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OPINION ON THE DRAFT LAW OF ALBANIA ON THE PEOPLE'S ADVOCATE

ALBANIA

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

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

ODIHR welcomes the legislative initiative of the Republic of Albania as it seeks to strengthen 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 Albania by the Global Alliance of National Human Rights Institutions' (GANHRI) Sub-Committee on Accreditation (SCA) in December 2020, as well as those of UN treaty and other European bodies.

At the outset, ODIHR notes positively that the the institution of the People's Advocate is expressly provided for in the Constitution of the Republic of Albania (Articles 60–63). This constitutional basis, alongside an enabling law regulates the organization and functioning of the institution. Albania also ratified the Optional Protocol to the Convention against Torture (OPCAT) on 1 October 2003, and has designated the People's Advocate as the National Preventive Mechanism (NPM) under OPCAT.

The Draft Law on the People's Advocate (hereinafter the "Draft law") constitutes a comprehensive and well-structured legal framework, which reflects core international recommendations and good practices. In particular, the Draft Law explicitly refer to the People's Advocate's independence and security of tenure and key principles of activity, the high standing of the People's Advocate in the country, and its stated function to promote and protect human rights. It is also welcome that the Draft Law contains provisions on engagement with the international human rights system and includes a number of safeguards on financing and staffing that, in principle, align with relevant international standards. New positive provisions have also been introduced that specifically address recommendations made by international and regional bodies, thereby further aligning the enabling law with the Paris Principles. These include extending the personal scope of the functional immunity, which used to be limited to the People's Advocate, to the commissioners and staff of the Office of the People's Advocate, as well as explicitly mandating the institution to cover acts or omissions of private entities and to encourage the ratification of, or accession to, international human rights instruments.

At the same time, the Opinion offers a number of recommendations intended to further enhance the legal framework and ensure that important aspects pertaining to the core of the institution's basic guarantees of independence are effectively implemented in practice, and pursue full compliance with the Paris Principles.

In particular, the Draft Law would benefit from strengthening safeguards that protect institutional independence and effectiveness in practice, including through the provision of adequate funding and financial autonomy, including for regional presence and NPM functions.

Moreover, while the People's Advocate has in practice increasingly incorporated gender equality and diversity considerations into its work, the Draft Law could more explicitly reflect these dimensions to ensure the sustainable and systematic integration of a gender and diversity perspectives throughout its mandate, activities and internal functioning, while promoting gender parity and diverse representation at all levels of the institution.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to improve the Draft Law's compliance with OSCE commitments and international human rights standards, including the Paris Principles:

A. With respect to functional immunity:

   1. To clarify Article 22 of the Draft Law regarding the functional immunity for the People's Advocate, the commissioners and all staff of the People's Advocate's office, by specifying that they shall not incur civil, administrative and criminal liability for words spoken or written, decisions made, or acts performed in good faith in their official capacity; [par 33]

   2. To provide that such functional immunity also applies after the end of the mandate or after a staff member ceases their employment; [par 33]

   3. To guarantee in legislation the inviolability of the NHRI's premises, property, means of communication and all documents, including internal notes and correspondence, as well as of baggage, correspondence and means of communication belonging to the members of the NHRI's leadership body and professional staff; [par 34]

   4. To clarify the grounds, and the grounds, and establish a clear and transparent process, by which the immunity of the People's Advocate, commissioners and staff may be lifted, in whole or in part, and only to the extent necessary in the circumstances; [par 36]

B. To clarify in Article 10 that mediation is at the discretion of the People's Advocate and does not unduly limit the People's Advocate's role to investigate and address individual or systemic issues, and further, that recourse to mediation does not prejudice the ability of individuals to pursue judicial remedies, where appropriate. Further, the provision should explicitly exclude mediation for the aforementioned situations including allegations concerning torture, serious ill-treatment, grave discrimination, or structural violations. The provision should extend the possibility to seek mediation to private legal entities; [par 46]

C. With respect to confidentiality and data protection:

   1. To supplement Article 21 of the Draft Law, concerning the material scope of the complaints-handling mechanism, by expressly excluding from the NPM's mandate the handling of individual complaints by persons deprived of liberty alleging torture or other forms of ill-treatment and , clarifying that the NPM may receive and consider such allegations as relevant information for preventive monitoring while, however, specifying that such complainants

raising matters of such nature shall be referred informed to about/referred to the competent authorities for criminal investigation and to any other independent and effective complaints-handling mechanism that the UNCAT Committee recommends establishing; [par 52]

2. To clarify in Article 12 of the Draft Law that unhindered access shall be guaranteed to all places of deprivation of liberty located on the territory of the Republic of Albania, including migration detention facilities and all reception centres, irrespective of the management or jurisdiction of such places of detention or centres; [par 53]

D. With respect to the selection and appointment process:

1. To further clarify the selection and appointment process for the People's Advocate in Article 5 by ensuring widely publicised vacancy announcements, predetermined and publicly available criteria for screening and evaluation, meaningful participation of civil society, and clear deadlines that prevent protracted vacancies while preserving the qualified majority requirement for election; [par 68]

2. To supplement Article 5 of the Draft Law by an effective deadlock breaking mechanism. Any such mechanism should preserve the qualified majority appointment requirement while ensuring a public, transparent, merit-based and pluralistic process; this could include, for example, a greater role for an independent and pluralistic nominating or pre-selection body, or another appropriate independent mechanism; [par 68]

E. With regard to dismissal and judicial remedies:

1. To strengthen legal certainty and safeguards against arbitrary removal, the Draft Law should provide that dismissal grounds must be established on the basis of clear, objective, and verifiable evidence, following a transparent procedure that ensures due process, including access to the evidence relied upon and a reasoned decision; [par 76]
2. To ensure the right of appeal to an independent tribunal as well as that the procedure is public and transparent, unless otherwise provided in procedural law; [par 78]

F. To remove from Article 34 the ground for dismissal of commissioners linked to the repeated failure to meet the objectives set by the Legal Affairs Committee; [par 79]

G. To provide for pluralism in the composition of the People's Advocate's Office at all levels and include reference to various kinds of diversity, including ethnic and linguistic minorities and persons with disabilities, while ensuring the equitable representation of women in the NHRI, including in leadership positions; [par 85]

H. To revise and/or further clarify the jurisdictional limitations in Article 21 so that any exclusions are narrowly framed and do not create gaps in human rights protection, including by (i) more clearly circumscribing the carve-outs relating to acts of the President and the Prime Minister while retaining oversight over their administrative apparatus, (ii) ensuring that the exclusion for orders of a military nature cannot be used to shield measures with human rights implications for

service members or civilians, and (iii) ensuring that the exclusions relating to judicial decisions and pending proceedings preserve the People's Advocate's ability to address systemic administrative and procedural shortcomings affecting access to justice and fair trial rights, with appropriate safeguards for judicial and prosecutorial independence; [pars 89-92]

I. To strengthen Article 39 to ensure that the State will provide the People's Advocate's office with adequate funding to cover the costs of human, financial, material and technical capacity to guarantee the proper implementation of its broad mandate, including as National Preventive Mechanism under OPCAT, while explicitly providing for the institution's financial autonomy, full control over the execution of its approved budget, appropriate timing of release of funding, and safeguards against unwarranted budgetary cutbacks. The framework on donations should be clarified to ensure that such funding is supplementary, transparent and cannot undermine, or be used to undermine, the independence of the institution. [pars 103-104]

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 their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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ANNEX: Draft Law of Albania on the People's Advocate

I. INTRODUCTION

1. On 17 December 2025, the People's Advocate of the Republic of Albania sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for a legal review of the Draft Law of Albania on the People's Advocate (hereinafter "the Draft Law").
2. On 30 December 2025, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of the Draft Law with international human rights standards and OSCE human dimension commitments.
3. This 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 human dimension commitments.[1]

II. SCOPE OF THE OPINION

4. This Opinion covers 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 People's Advocate and human rights protection and promotion mechanisms in Albania.
5. It raises key issues and provides indications of areas of concern relating to the People's Advocate. In the interest of conciseness, it focuses on those provisions that require amendments or improvements rather than on the positive aspects of the Draft Law. The following 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. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national examples, ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.
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

1 See especially 1990 OSCE Copenhagen Document, para. 27, which states that participating States will "*facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law*"; Bucharest Plan of Action for Combating Terrorism (2001), Annex to OSCE Ministerial Council Decision on Combating Terrorism, MC(9).DEC/1, 4 December 2001, para. 10, which tasks 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*"; and OSCE Ministerial Council, Madrid 2007, Decision No. 10/07 on Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding, para. 10, which *"[e]ncourages the establishment of national institutions or specialized bodies by the participating States which have not yet done so, to combat intolerance and discrimination (…), drawing on the expertise and assistance of the relevant OSCE institutions, based on existing commitments, and the relevant international agencies, as appropriate*".

2 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 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.

activities, programmes and projects, this Opinion integrates, as appropriate, a gender and diversity perspective.

7. This Opinion is based on an unofficial English translation of the Draft Law, which is attached to this document as an annex. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

8. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Albania 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) hold a crucial position among the range of institutions that form the infrastructure of a democratic system based on the rule of law and human rights. As 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] NHRIs link the responsibilities of the State stemming from international human rights obligations to the rights of individuals in the country and thus 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 in order 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 protection and promotion of human rights. An important characteristic of an effectively operating institution of this type is its independence, including financial independence, from other branches of government, especially the executive. 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 leadership and decision-making body and to recruit staff with relevant professional qualifications of the highest possible level.

