Warsaw, 11 February 2022
Opinion-Nr.: NHRI-UZB/434/2021

URGENT OPINION ON THE DRAFT LAW ON THE OMBUDSPERSON OF UZBEKISTAN

UZBEKISTAN

This Opinion has been prepared by Tamara Otiashvili, Senior Legal Expert in Human Rights and Democratic Governance, and has benefited from contributions by Kirsten Roberts Lyer, Associate Professor, Department of Public Policy, Central European University Vienna.

Based on an unofficial English translation of the Draft Law commissioned by the OSCE Office for Democratic Institutions and Human Rights.

OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00, Fax: +48 22 520 0605
www.legislationline.org

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

ODIHR welcomes the legislative initiative of the Ombudsperson of Uzbekistan as it seeks to reform its National Human Rights Institution (NHRI), in compliance with United Nations Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (hereinafter "the Paris Principles"). This is a positive step in addressing the recommendations made to Uzbekistan by the Global Alliance of National Human Rights Institutions' (GANHRI) Sub-Committee on Accreditation (SCA) in December 2020.

There are some positive provisions in the Draft Law, specifically the explicit reference to the independence of the Ombudsperson, the high standing of the Ombudsperson in the country provided for by the Draft Law, and provisions on the institution's promotion and protection functions. At the same time, the Draft Law would benefit from amendments to ensure important aspects pertaining to the NHRI and its functioning, especially those at the core of the institution's basic guarantees of independence, as well as to ensure full compliance with the Paris Principles.

In particular, provisions for the selection and appointment procedures of the Ombudsperson, Deputy Ombudsperson and Regional Representatives require clarification. Broad and unclear provisions on the dismissal process may undermine the security of tenure of the Ombudsperson. Additional safeguards are needed to strengthen the provisions for financial independence. Furthermore, in particular, the NHRI's staff and Regional Representatives should be protected from civil, administrative and criminal liability for words spoken or written, decisions made, or acts performed in good faith in their official capacities ("functional immunity").

More specifically ODIHR makes the following recommendations to further enhance the Draft Law:

A. The Draft Law should specify scope of the Ombudsperson's mandate, including that it covers all human rights and fundamental freedoms.; [par 21]
B. Article 26 should be amended to reflect that the Ombudsperson may provide his/her own reports to international human rights bodies and that any participation in the preparation of State reports to treaty bodies is limited to consultation and is undertaken with due regard for the independence of the Ombudsperson's Office; [par 22]
C. Chapter 5 should be amended to include an explicit provision that the contents of that Chapter are in line with the minimum requirements for the enabling legislation of a NPM as required by the SPT as well as other powers and functions, as reflected in Chapter 4, in the area of torture prevention; [par 26]
D. Article 8 should be clarified to ensure that the actual and perception of independence of the Ombudsperson (as well as Deputy and Regional Representatives), is respected after perusing positions upon the expiry of their term.; [par 30]
E. Article 41 should be expanded to specify that the state will provide the Ombudsperson's Office with adequate funding that includes the areas indicated by the SCA and provide for the NHRI's financial autonomy and

control over its budget. Specific reference should be made to funding for the NPM.; [par 33-34]

F. The Draft Law should provide for pluralism in the composition of the Ombudsperson's Office at all levels and include reference to various kinds of diversity, including ethnic and linguistic minorities, persons with disabilities, and ensuring the equitable representation of women in the NHRI, including in leadership positions.; [par 36]
G. The five-year residency requirement to qualify for the election of the Ombudsperson is overly restrictive and should be removed; [pars 38]
H. The Draft Law should be amended to include detailed provisions on selection and appointment, focusing on a broad, transparent and participatory process. Specific provisions should be included setting out the criteria for the identification and evaluation of candidates.; [par 45]
I. The Draft Law should specify the process by which an incumbent Ombudsperson can receive a second term and whether they can ever be re-elected in the future, bearing in mind the requirements for the selection and appointment process; [par 51]
J. The Draft Law should be amended to provide clear and detailed provisions for the dismissal process of an Ombudsperson that includes the right of appeal to an independent tribunal; [par 55]
K. Article 12 should be amended to provide immunity for all staff of the Ombudsperson's Office, and for the Regional Representatives and specify that functional immunity applies even after the end of the mandate or after a staff member ceases their employment. In addition, the Draft Law should clearly establish the grounds, and a clear and transparent process, by which the functional immunity may be lifted.; [par 60]
L. The Draft Law should provide for the autonomy and independence for the staff of Ombudsperson's Office; [par 62]
M. The powers and functions of the Commission for Constitutional Human Rights and Freedoms should be clearly defined in the Draft Law in a manner that does not undermine the independence of the Ombudsperson's Office. [par 65]

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 17 December 2021 the Authorized Person of the Oliy Majlis of the Republic of Uzbekistan (Ombudsperson) sent a request for a legal review of the Draft Law on the Ombudsperson of Uzbekistan (hereinafter "Draft Law") to the OSCE Office for Democratic Institutions and Human Rights (ODIHR).
2. On 27 December 2021, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of these draft amendments with international human rights standards and OSCE human dimension commitments.
3. Given the short timeline to prepare this legal review, ODIHR decided to prepare an Urgent Opinion on the Draft Law, which does not provide a detailed analysis of all the provisions of the Draft Law but primarily focuses on the most concerning issues relating to the Office of the Ombudsperson.
4. This Urgent Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments.[1]

II. SCOPE OF THE OPINION

5. The scope of this Urgent Opinion covers only the most concerning issues in the Draft Law submitted for review. Thus, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the Office of the Ombudsperson and human rights protection mechanisms in Uzbekistan. It raises key issues and provides indications of areas of concern relating to the Office of the Ombudsperson. In the interest of conciseness, it focuses on those provisions that require amendments or improvements rather than on positive aspects of the Draft Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments.
6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[2] (CEDAW) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*[3] and commitments to mainstream gender into OSCE activities, programmes and projects, this Opinion integrates, as appropriate, a gender and diversity perspective.
7. This Urgent Opinion is based on an unofficial English translation of the Draft Law commissioned by the OSCE/ODIHR, which is attached to this document as an annex.

1 See especially OSCE Decision No. 7/08 Further Strengthening the Rule of Law in the OSCE Area (2008), point 4, where the Ministerial Council "[e]ncourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law [on the issue of] independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention […]".

2 See The Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly resolution 34/180 on 18 December 1979.

3 See OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

Errors from translation may result. The Opinion is also available in Russian. However, the English version remains the only official version of the Urgent Opinion.

8. In view of the above, ODIHR would like to stress that this Urgent Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Uzbekistan in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

9. National Human Rights Institutions (NHRIs) are independent bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are considered a "key component of effective national human rights protection systems and indispensable actors for the sustainable promotion and protection of human rights at the country level".[4] Thus, NHRIs link the responsibilities of the State stemming from international human rights obligations to the rights of individuals in the country and constitute "a bridge between government and civil society, as well as between the national and international systems".[5] Although part of the state apparatus, NHRIs are independent from the executive, legislative and judicial branches to ensure that they are able to fulfil their mandate.

