulations on an NHRI is not considered inappropriate provided they do not compromise the NHRI's ability to perform its role independently and effectively.

Note, however, that the SCA does not always accept this as a justification for recruitment practices that may compromise NHRI independence: October 2021 SCA Report (n 34) 12-13 (Mongolia); December 2020 SCA Report (n 53) 31-32 (Serbia).

[43] Global Alliance of National Human Rights Institutions, *Compilation of the Rules and Working Methods of the SCA* < https://ganhri.org/information-for-nhris/> 26.

gender equity and opportunities for advancement'.[44] Similarly, in its November 2017 review of the NHRI of Panama, the SCA recognised 'the efforts undertaken by DPRP to address pluralism including that it reports that out of the twelve (12) current directors, seven (7) are women, and that out of the eleven (11) regional branches chiefs, eight (8) are women'.[45]

In its May 2024 review of the NHRI of Sri Lanka, the SCA identified that 48% of the institution's staff were women and acknowledged that the NHRI was 'formulating a comprehensive gender inclusion policy to guide pluralism and diversity within its staff'.[46] However, the report also noted that the NHRI's enabling legislation was 'silent on the requirement for a pluralistic and diverse composition of the HRCSL staff, including linguistic and ethnic representation', encouraging the NHRI to 'continue to establish measures to support pluralism and diversity'.[47] This issue was raised with the NHRI in the context of a recommendation to upgrade the institution from B to A status, which may indicate that the SCA was encouraged by the NHRI's work on the gender inclusion policy and considered the proportion of female staff to be sufficient, although this is not made clear in the report. Similar comments were made in the report from the same session in relation to the NHRI of Portugal, which the SCA acknowledged had a proportion of 71% female staff.[48]

The SCA raised pluralism and diversity as an issue of concern in its review of the NHRI of Ghana in March 2019, highlighting 'that there is gender imbalance in the staff complement' of the NHRI, but without providing any further detail on the extent of this gender balance.[49] In other accreditation reviews, the SCA has highlighted where specific proportions of female staff were not considered to represent sufficient gender balance, with reported proportions of 36%,[50] 34%,[51] 27%,[52] 25.92%,[53] and 20%[54] female staff all being considered by the SCA to be insufficient.

There is often an absence of detail in the SCA's reporting on pluralism, with pluralism and diversity among staff often identified as an issue of concern without specifying whether this concern is relating to the representation of women, and/or other marginalised groups, or both. For example, in its October 2023 review of the NHRI of Moldova, the SCA noted that the NHRI's 'enabling law is silent with regards to pluralism and diversity of its staff', recommending that the institution 'advocate for the formalization of processes that ensure that the principles of pluralism and diversity are reflected in its staff [and] takes steps to ensure these principles are implemented'.[55] This leaves the NHRI under review, and indeed other NHRIs or stakeholders that may consider the SCA's report as a reference for guidance in their own context, to speculate as whether the SCA was concerned with the representation of women, and/or with other groups among NHRI staff. While the lack of prescription in the SCA's recommendations offers the NHRI some latitude in

[44] Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, 27-31 October 2014 <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_OCTOBER_2014_FINAL_REPORT_-_ENGLISH.pdf> ('October 2014 SCA Report') 17 (Afghanistan).
[45] November 2017 SCA Report (n 30) 24 (Panama).
[46] May 2024 SCA Report (n 15) 37 (Sri Lanka).
[47] Ibid.
[48] Ibid, 31 (Portugal).
[49] SCA Report March 2019 (n 27) 23 (Ghana).
[50] October 2021 SCA Report (n 34) 16-17 (Palestine).
[51] October 2022 SCA Report (n 34) 25 (Niger).
[52] March 2017 SCA Report (n 34) 12 (Niger).
[53] Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation*, Online, 7-18 December 2020 <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_December_2020_-_24012021_-_En.pdf> ('December 2020 SCA Report') 21 (Mauritania).
[54] May 2024 SCA Report (n 15) 45 (India).
[55] Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Online, 25-29 September 2023, Geneva, 23-27 October 2023 <https://www.ohchr.org/sites/default/files/documents/countries/nhri/ganhri/SCA-Report-Second-Session-2023-EN-new.pdf> ('October 2023 SCA Report') 23 (Moldova).

addressing this particular concern, it may also create some uncertainty for NHRIs in understanding the SCA's expectations.

NHRI programs on gender-related human rights

Neither the Paris Principles nor the *General Observations* establish any explicit standards for the performance of NHRIs in how they address gender and the rights of women and girls in the exercise of their mandate. Indeed, the Paris Principles standards provide little guidance on how an NHRI should select and prioritise different human rights issues. General Observation 1.2 on the Human rights mandate explains that:

> [a]n NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights.[56]

The above focus on NHRI 'interpretation' of the mandate has been applied by the SCA to require NHRIs to engage across a broad range of human rights issues, even in contexts where there may be an express restriction in the institution's legal mandate.[57]

Interrogating how an NHRI interprets its legal mandate will inevitably enliven considerations of how it prioritises its financial resources and the basis on which it elects to develop programs on one thematic issue over another. Despite the lack of prescription in the *General Observations* on the quality and focus of NHRI thematic programs, these are often issues of focus for the SCA and tend to be raised in more contentious accreditation reviews, typically resulting from allegations of political interference in a third-party submission or a report from the United Nations human rights machinery.[58] Documented in SCA reports under the heading 'Addressing human rights violations', the SCA will identify where it is concerned that an NHRI has not provided sufficient evidence that it has used its mandate effectively to respond to what the SCA considers to be one or more of the most serious human rights issues in that particular national context. This issue of performance has led to recommendations to downgrade or remove accreditation status from NHRIs in various recent reviews.[59] Occasionally, the SCA will also reference specific thematic human rights issues under this heading where it wants to highlight a good practice or where there has been demonstrated improvement in an NHRI's performance,[60] although this is less common.