11. The UN Paris Principles contain internationally recognized rules on the status, mandates and competencies of NHRIs.[6] They set out minimum standards on the establishment and functioning of NHRIs, and promote key principles of pluralism, transparency, guarantees

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

5 Joint Statement from the Expert Meeting on Strengthening Independence of National Human Rights Institutions in the OSCE Region, 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 UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles) were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris (79 October 1991), and adopted by UN General Assembly Resolution 48/134 of 20 December 1993.

of functional and institutional independence and effectiveness of NHRIs. The implementation of the Paris Principles 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 NHRIs, 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.[9]

12. The UN General Assembly and the UN Human Rights Council have also issued various resolutions on NHRIs.[10] Additionally, the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have published a Toolkit for Collaboration with National Human Rights Institutions.[11] 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.[12]

13. Furthermore, several resolutions of the UN General Assembly on the role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law,[13] strongly encourage Member States to create and strengthen Ombuds institutions "*consistent with the principles on the protection and promotion of the Ombudsman institution (the Venice Principles)*", while also "*[e]ncouraging 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. As Albania is a Member State of the Council of Europe (CoE), the Opinion will also refer to a number of CoE documents, which serve as important and useful sources for reference to policy- and law-makers. In particular, CoE Parliamentary Assembly Recommendation 1615(2003) lists certain characteristics that are essential for the effective functioning of ombudsperson institutions specifically.[14] CoE Committee of Ministers Recommendation CM/Rec(2021)1 on the Development and Strengthening of Effective, Pluralist and

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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; see <https://ganhri.org/>.

8 Article 15 of the GANHRI Statute (version adopted on 15 March 2023). 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 GANHRI SCA, General Observations, adopted on 21 February 2018.

10 See e.g., the latest UN General Assembly, Resolution 80/214 on National Human Rights Institutions, A/RES/80/214, adopted on 22 December 2025; and Resolution 74/156 on National Human Rights Institutions, A/RES/74/156, adopted on 18 December 2019. See also Resolution 70/163 on National Institutions for the Promotion and Protection of Human Rights, A/RES/70/163, adopted on 17 December 2015; resolutions 79/177, 75/186, 63/169 and 65/207 on the Role of the Ombudsman, Mediator (and Other National Human Rights Institutions) in the Promotion and Protection of Human Rights, A/RES/79/177, A/RES/75/186, A/RES/63/169 and A/RES/65/207, adopted on 17 December 2024, 16 December 2020, 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 UN Human Rights Council, resolutions 57/23 on National Human Rights Institutions, 39/17 on National Human Rights Institutions and 27/18 on National Institutions for the Promotion and Protection of Human Rights, A/HRC/RES/57/23, A/HRC/RES/39/17 and A/HRC/RES/27/18, adopted on 11 October 2024, 28 September 2018 and 7 October 2014, respectively.

11 UNDP-OHCHR, Toolkit for Collaboration with National Human Rights Institutions, December 2010.

12 *Ibid.* p. 241.

13 See e.g., UN General Assembly, resolutions 79/177 and 75/186, on the Role of the Ombudsman, Mediator (and Other National Human Rights Institutions) in the Promotion and Protection of Human Rights, A/RES/79/177 and A/RES/75/186, adopted on 17 December 2024 and on 16 December 2020, respectively.

14 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.

Independent National Human Rights Institutions (hereinafter "CoE Recommendation (2021)1") aims to ensure that NHRIs are established and governed in accordance with the minimum standards set out in the Paris Principles, notably as regards their terms of reference and competence to promote and protect all human rights and their independence from government.[15] The Council of Europe's European Commission for Democracy through Law (Venice Commission), in addition to numerous opinions on NHRI and ombudsperson legislation, published the Principles on the Protection and Promotion of the Ombudsman Institution ("the Venice Principles") in 2019.[16]

15. Given the EU candidate status of Albania and the opening of all the clusters of the EU accession negotiations,[17] including 'Cluster 1: Fundamentals', which focuses *inter alia* on the functioning of democratic institutions, rule of law and public administration reform, the need to strengthen the legal and institutional framework for the promotion, protection and enforcement of human rights is paramount. The latest European Commission's Report notes specifically that while the People's Advocate "continued to exercise its mandate satisfactorily", there have been delays in the appointment of the People's Advocate, human and financial resources shortages for the institution persist, and the implementation of the Ombudsperson's recommendations remains overall low.[18] The 2025 European Commission's Rule of Law Report on Albania also noted that the People's Advocate continued to enjoy a stable level of public trust and awareness about their competences, although noting some challenges.[19]

16. 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*".[20] 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 on Combating Terrorism, which tasks 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*".[21]

17. 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:

    - the *ODIHR National Human Rights Institutions in a Public Emergency: A Reference Tool* (2020),[22] which aims to assist NHRIs in the exercise of their functions during times of public emergency and post-emergency, and the *ODIHR Strengthening the Resilience of National Human Rights Institutions Guidance Tool* (2022);[23]
    - the *ODIHR Handbook for National Human Rights Institutions on Women's Rights and Gender Equality (2012),* which provides useful guidance regarding measures

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15 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 <Albania - Enlargement and Eastern Neighbourhood - European Commission>.

18 See European Commission, *Commission Staff Working Document – Albania 2025 Report*, SWD(2025) 750 final, 4 November 2025, p. 34.

19 European Commission Staff Working Document, *2025 Rule of Law Report - Country Chapter on the rule of law situation in Albania*, SWD(2025) 928 final, 8 July 2025, pp. 16-17, noting in particular the failure of the Parliament to promptly appoint the Ombudsperson, the need to ensure that the institution's annual report is published before Parliament has debated on it, and the low level of implementation rate of the recommendations issued by the Ombudsperson.

20 1990 OSCE Copenhagen Document, para. 27.

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

22 ODIHR, National Human Rights Institutions in a Public Emergency: A Reference Tool (6 October 2020).

23 ODIHR, Strengthening the Resilience of National Human Rights Institutions Guidance Tool (22 August 2022).

and initiatives to strengthen NHRIs' capacity and practical work on women's rights and gender equality;[24]

- the Opinions of ODIHR on draft and existing legislation on national human rights institutions;[25] and
- the *Compilation of Venice Commission Opinions concerning the Ombudsman Institution* (as last updated in May 2022).[26]

2. Background

18. The People's Advocate was established by the Constitution of the Republic of Albania and further regulated by Law No. 8454 "On the People's Advocate" (adopted on 4 February 1999, as amended). The People's Advocate is Albania's NHRI and has been accredited with "A" status by GANHRI following the most recent re-accreditation recommendation from December 2020 by the SCA. It will be subject to a re-accreditation review by the SCA in November 2026.

19. Albania acceded to the Optional Protocol to the Convention against Torture (OPCAT) on 1 October 2003, and has designated the People's Advocate as the National Preventive Mechanism (NPM) under the OPCAT. The NPM mandate is exercised through a dedicated structure within the institution and is further detailed in domestic legislation and implementing instruments. Albania also ratified the UN Convention on the Rights of Persons with Disabilities (CRPD), although no specific institution or body has been formally designated to serve as one (or several) National Implementation and Monitoring Mechanism (NIMM) as per Article 33 (2) of the CRPD.[27] While Article 16 of the Law no. 93/2014 "On inclusion and accessibility of persons with disabilities" indicates the People's Advocate and the Commissioner for Protection from Discrimination as the entities mandated to monitor the implementation of the Law, each of these institutions performs this monitoring in accordance with the field of implementation of the sectoral laws on the basis of which they operate, and dedicated independent monitoring framework and mechanisms should be designated or established.[28] **The legal drafters should discuss and assess whether such monitoring functions may be entrusted to the People's Advocate – provided that adequate additional financial and human resources and capacities are ensured. If yes, the Draft Law should specifically provide for a formal legal mandate as NIMM, specifying that such a mandate encompasses the promotion and protection of the rights of persons with disabilities and the monitoring of the implementation of the CRPD (Article 33 (2) of the CRPD).[29] In this case, the Draft Law should also define the rules, procedure and methodology for its monitoring and reporting which may then be further elaborated in secondary legislation**.

20. Articles 60-63 of the Constitution establishes the People's Advocate as an independent institution elected by the Assembly through a qualified majority vote of three-fifths of all members of the Assembly. The Constitution sets out the People's Advocate core mandate to defend the rights, freedoms and lawful interests of individuals from unlawful or improper actions or omissions of public administration, and establishes the People's

24 ODIHR, Handbook for National Human Rights Institutions on Women's Rights and Gender Equality, 4 December 2012.
25 Available at: <ODIHR Legal reviews | National Human Rights Institutions | LEGISLATIONLINE>.
26 Available at: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)022-e>.
27 The UN Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 during the sixty-first session of the UN General Assembly by resolution A/RES/61/106, was ratified by Albania on 11 February 2013.
28 UN Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Albania*, CRPD/C/ALB/CO/1, 14 October 2019, paras. 53-54.
29 See SCA General Observation 2.9 and its Justification.

Advocate's independence as a cornerstone of the institution. The Draft Law under review, together with the Constitution and the broader domestic legal framework, forms the basis for regulating the People's Advocate's mandate, powers, organization and functioning, including the discharge of NPM functions under the OPCAT.

21. A number of UN human rights treaty bodies and other regional bodies have welcomed Albania's NHRI "A status" accreditation while noting some concerns relevant to the institution's effectiveness in practice. These include, *inter alia*, the inadequacy of financial and human resources including to ensure a sustainable regional presence, delays in appointment of the People's Advocate by the Assembly, the low implementation of the Ombudsperson's recommendations, and thematic institutional arrangements relevant to specific groups and rights-holders.[30] These observations underscore the importance of ensuring that any reform of the enabling law strengthens the People's Advocate's independence, broad mandate, accessibility, effectiveness and financial and human capacity, in line with the Paris Principles.

22. In addition, in the context of the People's Advocate's NPM designation under the OPCAT, international standards require that the NPM enjoys functional independence and has the resources, access and practical safeguards necessary to carry out regular preventive monitoring of all places of deprivation of liberty, including through unannounced visits and effective follow-up. These considerations are directly relevant when assessing the provisions of the Draft Law that affect access powers, confidentiality/publicity of findings, resourcing, and the institutional arrangements for carrying out the preventive mandate.

23. In its December 2020 accreditation review, the GANHRI SCA issued observations and recommendations relevant to the present Opinion, including on the breadth of the mandate, notably in relation to coverage of private entities, the need to advocate for adequate funding to ensure full-time staff in regional offices, and the desirability of an explicit mandate to encourage ratification or accession to regional and international human rights instruments. Where relevant, this Opinion will refer to these recommendations, alongside observations by UN treaty bodies and other international and regional mechanisms.

3. General Comments

24. The Draft Law details the organization, functioning and powers of the institution. This is overall in line with the Paris Principles that require that a NHRI be established in a constitutional and/or legal text. Further, the Draft Law explicitly provides for the NPM functions of the institution. This is also in line with recommendations that the overall mandate and all the functions of the NHRI, including its NPM role, are addressed in a single enabling law,[31] primarily to avoid having two different sets of standards, including on independence.