10. However, whether an NHRI can play its role within the state to the full extent depends on many political, social and legal factors. Such an institution must occupy a proper place within the national institutional framework, while having a sufficiently broad scope of competence, as well as a range of powers and financial resources allowing it to effectively carry out its mandate and advance the legal sphere and practice in the human rights field. An important characteristic of an effectively operating institution of this type must be its independence, including financial independence, from other branches of government, especially the executive. Therefore, special statutory safeguards need to protect such independence, including those involving the institution's budget. The success of an NHRI also very much depends on its integrity, professionalism and authority within the structures of the state and of society in general. Thus, it is of the utmost importance to establish, inter alia, appropriate criteria and an adequately transparent procedure for selecting or appointing individuals to serve in the NHRI's decision-making body and to recruit staff with professional qualifications of the highest possible level.

11. The UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights, also known as the "Paris Principles", contain internationally recognized rules on the mandates and competencies of NHRIs.[6] The Paris Principles set out minimum standards on the establishment and functioning of NHRIs, and promote key principles of pluralism, transparency, guarantees of functional and institutional independence and effectiveness of NHRIs. The implementation of the Paris Principles

4 See UN High Commissioner for Human Rights, Report to the UN General Assembly (2007), A/62/36, par 15.

5 the Joint Statement from the Expert Meeting on Strengthening Independence of National Human Rights Institutions in the OSCE Region, 28- 29 November 2016, Warsaw, <http://www.osce.org/odihr/289941?download=true>, which states that "a strong and independent NHRI is a necessary feature of any state that underpins good governance and justice, as well as human rights".

6 The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris (7-9 October 1991), and adopted by UN General Assembly Resolution 48/134 of 20 December 1993.

and evaluation of NHRIs against these principles is undertaken by the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation (SCA).[7] The SCA publishes reports on the accreditation applications of states, reviews their status and provides them with status accreditation every five years.[8] The status of NHRIs may also be reviewed if the legislation regulating them is amended, among other circumstances. The SCA additionally develops "General Observations", which clarify and further explain the Paris Principles.

12. The UN General Assembly and the UN Human Rights Council have also issued various general resolutions on NHRIs.[9] Additionally, the United Nations Development Programme ("UNDP") and the Office of the United Nations High Commissioner for Human Rights (hereinafter "OHCHR") have published a Toolkit for Collaboration with National Human Rights Institutions.[10] The toolkit explains the various models of NHRIs and provides guidance on how to support NHRIs in the different phases of their existence, from their establishment to supporting their development into more mature NHRIs.[11]

13. Furthermore, the UN General Assembly Resolution A/ RES / 75/186 on the role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law,[12] in its paragraph 2, strongly encourages Members States to create and strengthen Ombudsman institutions "consistent with the principles on the protection and promotion of the Ombudsman institution (the Venice Principles)"; in paragraph 8 it "[e]ncourages Ombudsman and mediator institutions, where they exist, (a) To operate, as appropriate, in accordance with all relevant international instruments, including the Paris Principles and the Venice Principles".

14. At the Council of Europe (hereinafter "CoE") level,[13] Parliamentary Assembly Recommendation 1615 (2003) lists certain characteristics that are essential for the effective functioning of ombudsperson institutions specifically.[14] In addition, CoE Committee of Ministers Recommendation CM/Rec(2021)1, on the Development and strengthening of effective, pluralist and independent national human rights institutions, (hereinafter "CoE Recommendation 2021") aims to ensure that NHRIs are established

7 The GANHRI, formerly known as the International Coordinating Committee for National Human Rights Institutions (ICC), was established in 1993 and is the international association of national human rights institutions from all parts of the globe. The GANHRI promotes and strengthens NHRIs in accordance with the Paris Principles, and provides leadership in the promotion and protection of human rights.

8 See Article 15 of the GANHRI Statute (version adopted on 22 February 2018). Accreditation is the recognition that a NHRI meets the requirements of or continues to comply with the Paris Principles. The SCA awards A or B status to NHRIs. Status A means that an NHRI is in compliance with the Paris Principles and a voting member as regards the work and meetings on NHRIs internationally; status B means that the NHRI does not yet fully comply with the Paris Principles or has not yet submitted sufficient documentation in this respect.

9 See e.g., UN General Assembly, resolution 70/163 on National Institutions for the Promotion and Protection of Human Rights, A/RES/70/163, adopted on 17 December 2015; resolutions 63/169 and resolution 65/207 on the Role of the Ombudsman, Mediator and Other National Human Rights Institutions in the Promotion and Protection of Human Rights, A/RES/63/169 and A/RES/65/207, adopted on 18 December 2008 and on 21 December 2010 respectively; resolution 63/172 and resolution 64/161 on National Institutions for the Promotion and Protection of Human Rights, A/RES/63/172 and A/RES/64/161, adopted on 18 December 2008 and 18 December 2009 respectively; and resolution 48/134 on National Institutions for the Promotion and Protection of Human Rights, A/RES/48/134, adopted on 4 March 1994. See also resolution 27/18 on National Institutions for the Promotion and Protection of Human Rights of the UN Human Rights Council, A/HRC/RES/27/18, adopted on 7 October 2014.

10 See the UNDP-OHCHR, Toolkit for Collaboration with National Human Rights Institutions, December 2010.

11 See the UNDP-OHCHR, Toolkit for Collaboration with National Human Rights Institutions, December 2010), page 241.

12 Adopted by the UN General Assembly on 16 December 2020 (75th session).

13 Although the Republic of Uzbekistan is not a member to the Council of Europe, the documents referred to may serve as important and useful sources for reference.

14 See the Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1615 (2003) on the Institution of Ombudsman, 8 September 2003; see also other CoE documents of relevance, e.g., CoE Committee of Ministers, Recommendation Rec(97)14E on the Establishment of Independent National Institutions for the Promotion and Protection of Human Rights, 30 September 1997; PACE, Recommendation 1959 (2013) on the Strengthening of the Institution of Ombudsman in Europe, adopted on 4 October 2013.

and governed in accordance with the minimum standards set out in the Paris Principles, in particular as regards their terms of reference and competence to promote and protect all human rights and their autonomy from government.[15] The European Commission for Democracy through Law (hereinafter "Venice Commission"), in addition to numerous opinions on NHRI legislation, published Principles on the Protection and Promotion of the Ombudsman Institution ("the Venice Principles") in 2019.[16]

15. In the 1990 Copenhagen Document, OSCE participating States have committed to facilitate "the establishment and strengthening of independent national institutions in the area of human rights and the rule of law".[17] Other OSCE commitments have further emphasized the important role that NHRIs play in the protection and promotion of human rights, in particular, the Bucharest Plan of Action for Combatting Terrorism, which tasks the OSCE/ODIHR with continuing and increasing "efforts to promote and assist in building democratic institutions at the request of States, inter alia by helping to strengthen […] ombudsman institutions".[18]

16. Other useful reference documents of a non-binding nature are also relevant in this context, as they contain a higher level of practical details including, among others:

    i. the *Compilation of Venice Commission Opinions concerning the Ombudsman Institution* (2016);[19] and

    ii. the OSCE/ODIHR *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality (2012),* which provides useful guidance regarding measures and initiatives to strengthen NHRIs' capacity and practical work on women's rights and gender equality.[20]

2. BACKGROUND

17. The Institute of the Authorized Person of the Oliy Majlis of the Republic of Uzbekistan for Human Rights (Ombudsperson) was established on 6 May 1995. The adoption of the Law on the Office of Ombudsperson followed in 1997. This law, together with the Constitution, form the basis for and regulates the mandate of the Office of the Ombudsperson. Since the adoption of the law in 1997, the mandate of the Ombudsperson has been amended, most recently in 2017 following reforms initiated by the current President of Uzbekistan.[21]

18. The 2017 amendments provided additional rights to the Ombudsperson to propose issues for consideration by the Constitutional Court, a waiver of court fees for the cases submitted by the Ombudsperson, the right to submit special reports to the parliament, the right to provide recommendations to heads of state agencies on human rights issues, broader mandateon handling complaints related to human rights abuses in places of detention, and allocation of a separate line in the state budget. These amendments also

15 See the CoE Committee of Ministers, Recommendation CM/Rec(2021)1, on the Development and strengthening of effective, pluralist and independent national human rights institutions, 31 March 2021.