The thematic work of NHRIs on gender or the rights of women and girls does not appear frequently in reports of the SCA. This may be interpreted as an indication that NHRI work on gender-related human rights is not typically seen as a space for political interference with or compromised independence of the NHRI. Conversely, it may represent a lack of focus at the SCA on NHRI performance on gender-related human rights, or a similarly limited engagement on gender performance in third-party submissions or reports from the UN machinery.

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[56] *General Observations* (n 16) 7.
[57] See, eg, March 2017 SCA Report (n 34) 10 (Lithuania); October 2023 SCA Report (n 56) 10 (Australia).
[58] On the capacity of the SCA to receive submissions from third parties, see Global Alliance of National Human Rights Institutions, *Rules of Procedure for the GANHRI Subcommittee on Accreditation*, 4 March 2019 < https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/ENG_GANHRI_SCA_RulesOfProcedure_adopted_04.03.2019_vf.pdf> rule 6.7. The SCA has also released two practice notes that address its capacity to receive submissions from third parties and consider other extrinsic materials: Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Practice Note 3 – Assessing the Performance of NHRIs*, 6 March 2017 < https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN_PracticeNote3_AssessingPerformance_adopted_06.03.2017.pdf>; Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Practice Note 5 – Sources of information to assess the performance of NHRIs*, 18 May 2018 < https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/PracticeNote-5_EN.pdf>.
[59] Some recent examples include SCA recommendations to remove accreditation from the NHRIs of Russia and Myanmar: October 2023 SCA Report (n 55) 46-53.
[60] See, eg, above examples where an NHRI has interpreted its mandate broadly: (n 57).

In the limited circumstances where NHRI thematic work on gender has appeared explicitly in SCA reports, it is typically with reference to an NHRI's positive achievements in advancing the rights of women and girls. For example, in its review of the NHRI of Oman in May 2024, the SCA acknowledged the institution's 'recommendations for the State to adhere to international standards' in its engagement with the UN Committee on the Elimination of Discrimination against Women.[61] At the same session, the SCA recognised that the NHRI of Spain had addressed 'a wide range of human rights issues such as migrant's rights, women's rights, children's rights, racial discrimination, sexual and gender-based violence and housing'.[62] Considering the accreditation of the NHRI of Bahrain in October 2023, the SCA noted that the institution had 'successfully advocated for legislative changes to allow for Bahraini women to pass on citizenship to their children'.[63]

There have also been some examples where the SCA has identified concerns with an NHRI's thematic work on gender. In its June 2021 recommendation to downgrade the NHRI of Hungary to B status, the SCA acknowledged that it had:

> received information from civil society that the CFR had failed to step up in support of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention.[64]

The failure was considered among other issues of performance to have compromised the NHRI's full compliance with the Paris Principles. In its March 2019 review of the NHRI of Bulgaria, the SCA acknowledged the NHRI's submission that it:

> has made various recommendations on the issue of domestic violence, including in relation to the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. It further reports that there has been an inadequate response to these recommendations by relevant State authorities.[65]

This does not necessarily indicate a concern with the quality of the NHRI's programming on domestic violence or its advocacy for the adoption of relevant regional human rights instruments, but rather the failure of authorities to adopt recommendations from the NHRI.

Concluding remarks

The Paris Principles and *General Observations* offer a framework to define standards for the gender-based governance of NHRIs. In establishing mechanisms to support gender diversity in leadership and staff, these standards offer a pathway for an NHRI to be truly reflective of the population it purports to represent, which will in turn support its effectiveness in practice. Jurisprudence at the SCA also reveals a focus on gender equality in the application of the Paris Principles framework in the accreditation of NHRIs. Despite the limited express reference in the Paris Principles themselves to gender or the rights of women and girls, the application of the pluralism requirements of the Paris Principles has had the effect of strengthening gender representation on NHRIs.

This paper has also revealed that the Paris Principles, *General Observations*, and reported SCA jurisprudence collectively provide very limited guidance for NHRIs on the performance of their mandate in relation to gender and the rights of women and girls. This is symptomatic of a broader

[61] May 2024 SCA Report (n 15) 49-50 (Oman).
[62] Ibid 35 (Spain).
[63] October 2023 SCA Report (n 55) 35 (Bahrain).
[64] Global Alliance of National Human Rights Institutions, Subcommittee on Accreditation, *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation*, Online, 14-24 June 2021 <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf> ('June 2021 SCA Report') 13 (Hungary).
[65] March 2019 SCA Report (n 27) 17 (Bulgaria).

reluctance from the SCA to develop universally applicable expectations for NHRI performance on specific thematic issues in the *General Observations*. While this may be a notable absence in the *General Observations*, the SCA routinely cites the failure of an NHRI to effectively address specific thematic issues as a reason for adverse accreditation recommendations. As a framework of standards under constant development, it is open to the SCA to consider revisions to the *General Observations* to establish clearer expectations on how NHRIs should address the rights of women and girls in practice. However, the desire for predictable and universal performance standards should be balanced against the benefit of maintaining some flexibility for the SCA to provide more contextually relevant recommendations.