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30 See UN Human Rights Committee, Concluding observations on the third periodic report of Albania, CCPR/C/ALB/CO/3, 30 April 2025; UN CEDAW Committee, Concluding observations on the fifth periodic report of Albania, CEDAW/C/ALB/CO/5, 14 November 2023, paras. 17-18; CERD Committee, Concluding observations on the combined thirteenth and fourteenth periodic reports of Albania, CERD/C/ALB/CO/13-14, 23 May 2024, paras. 10-11; UN Committee against Torture, Concluding observations on the third periodic report of Albania, CAT/C/ALB/CO/3, 23 December 2025, paras. 16-17. See also ENNHRI, Implementing the Council of Europe Recommendation on National Human Rights Institutions: The State of Play - The Situation in Albania (2023). See also European Commission, *Commission Staff Working Document – Albania 2025 Report*, SWD(2025) 750 final, 4 November 2025, p. 34; and European Commission Staff Working Document, *2025 Rule of Law Report - Country Chapter on the rule of law situation in Albania*, SWD(2025) 928 final, 8 July 2025, pp. 16-17.

31 See Paris Principle A.2, which provides: "*A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence*"; and SCA General Observation

25. Article 3 of the Draft Law lists key basic principles governing the activity of the institution, including independence, impartiality, accountability, efficiency and professionalism and transparency, which is positive as these are essential to the effective performance of an NHRI's mandate. At the same time, certain other key principles that are crucial to an NHRI's functions, would also deserve mention in Article 3 of the Draft Law. Especially, direct and easy accessibility of the institution to everyone, especially to under-represented or marginalized groups, persons with disabilities or to sections of the populations who are geographically, politically or socially remote could be highlighted.[32]

26. While the principle of equal treatment and non-discrimination is mentioned in Article 10 (2) with respect to the People's Advocate's powers, this principle should be stated at the outset under Article 3 as not only guiding the exercise of external functions, but also the institution's internal functioning and work. It is noted that Article 10 (2) of the Draft Law provides that *"[t]he powers of the People's Advocate shall be exercised equally in respect of all individuals, without distinction as to nationality, race, gender, language, religion, political or social opinion, national or social origin, or any other status"*. While the provision concludes with a catch-all phrase referring to distinction based on "*any other status*", it does not mention some of the protected grounds that are expressly included in international and regional treaties,[33] and evolving caselaw of the ECtHR,[34] such as colour, birth, property, association with a national minority, marital status, disability, migrant or refugee status, sexual orientation, gender identity, health status or belief (not only religion). **It is recommended to expand the list by also expressly referring to these other protected grounds**. An explicit mention of the above features as protected grounds will reinforce that discrimination on the basis of such characteristics is unacceptable and make the Draft Law clearer and more easily implementable in this respect. Aligning the

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1.1, which states: "*An NHRI must be established in a constitutional or legislative text with sufficient detail to ensure the NHRI has a clear mandate and independence. In particular, it should specify the NHRI's role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members*".

32 See SCA General Observation 1.5 and justification (referring to the importance of relations with civil society and NGOs to improve the NHRI's accessibility to sections of the populations who are geographically, politically or socially remote and to provide an outreach mechanism to engage with marginalized groups or persons in situation of vulnerability), General Observation 1.7 and justification (emphasizing pluralism and the diversity of the membership and staff of an NHRI as an important element in ensuring the effectiveness of an NHRI and its real and perceived independence and accessibility) and General Observation 1.10 and justification (underlining the need for NHRI premises which are accessible to the wider community, including for persons with disabilities, but also the need for regional presence to ensure accessibility to geographically remote communities). See also 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, para. 1.

33 Especially Articles 2 and 6 of the ICCPR referring to "*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*"; Article 14 of the ECHR and Protocol 12 to the ECHR mentioning "*sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*"; Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Albania on 11 February 2013; Article 4 (3) of the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which entered into force in Albania on 1 August 2014, which refers to "*sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status*". The UN Committee on Economic, Social and Cultural Rights has explicitly recognized gender identity as among the prohibited grounds of discrimination (Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights* (Art. 2, par 2), UN Doc E/C.12/GC/20, 2009, para. 32). See also: Article 21 of the EU Charter of Fundamental Rights, which refers to "*sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation*"; Employment Equality Directive (2000/78/EC), limited to the field of employment and occupation, covering the grounds of religion *or belief*, disability, age and sexual orientation.

34 The ECtHR has clarified that the prohibition of discrimination extends to "*sexual orientation*" and "*gender identity*"; see ECtHR in *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, 24 January 2017, para. 61, "*Article 14 prohibits differences based on an identifiable, objective or personal characteristic, or "status" by which individuals or groups are distinguishable from one another*" (discrimination grounds), underlying that the list of discrimination grounds is "an illustrative and not exhaustive" (thus open) list and noting that the words "other status" have generally been given a wide meaning and their *"interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent";* ECtHR, *A.M. and Others v. Russia*, no. 47220/19, 6 July 2021, para. 73, which states that "*the prohibition of discrimination under Article 14 of the Convention duly covers questions related to gender identity*". The ECtHR also held that *"[t]he reference to the traditional distribution of gender roles in society cannot justify the exclusion of men [...] from the entitlement to parental leave" and that "gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation*" (*Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012, para. 143).

text more with international standards would remove any interpretive doubt and signal more comprehensive commitment to equality.

27. Moreover, while **pluralism** is mentioned under Article 35 of the Draft Law with respect to staff selection and training opportunities, since it is a foundational principle of the UN Paris Principles, it would be recommended to also mention it under Article 3 of the Draft Law (see also Sub-Section 6.6 *infra*).

28. Finally, with the recent adoption of new Law No. 64/2025 on Gender Equality,[35] approved by the Parliament on 6 November 2025, it is also essential to include **gender equality as a guiding principle under Article 3 of the Draft Law along with gender- and diversity- mainstreaming. This** ensures the consideration of different gender interests, needs, and priorities as well as those of under-represented or marginalized groups, during the planning, preparation, drafting, approval, implementation, monitoring and evaluation of policies, laws, budgets, and programs, and the adoption and implementation of decisions.[36] More generally, while it is positively noted that the People's Advocate has taken steps to integrate gender considerations into its operations,[37] greater emphasis could be placed on this dimension throughout the Draft Law itself in order to ensure the sustainable and systematic integration of a gender and diversity perspective in the NHRI's mandate, activities and internal functioning, as well as composition and staff at all levels (see specific recommendations under Sub-Sections 5-10 regarding the NHRI's composition, data collection and annual reporting, gender-responsive budgeting, human resource policies, prevention of sexual and other forms of harassment and gender-based violence, etc.).[38]

4. The Independence of the People's Advocate Office

4.1. Safeguard and Guarantees of Independence

29. The Paris Principles require that an NHRI is, and is perceived to be, independent of the government. The Draft Law would benefit from additional safeguards that could further protect and guarantee such independence. These include, but are not limited to, provisions providing guarantees ensuring its operational and financial independence and autonomy (see Section 8 *infra*), on the terms and conditions governing the selection, appointment and dismissal of the People's Advocate (see Section 6 *infra*), as well as their functional immunity (see Sub-Section 4.2 *infra*). In addition, the Draft Law should strengthen safeguards on confidentiality and protection against reprisals (see Sub-Section 4.3 *infra*), and ensure that the institution's mandate, access powers and resourcing are framed and implemented so as to enable the People's Advocate to operate effectively and independently in practice (see Sections 5, 7 and 8 *infra*).

30. The explicit statement of independence of the People's Advocate in the exercise of their powers in Article 3 of the Draft Law is positive, as is the reference to the promotion and protection of human rights in Article 2. Further, it is welcome that the basic principles of activity are stated in Article 3 as covering important principles including accountability, efficiency and professionalism and transparency. However, in recognition of the status of the People's Advocate as Albania's NHRI, **it would be positive to include in the Draft Law an explicit reference to the Paris Principles.** This would help setting more clearly

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35 See <20251113135225413 8ligj nr. 64 dt. 6.11.2025.pdf>.

36 See e.g., ODIHR, Handbook for National Human Rights Institutions on Women's Rights and Gender Equality, 4 December 2012, Section 7.3.

37 See ENNHRI, State of the rule of law in the EU enlargement countries (2025), p. 21, which notes that the People's Advocate contributes gender-sensitive data to the National Statistics Institute and reports annually on gender equality dimensions within its mandate.

38 See also ODIHR, Handbook for National Human Rights Institutions on Women's Rights and Gender Equality, 4 December 2012.

the purpose for the law and the People's Advocate as a Paris Principles-compliant institution. Further, the provisions on independence, and principles of activity should explicitly reference the Commissioners. More generally, **the Draft Law should more clearly set out that the guarantees of independence and the principles of activity should be framed so as to apply clearly to the institution as a whole, including commissioners and staff and any specialized or decentralized structures** (such as regional offices and the NPM function), to avoid protection gaps in practice.

4.2. Functional Immunity to Protect Institutional Independence

31. The functional immunity of members of NHRIs' leadership exists as an essential corollary of their institutional independence.[39] Because NHRIs' tasks require special examinations/investigations of frequently politically sensitive issues and reporting on actions of the Government often resulting in strong criticism of authorities, such institutions may be a likely target of actions or threats motivated by political or other interests. The functional immunity of NHRI leadership and staff is therefore essential to guarantee institutional independence, which may be impacted by fear of malicious criminal proceedings or civil action by an allegedly aggrieved individual or entity, including public authorities.[40]

32. Since the People's Advocate also serves as the NPM, the legislation pertaining to the People's Advocate should also comply with the relevant provisions of OPCAT, including by ensuring such privileges and immunities as are necessary for the independent exercise of NPM functions.[41]

33. Article 7 of the Draft Law provides that the People's Advocate enjoys the immunity of a Supreme Court judge, and Article 22 provides that the People's Advocate enjoys full immunity for opinions, recommendations and acts carried out in the exercise of constitutional and legal functions. The same legal protection applies to commissioners and authorized staff for acts performed in the course of their official duties (Article 22 (2) of the Draft Law). It is welcome that the personal scope of the functional immunity will now expand to commissioners and staff, and not only the People's Advocate as provided in the current Law. At the same time, the provisions on functional immunity could be strengthened and clarified to ensure they are effective in practice. Article 22 of the Draft Law should explicitly **provide that the People's Advocate, commissioners and staff of the People's Advocate's office shall not incur civil, administrative and criminal liability for words spoken or written, decisions made, or acts performed in good faith in their official capacity.[42] The relevant provision would ideally also specify that functional immunity continues to apply even after the end of the leadership body's mandate or after a staff member ceases his/her employment with the institution thereby clarifying the temporal scope of the functional immunity**.[43]

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39 See SCA General Observation 1.1 and Justification to General Observation 2.3, which considers functional immunity as being an "essential hallmark of institutional independence".