16 European Commission for Democracy through Law (Venice Commission), Principles on the Protection and Promotion of the Ombudsman Institution ("the Venice Principles"), 3 May 2019.

17 See 1990 OSCE Copenhagen Document, (1990), par 27.

18 See Bucharest Plan of Action for Combating Terrorism (2001), Annex to OSCE Ministerial Council Decision on Combating Terrorism, MC(9).DEC/1, 4 December 2001, par 10.

19 See the Compilation of Venice Commission Opinions concerning the Ombudsman Institution.

20 OSCE/ODIHR, Handbook for National Human Rights Institutions on Women's Rights and Gender Equality, 4 December 2012, pages 9 and 78.

21 The major strategic framework for the reforms – Action Strategy for the five priority development areas of the Republic of Uzbekistan in 2017-2021 - explicitly envisages measures not only to promote human rights, but also to strengthen rule of law and reform the judicial system.

provided for closer cooperation of the Office of the Ombudsperson with civil society in delivering its mandate and an enhanced mandate in promoting human rights through education and communication with the general public. The Ombudsperson was accredited with B-status in December 2020 by the GANHRI SCA..[22]

19. The UN Human Rights Committee welcomed the amendments to expand the Ombudsperson's powers to allow it to receive complaints from persons deprived of liberty and to serve as the National Preventive Mechanism ("NPM").[23] However, a number of UN Treaty Bodies have noted concern about the functioning of the Ombudsperson's Office. For example, the Human Rights Committee expressed "concerns about reports that complaints are not always reported owing to concerns that it is not safe to do so, and that complaints that are made are not duly and impartially investigated."[24] The UN Committee Against Torture ("CAT") also "expressed concerns about the effectiveness of the Ombudsman in discharging its mandate to monitor places of deprivation of liberty in respect of complaints related to sexual violence and the referral of allegations of torture to the Ministry of Internal Affairs."[25] In its 2019 Concluding Observations, the Committee on the Elimination of Racial Discrimination ("CERD") "noted that the Ombuds[person] reported not to have received any complaints on racial discrimination from citizens, foreign nationals or stateless persons, and any complaints regarding the provision of redress to victims of racial discrimination."[26] While welcoming the establishment of the Ombudsperson's Office and "the efforts it has made to promote and protect human rights despite the challenging context in which it operates", the SCA expressed concern around the institution's activities in relation to torture and racial discrimination, the public availability of its recommendations, and the selection and appointment process.[27]

3. MANDATE, POWERS & FUNCTIONS

3.1. Powers and Functions

20. The Draft Law provides for an expanded mandate for the Office of the Ombudsperson. The main tasks and functions are set out in Articles 11 and 14, with additional complaints handling functions set out in Article 15. The SCA requires that NHRIs have both promotion and protection functions. According to the SCA's General Observation, promotion functions include education, training, advising, outreach and advocacy. Protection functions include monitoring, inquiring, investigating, reporting, as well as complaint handling.[28] The Ombudsperson's Office is given functions across these areas, and there is also explicit reference made to cooperation with civil society (Article 32). It is also welcomed that the Ombudsperson appears to be given high standing in the country, with high-level access to the courts and cabinet of ministers (Articles 28 to 31). Various

22 The Office previously had B-status.

23 See the UN Human Rights Committee, Concluding observations on the fifth periodic report of Uzbekistan, CCPR/C/UZB/CO/5, par. 3.c, adopted on 1 May 2020.

24 See the UN Human Rights Committee, Concluding observations on the fifth periodic report of Uzbekistan, CCPR/C/UZB/CO/5, par. 24, adopted on 1 May 2020

25 See the UN Committee Against Torture, Concluding observations on the fifth periodic report of Uzbekistan .

26 See the UN Committee on the Elimination of Racial Discrimination, Combined tenth to twelfth periodic reports submitted by Uzbekistan under article 9 of the Convention, due in 2018, CERD/C/UZB/10-12.

27 See the GANHRI Sub-Committee on Accreditation Report, (December 2020) p. 11-14.

28 See SCA, General Observations, 1.2 (adopted on 21 February 2018).

aspects of the Ombudsperson's mandate, however, would benefit from clarification to strengthen the Office's role to effectively promote and protect a range of human rights.

3.2 Definition of Human Rights

21. The Draft Law does not mention the scope of the 'human rights' covered by the Ombudsperson's Office. The SCA requires that NHRIs have a broad human rights mandate, applied to all functions that should at a minimum cover – but not be limited to - human rights in conventions ratified by the state.[29] Noting further the concerns of the SCA, and the CERD Committee in paragraph 19 above, explicit reference to the anti-discrimination role of the Ombudsperson's Office could be helpful in ensuring that this issue forms a clear part of the institution's mandate. **The Draft Law should specify the human rights covered by the Ombudsperson's Office, including that its mandate covers all rights and freedoms in the core UN human rights conventions.**

RECOMMENDATION A

The Draft Law should specify scope of the Ombudsperson's mandate, including that it covers all human rights and fundamental freedoms.

3.3 Engagement with the International Human Rights System

22. Article 26 provides two roles for the Ombudsperson in relation to the international human rights system: (1) in updating international human rights organizations and foreign institutions on implementation of international treaties in the field of human rights and freedoms; and (2) participating in the preparation of Uzbekistan's reports on implementation of international treaties in the field of human rights and freedoms. However, clarity is required to ensure that the Ombudsperson has the power to submit his/her own reports to the UN treaty bodies and similar regional and international conventions in a fully independent manner. The SCA considers that "the Paris Principles recognise that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review (UPR)) and other treaty bodies, can be an effective tool for NHRIs in the promotion and protection of human rights domestically."[30] **Article 26 should be amended to reflect that the Ombudsperson may provide his/her own reports to international human rights bodies and that any participation in the preparation of State reports to treaty bodies is limited to consultation and is undertaken with due regard for the independence of the Ombudsperson's Office. Further, follow-up to recommendations of the United Nations treaty bodies and the UPR should be included as a specific function of the institution.**

23. The Draft Law does not explicitly mention the powers of the Ombudsperson in encouraging ratification of, or accession to, international human rights instruments and their effective implementation, while also promoting and encouraging the harmonization of national legislation and practices with these instruments.[31] **Consideration could be**

29 See also ODIHR Opinion on the draft Law on the National Commission for the Promotion and the Protection of Fundamental Human Rights and the Fight against Discrimination in Italy and ODIHR Opinion on the Draft Law Amending and Supplementing the Ombudsman Act of Bulgaria.