40 See 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, para. 13. See also ODIHR, Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland, 31 October 2017, para. 82.

41 Article 35 of OPCAT provides that *"[m]embers [...] of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions"*. See also ODIHR, Urgent Opinion on the Draft Constitutional Law of Kazakhstan on the Commissioner for Human Rights, Recommendation C and Sub-Section 4.2; see also Venice Commission, Opinion on The Draft Law "On The Commissioner For Human Rights" of Kazakhstan, CDL-AD(2021)049, 13 December 2021, para 48.

42 See SCA General Observation 2.3, which refers to the protection from criminal or civil liability for "acts undertaken in good faith in their official capacity". See also Venice Commission, Opinion on Amendments to the Law on the Human Rights Defender of Armenia, CDL-AD(2006)038, paras. 74 and 76.

43 See ODIHR, Urgent Opinion on the Draft Constitutional Law of Kazakhstan on the Commissioner for Human Rights, para. 32; Venice Commission, Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina, CDL-AD(2015)034, para. 69; and ODIHR-Venice Commission, Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro (2011), para. 23.

Further, Article 8 (3), which allows for the most senior commissioner to perform the duties of the People's Advocate, should clarify that the immunity of the People's Advocate attaches to the senior commissioner while performing these functions.

34. An additional safeguard to protect functional immunity is **to guarantee in legislation the inviolability of the NHRI's premises, property, means of communication and all documents, including internal notes and correspondence**,[44] **as well as of baggage, correspondence and means of communication** belonging to the members of the NHRI's leadership body and professional staff.[45] **It is recommended to supplement the Draft Law accordingly.**

35. Overall, 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 (including, in particular abusive prosecution, false, frivolous, vexatious or manifestly ill-founded complaints, or harassment) and the general concept that nobody, including an NHRI leadership, should be above the law.[46] This concept derives from the principle of equality before the law, which is also an element of the rule of law.[47] Indeed, the SCA has recognized this and recommends that the law should clearly establish the grounds, and a clear and transparent process, by which the functional immunity of NHRI leadership or members of the decision-making body may be lifted.[48]

36. The Draft Law does not clearly set out the grounds and procedure by which immunity may be lifted, or the relationship between the special status referred to in Article 7 and the functional immunity provided in Article 22. Unless this is specified elsewhere, it may be unclear whether the immunity is intended to be functional in scope. At the same time, the Draft Law should clearly establish the grounds and a clear and transparent process by which immunity may be lifted in exceptional circumstances or make a reference to relevant legislation for such a process (e.g., if the same process as for lifting the immunity from a Supreme Court judge applies). Such a process should be based on objective criteria, be independent from the executive, and ensure that requests to lift immunity cannot be used to exert pressure or to pursue manifestly ill-founded complaints. The Draft Law should avoid leaving essential elements of the immunity framework to undefined secondary legislation. In light of the foregoing, **the Draft Law should clarify the grounds, and establish a clear and transparent process, by which the immunity of the People's Advocate, commissioners and staff may be lifted, in whole or in part, and only to the extent necessary in the circumstances.**

37. At the same time, a proper mechanism is needed to prevent or stop investigations or proceedings where there is no sufficient evidence to suggest criminal liability on the part of the NHRI members, or where functional immunity considerations apply. In particular, **the request to lift immunity should be submitted by a body independent from the executive, and clear, transparent and impartial criteria and procedures shall determine whether immunity should be lifted or not in a given case**.[49]

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44 See ODIHR and Venice Commission, Joint Opinion on the Law No. 2008-37 of 16 June 2008 relating to the Higher Committee for Human Rights and Fundamental Freedoms of the Republic of Tunisia, 17 June 2013, para. 52.

45 See e.g., ODIHR, Urgent Opinion on the Draft Constitutional Law of Kazakhstan on the Commissioner for Human Rights, para. 33; and ODIHR, Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland, 31 October para. 44. See also Venice Commission, Opinion on The Draft Law "On The Commissioner For Human Rights" of Kazakhstan, CDL-AD(2021)049, 13 December 2021, paras. 50-52, which recommended express provision for protection extending "*the scope of the protection [...] to all documents of the Institution, including correspondence and internal notes, as well as to the baggage and means of communication belonging to the Commissioner*". See also ODIHR-Venice Commission, Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro (2011), para. 23.

46 SCA General Observation 2.3 which states that *"[i]t is acknowledged that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances it may be necessary to lift immunity*".

47 See Venice Commission, Updated Rule of Law Checklist, CDL-AD(2025)002, 16 December 2025, pages 33-34.

48 See e.g., SCA Report and Recommendations (May 2016), page 37.

49 See e.g., ODIHR, Final Opinion on the Draft Act Amending the Act on the Commissioner for Human Rights of Poland, 16 February 2016, Sub-Section 4 on the Procedure for Lifting the Commissioner's Immunity from Criminal Proceedings.

38. In addition, Article 22 (3) provides that recommendations, opinions and views issued by the People's Advocate and its staff may be used as documentary evidence; however, as drafted, it states that they may not be summoned as witnesses in investigative, judicial or administrative proceedings. This protection should operate in a manner that safeguards in particular the confidentiality of sources, internal deliberations and information obtained in the exercise of the NPM functions, including protection against reprisals, but should not be framed as a blanket exclusion from participation in all proceedings .

RECOMMENDATION A.1

To clarify Article 22 of the Draft Law regarding the functional immunity for the People's Advocate, the commissioners and all staff of the People's Advocate's office, by specifying that they shall not incur civil, administrative and criminal liability for words spoken or written, decisions made, or acts performed in good faith in their official capacity.

RECOMMENDATION A.2

To provide that such functional immunity also applies after the end of the mandate or after a staff member ceases their employment.

RECOMMENDATION A.3

To guarantee in legislation the inviolability of the NHRI's premises, property, means of communication and all documents, including internal notes and correspondence, as well as of baggage, correspondence and means of communication belonging to the members of the NHRI's leadership body and professional staff.

RECOMMENDATION A.4

To clarify the grounds, the grounds, and establish a clear and transparent process, by which the immunity of the People's Advocate, commissioners and staff may be lifted, in whole or in part, and only to the extent necessary in the circumstances.

4.3. Confidentiality and Protection against Reprisals

39. Article 23 of the Draft Law provides that no person or organization shall be subject to sanctions or prejudice for addressing the People's Advocate or providing information to the People's Advocate. Article 23 also provides that confidential information collected in the exercise of the People's Advocate's functions enjoys privileged protection, and regulates the publication of personal data, requiring express consent, with an exception where "*disclosure is required by law in the public interest*".

40. International standards recognize that confidentiality and protection against reprisals are essential safeguards for the effective functioning of NHRIs, particularly where they handle complaints and where they operate as a NPM.[50] The Paris Principles envisage that an NHRI with quasi-jurisdictional competence may seek an amicable settlement of complaints on the basis of confidentiality. At the same time, the SCA General Observations emphasize that NHRIs should operate in openness and transparency, with

50 See SCA General Observation 2.9 on complaints-handling, including confidentiality in complaint-handling, alternative dispute resolution process, and the need to protect complainants and witnesses from retaliation; see also Article 21 of the OPCAT regarding prohibition of sanctions/prejudice for communicating with the NPM; protection of confidential information; protection of personal data. See also 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, para. 3.

a view to enhancing public confidence in the institution.[51] In this regard, confidentiality rules should be narrowly framed and focused on sensitive personal information and other clearly defined protected information, and should not be used in a manner that prevents the institution from publicly reporting on human rights violations or the effectiveness of its work.

41. The Venice Principles emphasise that confidentiality should protect complainants and other persons involved, while the decisions and recommendations should be made public, with appropriate safeguards to protect identities where requested and justified.[52] In addition, Article 21 of the OPCAT requires that no sanctions or prejudice be imposed on persons or organizations for communicating with the mechanism and that confidential information be protected, while personal data should not be published without the express consent of the person concerned.

42. Against this background, the Draft Law would benefit from clarifying, either in the Draft Law itself or by cross-referencing existing binding and publicly available rules, what constitutes confidential information and how confidentiality is applied in practice. This would also support coherent application of confidentiality-related provisions elsewhere in the Draft Law, including as a principle of activity and in complaint-handling procedures. In particular, confidentiality requirements should focus on sensitive personal information of complainants and other protected data, and should not be framed or applied in a manner that prevents the publication of the People's Advocate's decisions, recommendations and reports or otherwise limits the institution's ability to bring to light human rights violations.

43. The exception allowing publication of personal data without express consent where required by law "in the public interest" appears broad and should be clarified so that it cannot be applied in a manner that undermines trust in the institution or discourages individuals from co-operating with the People's Advocate. With regard to protection against reprisals, the SCA's General Observations on complaints-handling underscore the need for NHRIs to be able to protect complainants from retaliation for filing a complaint, and to protect witnesses from retaliation for providing evidence.[53] As underlined in the CoE Recommendation, any cases of alleged reprisals or intimidation against NHRIs, their membership and staff, or against those who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.[54] In order to ensure that the protection in Article 23 is operational in practice, **it is important to clarify and ensure in implementation that it applies to complainants, victims, witnesses, civil society organizations and any other persons who provide information or otherwise co-operate with the institution, including in the context of NPM work in places of deprivation of liberty**. The Draft Law could also be supplemented by a provision specifying that any allegation of reprisals or intimidation shall be promptly transmitted to relevant prosecution, judicial or other competent authorities for investigation and further action.

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51 See GANHRI SCA, General Observations, adopted on 21 February 2018.
52 Venice Principles 18 and 20.
53 SCA General Observation 2.9 on complaints-handling.
54 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, para. 13.

5. The Mandate of the People's Advocate

44. The main tasks and functions of the People's Advocate are set out in Articles 10 to 16, with Articles 11-12 detailing its functions as NPM under the OPCAT and its complaints handling functions further elaborated in Articles 17 to 20 of the Draft Law.

5.1. Human Rights Promotion and Protection Mandate

45. 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 while protection functions include monitoring, inquiring, investigating, reporting, as well as complaints-handling.[55] The People's Advocate's functions cover most of these areas. It is also welcomed that the People's Advocate appears to be given high standing in the country, with access to Parliament and other public institutions, including through reporting and participation mechanisms, and through the right to propose legislative improvements and constitutional petitions (Articles 13 and 15, and Articles 28 and 29 of the Draft Law). It is also welcome that the Draft Law specifically addresses one of the outstanding SCA recommendation and now explicitly includes the promotion of "*adoption or ratification of international acts aimed at strengthening the protection of fundamental human rights and freedoms*" (Article 15 (2) of the Draft Law). At the same time, certain aspects of its mandate would benefit from clarification to strengthen the institution's role to effectively promote and protect a range of human rights.

46. Article 10 provides for the power of the People's Advocate to mediate between individuals and public authorities for the amicable resolution of complaints and conflicts related to the violation of human rights, while Article 20 provides that investigations may be closed when the matter has been resolved through mediation following intervention by the People's Advocate. The competence to facilitate amicable resolution commonly forms part of an ombuds-institution's functions. However, mediation is "*…generally not suited for complaints based on gross violations of human rights or the commission of a crime, such as sexual assault or violations of core civil and political rights such as torture, forced disappearances etc.*"[56] or other particular situations where such violations have serious consequences for that individual, or indicate the presence of broader systemic issues. Thus, **the present wording of Article 10 would benefit from clarification to ensure that mediation is at the discretion of the People's Advocate and does not unduly limit the People's Advocate's role to investigate and address individual or systemic issues, and further, that recourse to mediation does not prejudice the ability of individuals to pursue judicial remedies, where appropriate**. **Further, the provision should explicitly exclude mediation for the aforementioned situations including allegations concerning torture, serious ill-treatment, grave discrimination, or structural violations. The provision should extend the possibility to seek mediation to private legal entities.**

47. Article 10 (1) (a) of the Draft Law explicitly refers to the People's Advocate's competence to investigate actions or omissions of public authorities and private legal entities that infringe upon fundamental rights and freedoms, while Article 17 (1) mentions complaints of human rights violations committed by private legal persons/commercial companies. This is welcome, and the broadening of the mandate to also cover private

55 SCA General Observation 1.2.

56 UNDP-OHCHR, Toolkit for Collaboration with National Human Rights Institutions, December 2010, p. 93.

legal entities was previously a recommendation from the SCA towards the institution.[57] It is also in line with international recommendations.[58]

48. Another point for consideration regarding the mandate is in relation to Article 30 (3). As drafted, this frames the People's Advocate's human rights education and awareness role "in cooperation with" educational institutions and civil society organizations. While co-operation is welcome, the wording could be read as conditioning the People's Advocate's competence on co-operation with those actors. Further clarity would help to avoid any risk that this Article could be invoked to argue that the People's Advocate cannot run independent education/outreach, or cannot work with other stakeholders not specifically listed (such as media, professional associations, local authorities, private-sector actors, marginalized/under-represented/minority-group representatives). The Paris Principles and SCA practice emphasize human rights education, outreach and awareness as core promotional functions that NHRIs should be able to pursue independently and according to their own priorities, even while encouraging co-operation with civil society. **For clarity, a term such as 'including' could be added to Article 30 (3) of the Draft Law.**

RECOMMENDATION B

To clarify in Article 10 that mediation is at the discretion of the People's Advocate and does not unduly limit the People's Advocate's role to investigate and address individual or systemic issues, and further, that recourse to mediation does not prejudice the ability of individuals to pursue judicial remedies, where appropriate. Further, the provision should explicitly exclude mediation for the aforementioned situations including allegations concerning torture, serious ill-treatment, grave discrimination, or structural violations. The provision should extend the possibility to seek mediation to private legal entities.

5.2. The People's Advocate as the National Preventive Mechanism

49. Articles 11 and 12 of the Draft Law entrust the People's Advocate with the functions of NPM under the OPCAT.[59] This requires the legislation to comply with the relevant provisions of the OPCAT, including Article 18, which states that States 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 NPMs.[60] The requirements for NPM legislation deriving from OPCAT have been elaborated upon by the UN Sub-Committee for the Prevention of Torture (SPT), including through its Guidelines on national preventive mechanisms and related tools.[61] In parallel, the Venice Principles underline that an ombudsperson should enjoy broad powers of access to information, documents and places of deprivation

57 GANHRI SCA Report, December 2020, Section 2.1 on Albania.

58 SCA General Observation 1.2 requires that an NHRI mandate should extend to acts and omissions of both the public and private sectors. Venice Principle 13.2 provides that "*[t]he mandate of the Ombudsman shall cover all general interest and public services provided to the public, whether delivered by the State, by the municipalities, by State bodies or by private entities*."

59 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.

60 See also the OHCHR, Practical Guide on The Role of National Preventive Mechanisms (2018).

61 UN Subcommittee on Prevention of Torture (SPT), Guidelines on National Preventive Mechanisms, CAT/OP/12/5, 9 December 2010, in particular paras. 7-12 (independence and resources), 24-29 (visits, unannounced visits, private interviews, non-reprisal, annual reporting), and 32 and 40 (separate unit and budget where other functions exist, and contact with the SPT). For details, see the SPT, Analytical Assessment Tool for National Preventative Mechanisms (2016), CAT/OP/1/Rev.1. See also, SCA General Observations 1.7-1.8.

of liberty, that annual reporting should be made public, and that sufficient and independent budgetary resources are required to ensure effective functioning.[62]

50. The NPM role of the People's Advocate may also be regulated by other domestic legislation and practice. This Opinion therefore focuses on those aspects of the Draft Law that may affect the People's Advocate's ability to discharge the NPM mandate in line with the OPCAT.

51. The Draft Law should ensure that the NPM powers listed in Article 20 of the OPCAT are explicitly and effectively reflected in the domestic legal framework. This includes, *inter alia*, the right to full access to all information concerning the number of persons deprived of liberty, the number of places and their location, and the treatment of those persons and their conditions of detention, as well as unrestricted access to all places of deprivation of liberty and their installations and facilities, and the possibility to conduct private interviews with persons deprived of liberty and any other person whom the NPM believes may supply relevant information. These powers should be formulated in a manner that covers relevant registers and documentation in whatever form they are kept, including electronic registers and databases, and should include the NPM's freedom to choose the places it wants to visit, the persons it wishes to interview, and to maintain direct contact with the SPT, as envisaged by the OPCAT and the SPT's guidance.[63] To avoid risks of restrictive interpretation or implementation, the Draft Law should be interpreted and applied so that these powers are not treated as exceptional or made contingent in practice on suspicion, complaint or authorization, as this would undermine the ability of the NPM to carry out regular, preventive monitoring of all places of deprivation of liberty.

52. The latest Concluding Observations of the UN Committee against Torture on Albania from November 2025 also underline a number of concerns regarding the NPM's legislative mandate. In particular, the UNCAT Committee noted that "*the [NPM]'s legislative mandate contains the power to receive and consider complaints from prisoners, which is incompatible with its purely preventive mandate under the [OPCAT]*" and recommended to *"[r]eview the legislation establishing the mandate of the national preventive mechanism to ensure that complaints are not included in its mandate*".[64] This recommendation remains unaddressed in the Draft Law. **Article 21 of the Draft Law, concerning the material scope of the complaints-handling mechanism, could be supplemented by expressly excluding from the NPM's mandate the handling of individual complaints by persons deprived of liberty alleging torture or other forms of ill-treatment and clarifying that the NPM may receive and consider such allegations as relevant information for preventive monitoring while, however, specifying that complainants raising matters of such nature shall be informed about/referred to the competent authorities for criminal investigation and any other independent and effective complaints-handling mechanism that the UNCAT Committee recommends establishing.**

53. The recommendations addressed to Albania by the UN Committee against Torture underscore the importance of ensuring that the NPM can exercise full and unhindered access to all relevant places of deprivation of liberty.[65] These shall include **all detention**

62 Venice Commission, Venice Principles, in particular Principles 16 (access to documents, buildings, institutions and persons deprived of liberty), 20 (annual reports made public) and 21 (sufficient and independent budgetary resources).

63 UN SPT, Guidelines on National Preventive Mechanisms, CAT/OP/12/5, 9 December 2010, in particular paras. 7–12 (independence and resources), 24–29 (visits, unannounced visits, private interviews, non-reprisal, annual reporting), and 32 and 40 (separate unit and budget where other functions exist, and contact with the SPT).

64 UN Committee against Torture, Concluding observations on the third periodic report of Albania, CAT/C/ALB/CO/3, 23 December 2025, paras. 16-17.

65 UN Committee against Torture, Concluding observations on the third periodic report of Albania, CAT/C/ALB/CO/3, 23 December 2025, in particular recommendations on resourcing and ensuring full and unhindered NPM access to all relevant places of deprivation of liberty.

facilities, including migration detention facilities and all reception centres located on the territory of the Republic of Albania, regardless of the centres' management or jurisdiction.[66] Article 12 of the Draft Law could be supplemented in this respect to avoid uncertainty or misinterpretation.