30 SCA General Observation

31 See SCA, General Observations, 1.3. See also ODIHR Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland.

given to clarifying the Ombudsperson's role in encouraging ratification of, or accession to international human rights instruments.

RECOMMENDATION B

Article 26 should be amended to reflect that the Ombudsperson may provide his/her own reports to international human rights bodies and, that any participation in the preparation of State reports to treaty bodies is limited to consultation and is undertaken with due regard for the independence of the Ombudsperson's Office.

3.4 Publicity of Reports

24. Article 16 obliges the Ombudsperson to prepare and submit annual and special reports to the parliament, to the president and the cabinet of ministers. However, no provisions expressly provide for the publication of such reports, which can impair the transparency of the Ombudsperson's work. The SCA has placed considerable emphasis on the creation and submission of annual, special and thematic reports by NHRIs and allowing for public scrutiny of the effectiveness of an NHRI.[32] This was also an area of concern raised by the SCA in its December 2020 review in relation to the lack of publicity of reports from the Ombudsperson's Office.[33] **The Draft Law should be amended to include explicit provision for publication of reports and recommendations by the Ombudsperson.** Such provision is already – correctly – included in Article 38 in relation to the annual report on torture prevention.

3.5. Ombudsperson as a National Preventive Mechanism

25. Pursuant to Article 34 of the Draft Law, the Ombudsperson performs the function of a NPM under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("OPCAT").[34] As such, the legislation should comply with the relevant provisions of the OPCAT, particularly Article 18, which states that State Parties "shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel" and "shall give due consideration to the [Paris] Principles" when establishing national preventive mechanisms.[35] The requirements for NPM legislation deriving from OPCAT have been elaborated upon by the Sub-Committee for the Prevention of Torture ("SPT"). The SPT requires that as a minimum, enabling legislation grants the NPMthe power to freely select the places of deprivation of liberty, as well as timing of such visits, and mandates them to make recommendations to the relevant authorities.[36]

26. Not all of the SPT requirements are explicitly covered in Chapter 5 of the Draft Law. Thus, while Chapter 5 specifies the Ombudsperson's powers and functions as the NPM, it needs to be understood as not limiting the Ombudsperson from using other powers to address torture prevention. For example, the power of legislative initiative is not

32 See also ODIHR Opinion on the Draft Amendments to the Act on Establishment of the Slovak National Centre for Human Rights.

33 See GANHRI Sub-Committee on Accreditation Report, December 2020, p 12.

34 The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted by General Assembly resolution A/RES/57/199 of 18 December 2002.

35 See also the OHCHR Practical Guide on The Role of National Preventive Mechanisms.

36 For details, see the SPT Analytical Assessment Tool for National Preventative Mechanisms.

mentioned in Chapter 5, but is a general function of the Ombudsperson in Chapter 4. The Ombudsperson must be able to apply this function to torture prevention activities. Similarly, the Ombudsperson must be able to engage with the international NPM network and SPT (per Article 26). **Chapter 5 should be amended to include an explicit provision that the contents of that Chapter are in line with the minimum requirements for the enabling legislation of a NPM as required by the SPT as well as other powers and functions, as reflected in Chapter 4, in the area of torture prevention.**

27. As noted above, the SCA and the CAT have expressed concern regarding the role of the Ombudsperson as the NPM. In its Concluding Observations, the Committee further noted that it was "alarmed that the ombudsman, who is accountable to the parliament, reportedly refers all allegations of torture to the procuratorial authorities and the Ministry of Internal Affairs for Investigation"[37] (see also paragraph 19 above). In this regard, Article 34 of the Draft Law, which states that cases of torture should be submitted to relevant government authorities for their immediate elimination, may be problematic. **Article 34 should be clarified to ensure that the role of the Ombudsperson as the NPM is to make recommendations to national authorities for the immediate cessation of treatment that contravenes the CAT, as well as for initiation by the national authorities of a criminal investigation into such treatment. Cases of particular concern must be monitored and followed-up by the NPM.**

28. Article 35 further expands the Ombudsperson's mandate to form groups made up of civil society representatives for "identifying and preventing cases of torture, including in the regions." However, the Article states that it is the parliament which approves the regulations governing the monitoring visits by these civil society groups. In keeping with the independence of the Ombudsperson's work, it is unclear why regulations for the activities of these civil society groups require approval by the parliament. This risks potential political interference in the activities of the Ombudsperson in undertaking its mandate as the NPM. **The Ombudsperson should have the authority to determine the regulations for activities of civil society groups who are mandated to visit places of detention within the context of the institution's NPM role. These regulations should be made publicly available, but should not be subject to approval by any external body.** In addition, there should be consideration of the requirements for NPMs in the development of Chapter 5 of the Draft Law, including financial and operational autonomy, specific staff expertise, immunities, and a separate unit as set out in the SPT Analytical Assessment.

RECOMMENDATION C

Chapter 5 should be amended to include an explicit provision that the contents of that Chapter are in line with the minimum requirements for the enabling legislation of a NPM as required by the SPT as well as other powers and functions, as reflected in Chapter 4, in the area of torture prevention.

4. INDEPENDENCE OF THE OMBUDSPERSON'S OFFICE

29. The Paris Principles require that an NHRI is, and is perceived to be, independent of the government. The explicit statement of independence of the Ombudsperson in Article 2 is

37 See Concluding observations on the fifth periodic report of Uzbekistan, 14 January 2020, para 42.

a positive inclusion in the Draft Law. It is also welcome that Article 3 sets the basic principles of operation as "legality, independence, justice, humanism, publicity, openness, and accessibility." However, the Draft Law would benefit from additional safeguards that could further protect and guarantee such independence: for example, guarantees ensuring its operational and financial independence and autonomy (see *Section 5 below*), the terms and conditions governing the appointment and dismissal of the Ombudsperson (see *Section 6 below*), as well as their functional immunity (see *Sub-Section 6.6 below*). **In addition, in recognition of the status of the Ombudsperson as Uzbekistan's NHRI, the Draft Law should include specific reference to the Paris Principles.**

30. Article 8 appears to allow for the Ombudsperson to be employed by the public administration after their term of office. The SCA has raised concerns about seconded individuals leading NHRIs because of the actual and perceived risk to the independence of the institution.[38] In particular, if a person has come from, and is going to return to a position within the public administration, such as within a government ministry, their independence may be called into question. Similarly, in respect of Article 8, perception of independence can be as important as actual independence of an NHRI, and trust in the institution may be reduced where the former Ombudsperson possibly takes up a high level government position. **Article 8 should be clarified to ensure that the actual and perception of independence of the Ombudsperson (as well as Deputy and Regional Representatives), is respected after perusing positions upon the expiry of their term.**

31. .

RECOMMENDATION D

Article 8 should be clarified to ensure that the actual and perception of independence of the Ombudsperson (as well as Deputy and Regional Representatives), is respected after perusing positions upon the expiry of their term.