54. The effectiveness of the NPM depends on formal powers and on its independence, resources and reporting arrangements. Article 18 (3) of the OPCAT requires that States Parties make available the necessary resources for the functioning of the NPM. The SPT has further emphasized that where the body designated as the NPM performs other functions in addition to those under the OPCAT, its NPM functions should be located within a separate unit or department, with its own staff and budget, so as to safeguard independence and effectiveness.[67] From this perspective, it is welcome that Article 32 (1) of the Draft Law retains a separate section dedicated to the NPM functions. The SCA's General Observations similarly stress that where an NHRI is designated with additional responsibilities, additional and adequate resources should be provided, and the NHRI should demonstrate the capacity to undertake the relevant roles effectively.[68] The SCA also raised this point in its most recent review of the Albanian NHRI,[69] as did the UN Committee against Torture in its latest Concluding Observations on Albania from November 2025. **The Draft Law should therefore ensure, including through Articles 32 and 39, that the NPM functions are supported by dedicated and adequate human and financial resources, and that such resources are stable, timely released, and protected from undue influence.**

55. Finally, the Draft Law should ensure a robust NPM reporting framework. The OPCAT requires NPMs to produce and publish annual reports, and the SPT has encouraged States to publish and widely disseminate NPM annual reports, and to ensure that they are presented to and discussed by the legislature, while the Venice Principles similarly emphasize that annual reports shall be made public.[70] **Given the People's Advocate's duty to submit and publish an annual report, the Draft Law should make it explicit that NPM annual reporting is included and made public, without any requirement of prior external clearance or approval, and should facilitate structured engagement by the legislature and relevant authorities on the NPM's findings and recommendations to enable follow up on those specific aspects.**

RECOMMENDATION C.1

Article 21 of the Draft Law, concerning the material scope of the complaints-handling mechanism, could be supplemented by expressly excluding from the NPM's mandate the handling of individual complaints by persons deprived of liberty alleging torture or other forms of ill-treatment and , clarifying that the NPM may receive and consider such allegations as relevant information for preventive monitoring while, however, specifying that such complainants raising matters of such nature shall be referred informed to about/referred to the competent authorities for criminal investigation and to any other independent and effective complaints-handling mechanism that the UNCAT Committee recommends establishing.

66 *Ibid.* UN Committee against Torture, Concluding observations on the third periodic report of Albania (2025), paras. 41 (c) and (d).
67 UN SPT, Guidelines on National Preventive Mechanisms, CAT/OP/12/5, 9 December 2010.
68 SCA General Observations, in particular G.O. 2.8 (assessing NHRIs designated as national preventive or monitoring mechanisms), G.O. 1.10 (adequate funding, including additional resources where additional responsibilities are given), and G.O. 1.11 (annual reports, publication and engagement by the legislature).
69 GANHRI SCA Report, December 2020, Section 2.1 on Albania.
70 UN SPT, Guidelines on National Preventive Mechanisms, CAT/OP/12/5, 9 December 2010, para. 29; and Venice Principle 20.

RECOMMENDATION C.2

To clarify in Article 12 of the Draft Law that unhindered access shall be guaranteed to all places of deprivation of liberty located on the territory of the Republic of Albania, including migration detention facilities and all reception centres, irrespective of the management or jurisdiction of such places of detention or centres.

6. Selection, Appointment and Tenure

56. The criteria and modalities/procedure for the selection and appointment of NHRI leadership is critical for its independence. The SCA emphasizes 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 throughout the process,[71] a position also supported by a range of regional and international standards.[72]

57. The Draft Law provides that the People's Advocate is elected by the Assembly by a qualified majority and that the dismissal of the People's Advocate is also subject to a qualified majority. It also introduces a commissioner system within the institution, which is elected by the Assembly under a separate procedure. The manner in which these procedures are designed and applied is central to ensuring the independence and legitimacy of the institution, and discussed further below.

6.1. Eligibility Criteria

58. To qualify for the post of People's Advocate, Article 4 of the Draft Law provides eligibility criteria that include, *inter alia*, a requirement to have completed law studies and integrity-related conditions. Article 33 provides eligibility criteria for commissioners and requires, inter alia, completion of second cycle law studies or equivalent. While there are some positive aspects to the eligibility criteria for the People's Advocate and commissioners listed in these provisions, the narrowness of the eligibility criteria and the use of disqualification grounds that are not based on a final determination are of concern. The SCA considers that eligibility criteria for NHRI positions should not be too narrowly drawn in order to ensure pluralism and encourage applications from a broad range of individuals.[73] The Venice Principles similarly provide that criteria for ombudspersons "*shall be sufficiently broad as to encourage a wide range of suitable candidates*".[74] Importantly, they note that "*the essential criteria are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms*".[75]

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71 SCA General Observation 1.8, which 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.

72 See e.g., 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, para. 4; ODIHR, Urgent Opinion on the Draft Constitutional Law of Kazakhstan on the Commissioner for Human Rights, paras. 52-58; and ODIHR, Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland, 31 October 2017, para. 82. See also Venice Commission, Venice Principle 6, which 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*"; and Opinion on the draft law on prevention and protection against discrimination in North Macedonia, CDLAD(2018)001, para. 69, which notes that "*the way according to which an Ombuds[person] 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*".

73 SCA General Observation 1.7 and justification.

74 Venice Commission, Venice Principle 8.

75 *Ibid.* Venice Principle 8.

59. The requirement in the Draft Law to restrict eligibility for the People's Advocate and commissioners to persons with law degrees may unreasonably limit the pool of candidates and reduce interdisciplinary expertise within the institution. For example, in several of its opinions, the Venice Commission has considered that requiring a law degree as a criterion for eligibility for the office of Ombudsperson was too restrictive, noting that what is essential for the position is a good reputation in society and recognized expertise in the field of human rights.[76] The SCA has also called for broad eligibility criteria. It regularly urges that the selection processes "*maximize the number of potential candidates from a wide range of societal groups and educational qualifications*," achieved by broad public advertising and inclusive, merit-based procedures.[77] This language is repeated in several SCA reports and demonstrates an implicit rejection of any rule that only lawyers or legal graduates can lead an NHRI. The International Ombudsman Institute (IOI) has also acknowledged that effective Ombudspersons come from diverse professional backgrounds, not only the legal field.[78] **It is recommended to revise the requirement to hold a law degree and to broaden this eligibility requirement to ensure eligibility of candidates from different fields.**

60. While Articles 4 and 33 provide for integrity-related requirements, such as the absence of conviction for a serious criminal offence, personal history of integrity and independence, an explicit reference to the individual being of high moral standing could be included.[79] Further, where eligibility criteria refer to disciplinary proceedings, disqualification should not be based solely on pending disciplinary action, without a final determination, as this may be open to abuse and could undermine pluralism and independence.

61. Article 4 (h) of the Draft Law restricts any candidate who has "*been a member, collaborator, or beneficiary of the former State Security prior to 2 July 1991, within the meaning of the Law 'On the Right to Information about the Documents of the Former State Security of the People's Socialist Republic of Albania'*".[80] The reference to "beneficiary" could unnecessarily widen the exclusion envisaged by this provision.[81] It is also unclear how this determination would be made in practice, and how the condition would be operationalized. Read together with Article 9 (1) (c), which permits dismissal for activities "contrary to" Article 4, the clause also creates a vulnerability throughout the mandate of the People's Advocate, potentially enabling *ex post* contestation of tenure and risking undermining perceived and actual independence of the institution. It is therefore recommended to remove the word "beneficiary" or alternatively to make the

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76 See e.g., Venice Commission, *Opinion on Amendments to the Law on the Human Rights Defender of Armenia*, CDL-AD(2006)038, 15-16 December 2006), paras. 21-24, which notes that *"the criteria for [Ombudsman] eligibility should not be too restrictive, and that e.g. a university degree in law is not a necessary prerequisite"*. See also e.g., Venice Commission, *Opinion on the Draft Law on the Ombudsman for Bosnia and Herzegovina*, CDL-AD(2015)034, October 2015, paras. 57-58, where the Venice Commission stated it "*has always been opposed to such restrictive requirements*" as mandating a law degree, bar exam, and lengthy legal practice and noted that while an ombudsperson deals with legal matters, "*the Ombudsman is not a judicial body*", so "*good reputation in society and recognized expertise in human rights*" are what *"should be essential for this position,"* rather than any particular legal credential, also emphasizing that legal knowledge may be provided by staff of the institution.

77 GANHRI SCA General Observation 1.8.

78 International Ombudsman Institute, Developing and Reforming Ombudsman Institutions (2016), which notes that "*in some jurisdictions, there is a tradition of appointing lawyers as Ombudsmen, but there are many examples of successful Ombudsmen coming from other backgrounds including public service, journalism, academia or politics*".

79 See 2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions, pages 123 and 152. See also Sub-Sections 1 and 3 of the 2022 Venice Commission's *Compilation of Venice Commission Opinions concerning the Ombudsman Institution*; and Principle 8 of the Venice Principles, which states that *"[t]he essential criteria are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms".* See also SCA Report of March 2012, p. 8.

80 European Commission for Democracy through Law (Venice Commission) Comments On the law on the cleanliness of the figure of high functionaries of the public administration and elected persons of the Republic of Albania, CDL(2009)132, 29 September 2009. See also, CDL-AD(2012)028-e, Amicus Curiae Brief on the Law on determining a criterion for limiting the exercise of public office, access to documents and publishing, the co-operation with the bodies of the state security ("Lustration Law") of "the former Yugoslav Republic of Macedonia" adopted by the Venice Commission At its 93rd Plenary Session (Venice, 14-15 December 2012)

81 PACE Resolution 1096 (1996), noting the principle that lustration must not be punitive and must be narrowly justified to protect democracy.

determination of eligibility solely on the basis of integrity, high moral standing and independence through a transparent, merit-based appointment process. If it is retained the legal drafters should ensure that it is narrowly framed, accompanied by clear procedural safeguards, based on a defined evidentiary standard, and subject to effective judicial review. The same concern applies to Article 33 (7) (h), which extends this exclusion to Commissioners and thus to the entire senior leadership of the institution.