5. ADEQUATE FUNDING OF THE OMBUDSPERSON'S OFFICE

32. Funding is vital to the independent functioning of NHRIs. The State is expected to provide the NHRI with an appropriate level of funding for all of its core operations and activities. The SCA considers that: '[t]o function effectively, 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." It must also have the power to allocate funding according to its priorities. In particular, adequate funding should ensure the "gradual and progressive realisation of the improvement of the NHRI's operations and the fulfilment of its mandate." CoE Recommendation 2021 similarly emphasizes the importance of funding.[39] According to the Recommendation, adequate funding includes allocation of funding for accessible premises, staff salaries, well-functioning

38 See for example, GANHRI Sub-Committee on Accreditation Report on Thailand (November 2008) p.11; ICC Sub-Committee on Accreditation Report on Mauritania (May 2011) p.16; GANHRI Sub-Committee on Accreditation Report on Tanzania (November 2016) p. 52.

39 Article 6 of the Recommendation CM/Rec(2021)1, Appendix, notes that "Member States should provide NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities."

communications systems and sufficient resources for mandated activities, including in times of financial constraint.[40]

33. In its December 2020 report on the Ombudsperson's Office, the SCA expressed concern regarding adequate funding. While acknowledging that the Ombudsperson's budget had increased in 2020, the SCA encouraged the Office "to continue to advocate for additional funding to ensure that it can effectively carry out the full breadth of its mandate and provide capacity building for its regional representatives."[41] The budget of the Ombudsperson is mentioned in Article 41, which provides for a separate budget line for the NHRI.[42] However, this is the only article in the Draft Law that regulates the budget. The absence of further detail in the regulation raises concerns for the Draft Law's proper implementation. This is particularly relevant as the Draft Law adds a number of additional aspects to the mandate of the Ombudsperson, including the NPM, which would require considerable funding to guarantee its ability to fulfil its mandate in its entirety. The addition of any mandate must be accompanied by adequate additional funding. **Article 41 should be expanded to specify that the Government will provide the Ombudsperson's Office with adequate funding that includes the areas indicated by the SCA. Specific reference should be made to funding for the NPM.**

34. In addition, there is no reference in the Draft Law to financial autonomy of the Ombudsperson's Office. The SCA has clear recommendations on the importance of such autonomy, which notes that "[f]inancial systems should be such that the NHRI has complete financial autonomy as a guarantee of its overall freedom to determine its priorities and activities. National law should indicate from where the budget of the NHRI is allocated and should ensure the appropriate timing of release of funding, which is particularly important in ensuring an appropriate level of skilled staff."[43] The SCA considers that there should not be any government interference, perceived or actual, in the financial autonomy of an NHRI. Decisions over and control of the budget of the Ombudsperson's Office must not be in the hands of the government, but in the control of the Ombudsperson, in line with their independence.[44] The Ombudsperson should have the authority to submit its budget to parliament.[45] Financial autonomy has also been emphasised as important for NPMs by the SPT. **Article 41 should provide for the NHRI's financial autonomy and control over its budget.**

RECOMMENDATION E

Article 41 should be expanded to specify that the state will provide the Ombudsperson's Office with adequate funding that includes the areas indicated by the SCA and provide for the NHRI's financial autonomy and control over its budget. Specific reference should be made to funding for the NPM.

40 See SCA, General Observations, 1.10.

41 See GANHRI Sub-Committee on Accreditation Report, December 2020, p 12.

42 See the Capacity Assessment, October 2018, p. 6.

43 See SCA, General Observations, 1.10.

44 Ibid. See also ODIHR Opinion on the Draft Law Amending Article 8 of the Law on the Human Rights Defender in Armenia.

45 See GANHRI Sub-Committee on Accreditation Report on South Africa (November 2017) p. 33.

6. SELECTION, APPOINTMENT AND TENURE

6.1 Pluralism

35. The Draft Law appears to be silent on pluralism within the Ombudsperson's Office at all levels. This is contrary to the requirement of the Paris Principle B.1, which refers to the need to ensure "the pluralistic representation of social forces (of the civilian society) involved in the promotion and protection of human rights".[46] It is important to note that pluralism refers to various kinds of diversity, including ethnic and linguistic minorities, persons with disabilities, and ensuring the equitable representation of women in the NHRI, including in leadership positions.

36. While there are diverse models for ensuring pluralism in the composition of NHRIs, the SCA has particularly noted that when both the leadership and the staff are representative of "a society's social, ethnic, religious and geographic diversity the public are more likely to have confidence that the NHRI will understand and be more responsive to its specific needs. Additionally, the meaningful participation of women at all levels is important to ensure an understanding of, and access for, a significant proportion of the population. […]. The diversity of the membership and staff of an NHRI, when understood in this way, is an important element in ensuring the effectiveness of an NHRI and its real and perceived independence and accessibility."[47] General Observation 1.7 further notes that a "diverse decision-making and staff body facilitates the NHRI's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRIs for all citizens."[48] The Draft Law should provide for pluralism in the composition of the Ombudsperson's Office at all levels and include reference to various kinds of diversity, including ethnic and linguistic minorities, persons with disabilities, and ensuring the equitable representation of women in the NHRI, including in leadership positions.

RECOMMENDATION F

The Draft Law should provide for pluralism in the composition of the Ombudsperson's Office at all levels and include **reference to various kinds of diversity, including ethnic and linguistic minorities, persons with disabilities, and ensuring the equitable representation of women in the NHRI, including in leadership positions.**.

6.2. Selection Criteria

37. In order to qualify for the post of Ombudsperson, a person must be a citizen of Uzbekistan, at least 30 years old, who possesses "high moral qualities, higher education, necessary experience in the protection of human rights, freedoms and people's legitimate interests" (Article 5). The Draft Law also requires at least a five-year residency in Uzbekistan prior to election. While there are some positive aspects to the criteria for the Ombudsperson listed in this Article, particularly, the requirement

46 See the Paris Principles.

47 See SCA, General Observations, 1.7. See also ODIHR Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland; ODIHR Opinion on the Draft Amendments to the Law on Civil Service of Ukraine, and ODIHR Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland.

48 See SCA, General Observations, 1.7.

that the person has the necessary experience in human rights and is of high moral standing, a five-year residency requirement is of concern.

38. The SCA considers that criteria for NHRI positions should not be too narrowly drawn. This is to ensure pluralism and encourage applications from a broad range of individuals. The Venice Principles similarly provide that criteria for ombudspersons "shall be sufficiently broad as to encourage a wide range of suitable candidates."[49] In the present case, a restrictive provision of five-year residency prior to the election would appear to unreasonably limit the pool of candidates, for example, by excluding those who were working as academics abroad or in international organisations prior to the date of the election. **The five-year residency requirement to qualify for the election of the Ombudsperson is overly restrictive and should be removed.**

39. At the same time, the Draft Law is silent on the selection criteria of the Deputy Ombudsperson and Regional Representatives. **For clarity, and to ensure the independence and merit-based nature of these roles, the criteria for Deputy Ombudsperson and Regional Representatives should be explicitly stated in the Draft Law.**

RECOMMENDATION G

The five-year residency requirement to qualify for the election of the Ombudsperson is overly restrictive and should be removed.

6.3. Selection and Appointment Process

40. The selection and appointment of NHRI leadership is critical for its independence. The SCA emphasises that the selection and appointment process for the NHRI should be detailed in enabling laws, with particular emphasis on transparency, broad consultation and participation of diverse societal forces. It further notes that a selection and appointment process requires competent authorities 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.[50]

41. The SCA's position is supported by a range of regional and international standards. The Venice Commission has noted in this respect that "the way according to which an Ombudsman is appointed is of the utmost importance as far as the independence of the institution is concerned and the independence of the Ombudsman is a crucial corner stone of this institution."[51] In its Venice Principles, it specifies that "[t]he Ombuds[person] shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution."

42. Importantly, the SCA has expressed concern about the selection and appointment process for the Ombudsperson. In its December 2020 review, it noted that the Ombudsperson "is elected by a majority vote of the members of Parliament following

49 See Venice Commission, Venice Principles, paragraph 8.

50 See SCA, General Observations, 1.8.

51 See the Venice Commission Opinion on the draft law on prevention and protection against discrimination in North Macedonia, CDL-AD(2018)001, para 69.

the nomination by the President of the Republic". The SCA found that in law and in practice, this was not sufficiently broad and transparent. It further noted that "[i]t is critically important to ensure the formalization of a clear, transparent and participatory selection and appointment process for an NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI."[52]

43. The provisions on selection and appointment contained in Article 4 of the Draft Law fail to meet the relevant international standards and do not address the concerns expressed by the SCA. In particular, the Draft Law is entirely silent on the application process for the Ombudsperson.[53] There are no requirements for wide advertisement of vacancies. The SCA emphasises that the selection process should aim at "[m]aximizing the number of potential candidates from a wide range of societal groups." The Venice Principles similarly provide that "[t]he procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law." [54] **Specific provision for the publication of vacancies, in a timely and accessible manner aiming at reaching potential candidates with a wide variety of backgrounds and expertise, should be included in the law.**

44. As regards the selection process, the Draft Law is not very clear on how the process is undertaken. It only states that "[a] candidate for the position of Ombuds[person] is submitted for consideration by the chambers of the Oliy Majlis of the Republic of Uzbekistan by the President of the Republic of Uzbekistan." It appears that the President has the sole power to nominate the candidates, who are then voted by the majority of the members of the parliament. **Reference to the President as the sole nominating authority in Article 4 should be reconsidered, as this may severely reduce the perceived and/or actual independence of the Ombudsperson.**

45. In addition, there is no further detail on how such a candidate is selected and assessed, including the composition of the selection panel, if there is any.[55] Generally, selection panels comprised entirely of political, governmental or administrative representatives could be problematic, undermining the Paris Principles.[56] **The Draft Law should be amended to include detailed provisions on the selection and appointment process reflecting a broad, transparent and participatory process. Specific provisions should be included setting out the criteria for the identification and evaluation of candidates.**

46. In addition, there are no provisions in the Draft Law for a consultation process as part of the selection and appointment**.[57] A consultation should be included in the Draft Law, particularly to allow civil society actors to be involved in this process.** This can be done through directly soliciting proposals from civil society or allowing civil society to directly participate in the evaluation of candidates.

47. These concerns are also relevant for the selection and appointment processes for Deputy Ombudspersons and Regional Representatives. The Draft Law requires elaboration in this regard. Specifically, the Draft Law only notes that the Deputy is nominated by the Ombudsperson (Article 10), and the latter also appoints Regional Representatives "by

52 See GANHRI Sub-Committee on Accreditation Report, December 2020.

53 See for example, GANHRI Sub-Committee on Accreditation Report on Montenegro (May 2016) p. 17

54 See Venice Commission, Venice Principles, paragraph 7.

55 See ICC Sub-Committee on Accreditation Report on Iraq (March 2015) p. 7.

56 See for example, GANHRI Sub-Committee on Accreditation Report on Sri Lanka (May 2018) p. 36.

57 See for example, GANHRI Sub-Committee on Accreditation Report on Bulgaria (March 2019) p. 16– 17.

their initiative or from at least three candidates nominated by the Jokargy Kenes of the Republic of Karakalpakstan, the regional Councils of People's Deputies and the city of Tashkent, respectively" (Article 33). At present, these vague provisions create a significant risk to the overall independence of the institution. The SCA requires that appointment procedures are in line with the Paris Principles.[58] Such requirements would also apply to regional representatives. The **Draft Law should detail the appointment process for Deputy Ombudspersons and Regional Representatives in line with the Paris Principles. This should be merit-based, ensuring pluralism (see *sub-section 6.1.*) and transparency of the process.**

RECOMMENDATION H

The Draft Law should be amended to include detailed provisions on selection and appointment, focussing on a broad, transparent and participatory process. Specific provisions should be included setting out the criteria for the identification and evaluation of candidates.

6.4. Security of Tenure

48. The Paris Principles focus on, among others, general questions of independence and functionality of NHRIs. In terms of mandates for members of NHRIs, Principle B.3 on the "Composition and guarantees of independence and pluralism" emphasizes the importance of stable mandates, noting that without such stability, there can be no real independence. In its General Observations, the SCA also emphasizes the importance of "ensur[ing] the continuity of [the NHRI's] programs and services."[59] Principle B.3 further states that members of NHRIs shall be appointed via a special act that shall establish the specific duration of their mandate.

49. As already mentioned, whether an NHRI can play its role within the state to the full extent depends on various factors, including political and legal guarantees of independence. One such guarantee is the security of tenure of NHRI members or of the Ombudsperson. The SCA recommends fixed terms of office (from 3 to 7 years, renewable once) clearly defined in the legislation. The Venice Principles recommend a term of office of not less than 7 years for Ombudspersons (non-renewable).

50. The establishment of term limits allows Ombudspersons to act without any interference from the executive or the legislative branches, and to act without fear of dismissal for making decisions that are unpopular or contrary to the will of an executive or prevailing political powers. The security of tenure of an Ombudsperson also ensures stability of the office and reduces the risk of political influence.[60]

51. Article 4 of the Draft Law provides for a five-year term for the Ombudsperson. It also states that the same person may not be elected to the office more than twice in a row. While this is welcomed, and in line with the SCA recommendation, it is not clear if the Ombudsperson would be required to go through a new process of appointment upon expiration of his or her term. The only mention is that "[t]he procedure for nominating a new Ombuds[person] shall take place no later than two months before the expiry of the term of office of the incumbent Ombuds[person] as indicated in paragraph two of this article" – which does not address this question. In addition, and unless this is a

58 See GANHRI Sub-Committee on Accreditation Report on Bolivia (March 2017) p. 19.

59 See SCA, General Observations, 2.2.

60 See ODIHR Urgent Note focuses on the issue of the continuation of ombudspersons in the transition period following the end of their terms of office until the appointment of a new office-holder in Poland.

matter of translation, the wording "in a row" is vague, leaving open the possibility of a future appointment. **The Draft Law should specify the process by which an incumbent Ombudsperson can receive a second term and whether they can ever be re-elected in the future, bearing in mind the requirements for the selection and appointment process.**

52. The Draft Law is also largely silent as regards the tenure provisions for the Deputy Ombudsperson and Regional Representatives, with the exception that the Deputy has a five-year term (Article 10). **The Draft Law should include clear provisions on the tenure of Deputy Ombudspersons and Regional Representatives.**

RECOMMENDATION I

The Draft Law should specify the process by which an incumbent Ombudsperson can receive a second term and whether they can ever be re-elected in the future, bearing in mind the requirements for the selection and appointment process.