6.2. Selection and Appointment Process for the People's Advocate

62. The Draft Law provides a detailed procedure for the election of the People's Advocate, including the public announcement of the vacancy, the submission of candidacies, verification and assessment by the Committee on Legal Affairs, Public Administration and Human Rights (hereinafter the "Legal Affairs Committee"), and public hearings, followed by election in plenary by a qualified majority of three-fifths of the total number of MPs, as required in the Constitution. While this level of detail is welcome, certain aspects would benefit from further clarification to ensure that the procedure is effective in practice and cannot be unduly prolonged, which has been a concern noted by several international and regional bodies during the last appointment process.[82] In particular, the Draft Law provides for multiple rounds and repetition of voting where a candidate does not obtain the required three-fifth majority (Article 5 (11)-(12)). It is welcome that the Article 8 (3) of the Draft Law provides for clear interim mechanism to ensure the People's Advocate's Office continuous functioning pending the appointment of the new office-holder, either by the continuation of the incumbent Ompudsperson's mandate in the transition period or, when not possible (in case of death, dismissal, mental or physical incapacity or reaching the retirement age), the most senior Commissioner in office. Indeed, transitional provisions for leadership are essential for the stability of NHRIs, either in case of early dismissals or when the mandate of the NHRI leadership comes to its end.[83]

63. Compared with the existing Law, the legal drafters sought to regulate the timeline of the process more strictly,[84] presumably with a view to reducing the risk of delays in the appointment procedure. At the same time, there is no specific timeline for the Legal Affairs Committee to verify the application, organize a public hearing and prepare the detailed report assessing each nomination (Article 5 (5)-(7)), which may still risks delaying the process.

64. In addition, in order to strengthen the effectiveness and pluralistic nature of the selection process, vacancy announcements should be widely publicized and accessible throughout

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82 See e.g., European Commission, *Commission Staff Working Document – Albania 2025 Report*, SWD(2025) 750 final, 4 November 2025, p. 34; and *2025 Rule of Law Report - Country Chapter on the rule of law situation in Albania*, SWD(2025) 928 final, 8 July 2025, pp. 16-17, noting in particular the failure of the Parliament to promptly appoint the Ombudsperson.

83 CoE Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution, 16 October 2019, para. 3. 1, which 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*". See also UN Human Rights Council, Report on National institutions for the promotion and protection of human rights, 1 May 2012, Principle 13 of the Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments (2012), which provides that a 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*". ODIHR also specifically recommended that legislation should establish procedures to ensure NHRIs' continuous functioning without interruption when the leader's term of office comes to an end, either through provisions allowing them to continue their mandate until their successor is appointed or through the introduction of clearly defined rules, which would allow NHRIs to continue effectively performing their functions, for instance by having the deputy perform the functions in the interim (see e.g., ODIHR, Urgent Note on International Standards and Comparative Practices Regarding the Continuation of Ombudspersons' Terms of Office until the Appointment of a New Office-Holder, 14 October 2020).

84 Public announcement of the vacancy at least three months prior to the expiry of the incumbent's term of office or within ten (10) days from the date of early termination of office (Article 5 (1)); the People's Advocate shall be elected by a three-fifths majority of all members of the Parliament, within a period of thirty (30) days of the expiry of the term of office or the occurrence of the vacancy (Article 5 (8)); if no candidate obtains the required majority in the first round, who receive the highest number of votes shall proceed to the second round of voting, which shall be held no later than ten (10) days from the conclusion of the first round (Article 5 (11)).

the country.[85] The procedure should also ensure sufficient time for the submission and assessment of candidacies, and for public consideration of candidates, while avoiding overly short timeframes that may undermine a Paris Principles-compliant process. When Article 5 (1) and Article 5 (9) are read together, it indicates that a new appointment can be made within 40 days in situations of premature removal from office. In the case of early termination of the People's Advocate's tenure, the vacancy is published within 10 days of termination, and new elections shall happen no later than 30 days from termination. This may, in practice, leave a very limited period for the full selection and appointment process. Such a short process raises significant concerns over the availability of qualified candidates, proper candidate evaluation, broad consultation and/or participation, public discourse, and careful decision-making.[86] **The timeframe for extraordinary appointments could be extended to allow for an open, transparent and thorough selection and appointment process, involving broad and inclusive consultation and/or participation.**

65. As regards the nomination and selection procedure, the Draft Law provides for candidacies to be submitted by a range of actors and for assessment by the Legal Affairs Committee. At the same time, the Draft Law should ensure that the criteria and methodology for screening and evaluation are predetermined, objective and publicly available, and that civil society involvement is meaningful and not only formal. There is no further detail on the criteria, methodology or procedural safeguards governing the Legal Affairs Committee's assessment of candidates. Moreover, there are no provisions in the Draft Law for a structured public consultation process as part of the selection and appointment procedure beyond public hearings.[87]

66. In any case, in order to strengthen the impartiality, objectivity and inclusiveness of the selection process in the Legal Affairs Committee, it may be advisable to consider providing for the establishment of an independent pre-selection commission, whose composition would reflect diverse societal groups (e.g., non-governmental organizations, universities, trade unions, concerned social and professional organizations, human rights groups), which would be in charge of screening and selecting candidates for the Legal Affairs Committee. [88] Indeed, the SCA has generally found overly political panels or selection panels comprised entirely of political, governmental or administrative representatives to be problematic, and undermining the Paris Principles.[89] This commission would then select a limited pool of candidates who would then be proposed for appointment.[90]

67. With the multiple rounds and repetition of voting where a candidate does not obtain the required three-fifth majority, it is unclear how long such processes may continue. The requirement of qualified majorities for the appointment of an NHRI is important as it aims to ensure broad agreement and consensus, ensuring in principle that the parliamentary majority will seek a compromise with the minority. At the same time, such a mechanism also increases the risk of a stalemate for which an effective deadlock-breaking mechanism should be devised, which continue to incentivize the majority and

85 GANHRI SCA General Observation 1.8.

86 ODIHR has previously raised concerns on a similarly short timeframe. See, e.g., ODIHR Urgent Interim Opinion on the Draft Constitutional Law of the Kyrgyz Republic on the Akyikatchy (Ombudsman), 16 August 2023.

87 See, for example, SCA Report on Bulgaria (March 2019), pp. 16-17.

88 See e.g., Venice Commission, CDL-AD(2021)012, Montenegro - Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption, paras. 37-38, 42. See also ODIHR, Urgent Opinion on the Draft Constitutional Law of Kazakhstan on the Commissioner for Human Rights, para. 56.

89 See, for example, SCA Report on Sri Lanka (May 2018) p. 36. See also Langtry & Roberts Lyer, *National Human Rights Institutions: Rules, Requirements, and Practice* (2021), p. 129.

90 See e.g., ODIHR, Opinion on the Draft Law Amending and Supplementing the Ombudsman Act of Bulgaria (29 March 2017), para. 25. 71 See e.g., Langtry & Roberts Lyer, National Human Rights Institutions: Rules, Requirements, and Practice (2021), p. 133.

the minority to seek a consensus.[91] Any anti-deadlock approach should preserve the requirement of a qualified majority provided in the Constitution, which helps strengthen independence and legitimacy. If consensus is not reachable even after several rounds of voting on the candidates figuring in the list prepared by the Legal Affairs Committee, or if certain MPs or parliamentary groups voluntarily boycott the process in order for the qualified majority not to be reached, perhaps other alternatives for proposing other candidates, without the involvement of the Legal Affairs Committee, could be explored. This could be done for instance by resorting to an independent, neutral, pluralistic body outside Parliament for the purpose of nominating other candidates,[92] or through directly soliciting proposals from civil society and/or allowing civil society to directly participate in the evaluation of candidates as mentioned above. Such a nominating body would then select one candidate or a limited pool of candidates to be proposed directly to the National Assembly for appointment.[93] While the required qualified majority of three-fifths would still apply, removing the nominating power from the political sphere/the Legal Affairs Committee, may create an incentive for the majority and the minority to reach consensus.

68. In light of the above, **it is recommended to ensure that the selection and appointment procedure remains broad, transparent and participatory throughout, including meaningful involvement of civil society and diverse societal groups, and that the procedure includes clear deadlines to reduce the risk of prolonged vacancies**. **Specific provisions should also set out the criteria for identification, screening and evaluation of candidates and modalities for the decision by the Legal Affairs Committee**. The legal drafters should also **consider supplementing Article 5 of the Draft Law by an effective deadlock breaking mechanism. Any such mechanism should preserve the qualified majority appointment requirement while ensuring a public, transparent, merit-based and pluralistic process; this could include, for example, a greater role for an independent and pluralistic nominating or pre-selection body, or another appropriate independent mechanism.**

69. **More generally, it is essential to include specific provisions setting out clear, predetermined and objective criteria for the identification and evaluation of candidates at all stages of the process.** To ensure an inclusive process, the legal drafters should also consult with various stakeholders, including civil society, when determining the most appropriate criteria and procedures for this purpose.[94]

RECOMMENDATION D.1

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91 Any anti-deadlock mechanism needs to be devised carefully in order to be effective and not to be perceived as undermining an objective of seeking consensus. The primary function of the deadlock-breaking mechanism is to push the majority and the minority to find a compromise to avoid the crisis or malfunctioning of an institution; therefore, such a mechanism should continue to incentivise the majority and the minority to seek an agreement, which may not be the case with rapidly decreasing a requirement for a qualified majority. The challenges of designing appropriate and effective anti-deadlock mechanisms must be acknowledged as there is no single model. Various solutions could be explored in this respect. For example, the participation in the vote could be made mandatory in order to have the required quorum. As underlined by the Venice Commission, beyond decreasing majorities in subsequent rounds of voting, which may not reach the intended goal, it is also possible to have recourse to the involvement of other, independent or more neutral institutional actors or consider establishing new relations between state institutions but each state has to devise its own formula; see Venice Commission, *Updated compilation of Venice Commission opinions and reports relating to qualified majorities and anti-deadlock mechanisms in relation to the election by parliament of constitutional and supreme court judges/presidents, prosecutors general, members of judicial and prosecutorial councils, independent/non-political bodies and ombudspersons*, CDL-PI(2025)023-e.

92 See e.g., Venice Commission, CDL-AD(2021)012, Montenegro - Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption, paras. 37-38, 42. ODIHR, Urgent Opinion on the Draft Constitutional Law of Kazakhstan on the Commissioner for Human Rights, para. 56; The SCA considers that the requirement for pluralism extends to the selection process, see e.g., SCA, '*Accreditation Report— Great Britain (EHRC)*' (November 2008), pp. 4-5.

93 See e.g., ODIHR, *Opinion on the Draft Law Amending and Supplementing the Ombudsman Act of Bulgaria* (29 March 2017), para. 25.

94 See e.g., ODIHR, Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland, 6 February 2017, paras. 46-47; and Venice Commission, Opinion on the draft Constitutional Law on the Human Rights Defender, adopted by the Venice Commission at its 109th Session (Venice, 9-10 December 2016), paras. 32-33.