6.5. Dismissal and Transition Period

53. NHRI legislation should contain an independent and objective dismissal process following predefined criteria, similar to that accorded to members of other independent State agencies. The grounds for dismissal must be clearly defined and appropriately confined to those actions or circumstances which impact adversely on the capacity of the members to fulfil their mandates. Where appropriate, the legislation should specify that the application of a particular ground for dismissal must be supported by the decision of a court or other independent body with appropriate jurisdiction.[61]

54. Article 9 of the Draft Law lists a number of grounds for the dismissal of the Ombudsperson. Some of these raise concern for being vague and open to broad interpretation. For example, the Ombudsperson can be dismissed for the violation of the oath, or for inability to perform their duties for a long/extended period of time or "other valid reasons" . This ambiguity can potentially undermine the security of tenure of the Ombudsperson, and ultimately, their independence, by opening the possibility of situations where the Ombudsperson could be arbitrarily dismissed. **The Draft Law should provide for clear and objective criteria for cases of dismissal.**

55. In addition, Article 9 lacks details on the process for a dismissal. This is essential to ensure the independence and stability of the institution. For example, in reviewing the NHRI of Bosnia and Herzegovina, the SCA noted that "the enabling law of an NHRI must contain an independent and objective dismissal process similar to that accorded to members of other independent State agencies."[62] In addition, the SCA has stated that the dismissal process should not be based solely on the discretion of the appointing body. Thus, the reference to the role of the chambers of the Oliy Majlis is insufficient because it would place the dismissal solely in the hands of the parliament. Further, it is highly problematic that there is no mention of voting requirements to remove the Ombudsperson. Where a process for removal involves parliament, care must be taken

61 See SCA, General Observations, 2.1. Council of Europe Committee of Ministers Recommendation on NHRIs similarly provides for the need for a clear dismissal process: to ensure independence, the enabling legislation of a NHRI should contain an objective dismissal process for the NHRI leadership, with clearly defined terms in a constitutional or legislative text. The dismissal process should be fair and ensure objectivity and impartiality and should be confined to only those actions which impact adversely on the capacity of the leaders of NHRIs to fulfil their mandate. Recommendation CM/Rec(2021)1.

62 See GANHRI Sub-Committee on Accreditation Report on Bosnia and Herzegovina (November 2016).

to ensure that removal cannot be for political reasons and must be by a majority vote.[63] **The Draft Law should be amended to provide clear and detailed provisions for the dismissal process of an Ombudsperson that include the right of appeal to an independent tribunal.**

56. Similarly, there are no provisions for the dismissal of the Deputy Ombudsperson or Regional Representatives. The SCA has held that "[t]he head of an institution should also not be able to remove a deputy without an independent and objective dismissal procedure, backed by transparent and objective criteria. These provisions may be contained in legislation, regulation, or another binding administrative guideline, but ideally should be in the enabling law."[64] **The Draft Law should be amended to provide clear and detailed provisions for the dismissal process of the Deputy Ombudsperson and Regional Representatives, including the right to appeal.**

57. Transitional provisions for leadership are also important for the stability of NHRIs. Committee of Minister's Recommendation (2019)6 states that "arrangements should be in place so that the post of the head of any NHRI does not stay vacant for any significant period of time".[65] Moreover, as expressly recommended in Principle 13 of the Belgrade Principles, vacancy in the composition of the membership of a NHRI "must be filled within a reasonable time" and "[a]fter expiration of the tenure of office of a member of a NHRI, such member should continue in office until the successor takes office".[66]

58. It is welcome that there are some transitional provisions in the Draft Law. Article 4 provides that on expiry of their term, the Ombudsperson shall stay in their position until a new Ombudsperson is elected. Article 10 provides that in cases of early dismissal of the Ombudsperson, a new candidate for this post is submitted within two months. In the interim, the Deputy performs the Ombudsperson's duties. While it is welcome in principle to have a prompt replacement of the Ombudsperson where their term has come to an end early, two months is very short to ensure the transparent, participatory and inclusive process required by the Paris Principles for the replacement. **In cases of early end of the term of Office of the Ombudsperson, consideration could be given to extending the time for the selection and appointment process to ensure that the process for a replacement Ombudsperson is Paris Principles-compliant.**

RECOMMENDATION J

The Draft Law should be amended to provide clear and detailed provisions for the dismissal process of an Ombudsperson that include the right of appeal to an independent tribunal.

6.6. Functional Immunity

59. The functional immunity of NHRI leadership is essential for institutional independence, which may be impacted by fear of malicious criminal proceedings or civil action by an individual or entity, including public authorities.[67] The SCA has recommended that

63 See ICC Sub-Committee on Accreditation Report on Latvia (March 2015).

64 See ICC Sub-Committee on Accreditation Report on Timor- Leste (November 2013) p. 31– 32; ICC Sub-Committee on Accreditation Report on Mauritius (October 2014) p. 22.

65 Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution, 16 October 2019, par. 3.

66 See the Human Rights Council Report on National institutions for the promotion and protection of human rights, 1 May 2012.

67 See the similar case of the immunity of judges, the case of Ernst v. Belgium, ECtHR Judgment of 15 October 2003 (Application No. 33400/96, only in French), par 85.

enabling legislation should include provisions that clearly establish the functional immunity of an NHRI's leadership and staff.[68] The SCA requires that such protection be given to all NHRI members and staff of the NHRI, as "[s]uch protections serve to enhance the NHRI's ability to engage in critical analysis and commentary on human rights issues, safeguard the independence of senior leadership, and promote public confidence in the NHRI".[69] The Venice Principles also provide for the immunity for staff, including after the end of their term.[70]

60. It is welcome that there is reference to functional immunity in Article 12 for the Ombudsperson and their Deputy. However, this is not extended to Regional Representatives and the Office's staff. In addition, Article 12 provides that immunity may be removed according to the established procedure set by the parliament. While the intention might be to regulate this by separate legislation, there needs to be a proper balance between immunity as a means to protect an NHRI against pressure and abuse from state powers or individuals and the general concept that nobody, including members of an NHRI governing body, should be above the law.[71] Secondary legislation should not be used to regulate the procedure for removal of immunity. **Article 12 should be amended to provide immunity for all staff of the Ombudsperson's Office, and for the Regional Representatives. The Article should also specify that functional immunity applies even after the end of the mandate or after a staff member ceases their employment. In addition, the Draft Law should clearly establish the grounds, and a clear and transparent process, by which the functional immunity may be lifted.**

RECOMMENDATION K.

Article 12 should be amended to provide immunity for all staff of the Ombudsperson's Office, and for the Regional Representatives and specify that functional immunity applies even after the end of the mandate or after a staff member ceases their employment. In addition, the Draft Law should clearly establish the grounds, and a clear and transparent process, by which the functional immunity may be lifted.

6.7. Staffing

61. The Draft Law is almost silent on the staffing of the Ombudsperson's Office. While acknowledging that much of the detail is likely contained in the "Statute on the Office of the Authorized Person for Human Rights (Ombudsperson) of the Oliy Majlis of the Republic of Uzbekistan" mentioned in Article 41, certain matters should be set out in the enabling law, and not be solely subject to secondary regulation.[72]

62. The SCA has previously noted that NHRIs should be legislatively empowered to determine their staffing structure and the skills required to fulfil their mandates, to set other appropriate criteria (e.g. to increase diversity), and to select their staff in accordance with national law. Staff should be recruited according to an open,

68 See GANHRI Sub-Committee on Accreditation Report and Recommendations of the Session (May 2016), p 37.

69 See SCA, General Observations, 2.3.

70 See Venice Commission, Venice Principles, paragraph 23. The ECRI has similarly stated that: 'persons holding leadership positions should benefit from functional immunity, be protected against threats and coercion and have appropriate safeguards against arbitrary dismissal or the arbitrary non-renewal of an appointment where renewal would be the norm.' CRI(2018)06 ECRI General Policy Recommendation No. 2: Equality Bodies to Combat Racism and Intolerance at National Level, Adopted on 7 December 2017.

71 See SCA, General Observations, 2.3.

72 See the 2018 APF Capacity Assessment Report.

transparent and merit-based selection process that ensures pluralism (including in the context of gender, ethnicity and persons belonging to minority groups) and a staff composition that possesses the necessary skills required to fulfil the NHRI's mandate, and that also ensures the equitable participation of women in the NHRI.[73] The Venice Principles on Ombudspersons similarly provide that the Ombudsperson "shall be able to recruit his or her staff."[74] **The Draft Law should specify that the Ombudsperson has the authority to determine the procedures and methods for recruiting their own staff. In addition, the Draft Law should provide for the autonomy and independence for the staff of Ombudsperson's Office,**

RECOMMENDATION L

The Draft Law should provide for the autonomy and independence for the staff of Ombudsperson's Office.

7. THE COMMISSION FOR CONSTITUTIONAL HUMAN RIGHTS AND FREEDOMS

63. Article 22 provides for the establishment of the Commission for Constitutional Human Rights and Freedoms. This body provides a potentially important opportunity to enhance the pluralism of the Ombudsperson's Office and provide a forum for civil society. This is positive as the SCA strongly encourages NHRI cooperation with other human rights bodies, in particular with civil society.[75] In December 2020, the SCA encouraged the Ombudsperson "to develop, enhance and formalize relationships and cooperation with other domestic institutions established for the promotion and protection of human rights, including civil society and human rights defenders."[76]

64. However, while it is stated that this Commission exists to assist the Ombudsperson in their tasks, the composition, purpose and role of this Commission is unclear, raising concerns as to its potential impact on the independence of the Ombudsperson's Office. In particular, the powers and activities of this Commission, membership, and selection and appointment process should be clearly set out in the Draft Law.

65. In addition, it is not clear what role the Commission has in relation to the functioning of the Ombudsperson. The Draft Law states that "[i]n its activities, the Commission shall be governed by the Regulation approved by the [parliament]." The use of secondary legislation, rather than specification in the Draft Law, raises concerns for potential interference with the Ombudsperson's work. **The powers and functions of the Commission should be clearly defined in the Draft Law, in a manner that does not undermine the independence of the Ombudsperson's Office.**

66. Moreover, the membership of the Commission is to be drawn from the representatives of civil society, media and scholars, in addition to representatives of the executive. It appears to be problematic that the Draft Law does not specify the ratio between civil society and governmental sector representatives. While recognising that working relations with the executive is important for any Ombudsperson, their presence on an

73 See SCA General Observation, 1.7.

74 See Venice Principles, para 22. See also the Council of Europe Committee of Ministers' 2021 Recommendation on NHRIs. Recommendation CM/Rec(2021)1, Appendix, Article 7.

75 See SCA, General Observations, 1.5.

76 See GANHRI Sub-Committee on Accreditation Report, December 2020.

advisory board has the potential to impact the perceived independence of the Ombudsperson's Office and may reduce the overall trust in the institution.

67. Most importantly, the Commission is established and members are appointed solely by the parliament. While nominations are extended by the Ombudsperson, granting the parliament appointment powers increases the risk of potential politicization. Lastly, the issues concerning the pluralism in the composition of the Ombudsperson's Office, as discussed in Subsection 6.1, are also applicable in decisions regarding the composition of the Commission. **Article 22 should be amended to include more detailed provisions on the composition of the Commission, taking into account the plurality and gender parity, as well as criteria for selection and appointment of the members to ensure that they are free from political influence.**

RECOMMENDATION M

The powers and functions of the Commission for Constitutional Human Rights and Freedoms should be clearly defined in the Draft Law in a manner that does not undermine the independence of the Ombudsperson's Office.

8. Recommendations Related to the Process of Preparing and Adopting the Draft Law

8.1 Impact Assessment and Participatory Approach

68. OSCE participating States have committed to ensure that legislation will be "adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability" (1990 Copenhagen Document, para. 5.8).[77] Moreover, key commitments specify that "[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives" (1991 Moscow Document, para. 18.1).[78] The Venice Commission's Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.[79] As also specifically recommended in the recent OSCE/ODIHR Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan, "[p]ublic consultations should become a routine feature of the overall and a meaningful part of every stage of the legislative process, particularly in the Legislative Chamber".[80]

69. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by the public. To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the process,[81] meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings).

77 See 1990 OSCE Copenhagen Document.

78 See 1991 OSCE Moscow Document.

79 See Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, Part II.A.5.

80 See OSCE/ODIHR, Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan (11 December 2019), Recommendation N.

81 See e.g., op. cit. footnote 90, Section II, Sub-Section G on the Right to participate in public affairs (2014 OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders).

70. Given the potential impact of the Draft Law on the exercise of human rights and fundamental freedoms, an in-depth regulatory impact assessment, including on human rights compliance, is essential, which should contain a proper problem analysis, using evidence-based techniques to identify the most efficient and effective regulatory option.[82]

71. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Draft Law, once adopted.[83]

8.2. Gender-neutral Legal Drafting

72. The Draft Law does not use gender neutral terminology. In all provisions it refers to individuals occupying certain official positions or belonging to a certain category using only the male form of a term, which would imply that the position is occupied by a man only. Established international practice requires legislation to be drafted in a gender neutral/sensitive manner.[84] It is recommended that, whenever possible, the reference to post-holders or certain categories of individuals be adapted to use a gender neutral word, whenever possible. Alternatively, the plural form of the respective noun could be used instead of the singular (e.g., them, they) or it is recommended to use both male and female words.[85]

[END OF TEXT]

82 See e.g., ODIHR, Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan (11 December 2019), Recommendations L and M; and Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, Part II.A.5.

83 See e.g., OECD, International Practices on Ex Post Evaluation (2010).

84 See e.g., ODIHR, Comments on the Law on the Assembly and the Rules of Procedure of the Assembly from a Gender and Diversity Perspective (2020), pars 105-107; and Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation (2017), page 63. See also the UN Economic and Social Commission for Western Asia (ESCWA), Gender-Sensitive Language (2013); European Parliament, Resolution on Gender Mainstreaming (2019); Council of the European Union, 'General Secretariat, Inclusive Communication in the GSC' (2018); and European Institute for Gender Equality's Toolkit on Gender-sensitive Communication (2018).

85 See e.g., ODIHR, Report on the Assessment of the Assessment of the Legislative Process in the Republic of Armenia (October 2014), pars 47-48.