To further clarify the selection and appointment process for the People's Advocate in Article 5 by ensuring widely publicised vacancy announcements, predetermined and publicly available criteria for screening and evaluation, meaningful participation of civil society, and clear deadlines that prevent protracted vacancies while preserving the qualified majority requirement for election.

RECOMMENDATION D.2

To supplement Article 5 of the Draft Law by an effective deadlock breaking mechanism. Any such mechanism should preserve the qualified majority appointment requirement while ensuring a public, transparent, merit-based and pluralistic process; this could include, for example, a greater role for an independent and pluralistic nominating or pre-selection body, or another appropriate independent mechanism.

6.3. Selection and Appointment Process for the Commissioners

70. The above concerns regarding the selection and appointment of the People's Advocate are also relevant for the selection and appointment process for commissioners under Article 33 of the Draft Law. Commissioners are elected by the Assembly, following a public call conducted by the People's Advocate, with hearings in the Legal Affairs Committee. The Draft Law provides that the People's Advocate submits two shortlisted candidates for each vacancy and that the Assembly elects a commissioner by a majority of the votes of the members present. The SCA requires that leadership appointment procedures are in line with the Paris Principles.[95] Such requirements also apply to commissioners, given their senior role within the institution. Furthermore, The CEDAW Committee calls upon States Parties to the CEDAW to adopt legislation and other measures to ensure parity (50/50) for public appointments.[96]

71. The low parliamentary voting threshold for the election of commissioners (by a simple majority of those present), the commissioners' term of office and the shortlisting stage, where the People's Advocate selects only two candidates per vacancy (Article 33) could potentially enable frequent changes in the institution's leadership and may heighten risks of politicization, including where commissioners' terms align with the parliamentary cycle and commissioners may be replaced or reshaped mid-term. This is of particular relevance given that, in certain circumstances, the most senior commissioner performs the duties of the People's Advocate (Article 8 (3)). In order to ensure parity in the leadership of the institution, a requirement to nominate candidates for appointment from the under-represented gender among the 6-persons leadership (People's Advocate and five commissioners) could be considered.

72. In light of the SCA's General Observation 1.8 and the Venice Principles, **the Draft Law should provide minimum statutory guarantees for the selection and appointment of commissioners to ensure that the process is open, public, transparent, merit-based and participatory, and that the selection criteria and evaluation methodology are predetermined and publicly available, while requiring the People's Advocate to nominate candidates from the underrepresented gender for appointment to ensure gender parity within the leadership of the institution.**

73. While it is welcome that Article 33 refers to co-operation with civil society in the selection process, key safeguards should not be left exclusively to internal rules adopted

95 See e.g., SCA Report on Bolivia (March 2017), p. 19.
96 See CEDAW Committee, *General recommendation No. 40 on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 49(a).

by the People's Advocate. In addition, the Draft Law should consider **strengthening the parliamentary voting threshold for the election of commissioners to enhance legitimacy, although as mentioned above, adequate deadlock-breaking mechanism should then also be introduced. Further, the term should be reviewed to ensure stability and continuity, including by considering whether commissioners' terms should be longer, staggered, or otherwise designed so that the institution's leadership cannot be reshaped at once in line with the political cycle**.

74. Article 33 (13) allows the People's Advocate to appoint a deputy commissioner or advisor to temporarily perform the duties of a commissioner when the position is vacant, pending selection of a new commissioner, but does not specify any maximum duration or safeguards for such interim arrangements. The Draft Law should provide clear limits and safeguards to ensure that interim commissioner appointments are strictly time-bound and cannot be used in practice to bypass the parliamentary appointment procedure or to create prolonged interim leadership arrangements.

6.4. Dismissal of the People's Advocate

75. NHRI legislation should contain an independent and objective dismissal process following predefined criteria, similar to that accorded to members of other independent state agencies.[97] The grounds for dismissal must be clearly defined and appropriately confined to those actions or circumstances which impact adversely on the capacity of NHRIs to fulfil their mandates. As emphasized in SCA General Observation 2.1, 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. In any case, dismissal should not be based solely on the discretion of appointing authorities.[98]

76. Article 9 of the Draft Law lists the grounds for dismissal of the People's Advocate by the Assembly and provides procedural elements including initiation by a group of members of parliament, review by the Legal Affairs Committee, the right of the People's Advocate to provide explanations, a hearing, and a qualified majority requirement for dismissal. Some of these may raise concern as they are vague and open to broad interpretation. In particular, reference to "activities in violation" of provisions framed as eligibility conditions would benefit from clarification to ensure legal certainty and to avoid overly broad interpretation. In addition, while Article 9 requires that a dismissal request be substantiated, supported by 'sufficient evidence' and provides for verification by the Legal Affairs Committee, the Draft Law does not specify the applicable standard of proof, the minimum evidentiary requirements, or the fact-finding methodology for grounds not already determined by a final court decision. This may create risks of inconsistent, arbitrary or politicized application, particularly in relation to grounds such as engaging in "activities contrary to Article 4" and "failure to report for duty". **To strengthen legal certainty and safeguards against arbitrary removal, the Draft Law should provide that dismissal grounds must be established on the basis of clear, objective, and verifiable evidence, following a transparent procedure that ensures due process, including access to the evidence relied upon and a reasoned decision.**

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97 SCA General Observation 2.1. See also SCA Report on Bosnia and Herzegovina (November 2016), where the SCA specifically 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*."

98 *Ibid.* SCA General Observation 2.1. See also CoE Committee of Ministers Recommendation CM/Rec(2021)1 on NHRIs, para. 5, which 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*".

77. In order to avoid any ambiguity that can potentially undermine the security of tenure of the People's Advocate, it is suggested to use uniform terminology throughout the Draft Law and to ensure that dismissal grounds are exhaustive, clear and reasonable. The Venice Principles emphasize the importance of clear provisions: *"[t]he Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law"*. These shall relate solely to the essential criteria of "incapacity" or "inability to perform the functions of office", serious "misbehaviour" or "misconduct", which shall be narrowly interpreted.[99]

78. While Article 9 provides a number of procedural safeguards, including a hearing and a qualified majority requirement, the Draft Law would benefit from additional effective guarantees against politicization, in particular clarity on the assessment of dismissal grounds and the availability of judicial review of dismissal decisions by an independent court. Where a process for removal involves the parliament, care must be taken to ensure that removal cannot be for political reasons and must be by a qualified majority vote.[100] The Venice Principles also emphasize that the parliamentary majority required for removal, whether by parliament itself or by a court on the request of the parliament, shall be equal to, and preferably higher than, the one required for election. The procedure for removal must be public, transparent and provided for by law.[84] **The Draft Law should ensure the right of appeal to an independent tribunal as well as that the procedure is public and transparent, unless otherwise provided in procedural law**.

RECOMMENDATION E.1

To strengthen legal certainty and safeguards against arbitrary removal, the Draft Law should provide that dismissal grounds must be established on the basis of clear, objective, and verifiable evidence, following a transparent procedure that ensures due process, including access to the evidence relied upon and a reasoned decision

RECOMMENDATION E.2

To ensure the right of appeal to an independent tribunal as well as that the procedure is public and transparent, unless otherwise provided in procedural law.

6.5. Dismissal of Commissioners and Transitional Provisions

79. 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*."[101] Article 34 of the Draft Law provides for the dismissal of commissioners. Certain elements, including dismissal linked to objectives set by the Legal Affairs Committee, raise serious concerns, as they risk exposing commissioners to performance management by a parliamentary body. In particular, the ground in Article 34 (1) allowing removal where a commissioner repeatedly "*fails, without justification, to meet the objectives set*

99 See SCA General Observation 2.1 and its Justification. See also Venice Commission, Venice Principle 11 and CoE Committee of Ministers Recommendation CM/Rec(2021)1 on NHRIs, para. 5.

100 See Venice Commission, Opinion on The Draft Law "On The Commissioner For Human Rights" of Kazakhstan, CDL-AD(2021)049, 13 December 2021, para. 77, which specifies that such a qualified majority "*should be at least equal to (and preferably higher than) the qualified majority required for election*" in order to "*protect the legal status of Commissioner, particularly his or her independence, and for preventing the politicisation of his or her possible dismissal*". See also, SCA Report on Latvia (March 2015), and Venice Commission, Venice Principle 11.

101 SCA Report on Timor-Leste (November 2013), pp. 31-32; SCA Report on Mauritius (October 2014), p. 22.

by the Commission for Legal Affairs, Public Administration and Human Rights … on a repeated basis", is overly broad and risks being used to exert undue influence on commissioners' independence, including through shifting or politicized performance expectations. **Such a ground does not correspond to the narrow categories of incapacity or serious misconduct envisaged by international standards on removal and should be reconsidered**.

80. In line with the SCA's General Observation 2.1, dismissal should be confined to serious grounds and should be supported by independent verification where appropriate. Further, while Article 34 provides certain procedural elements, it would benefit from clearer guarantees that the grounds for dismissal are exhaustive, clear and narrowly framed, and that the procedure includes safeguards against politicization. The Draft Law should also ensure effective judicial review. In this context, it is also important that the dismissal framework is assessed together with the acting arrangements in Article 8 (3), since the ease with which commissioners may be dismissed affects the resilience of the institution's leadership and may, in practice, affect continuity arrangements for the People's Advocate.

81. When read together, Articles 33, 34 and 8 (3) raise concerns as to the ease with which the institution's leadership could be reshaped mid-term and, indirectly, how the acting arrangements for the People's Advocate could be influenced. Article 33 provides for the election of commissioners by a majority of members present, on the basis of two shortlisted candidates selected by the People's Advocate, for four-year terms with the right of one re-election, and also allows interim performance of commissioner duties pending a new selection (Article 33 (10), (1), (8) and (13)). Article 34 provides for dismissal of commissioners by a majority of all members of the Assembly and includes a ground linked to repeated failure to meet objectives set by the Legal Affairs Committee and the People's Advocate (Article 34 (1) (d) and (4)). At the same time, Article 8 (3) provides that, in cases other than expiry of term or resignation, "the most senior commissioner" performs the duties of the People's Advocate until a new People's Advocate is elected. In combination, these provisions may reduce the resilience of the leadership by allowing changes to commissioner composition and seniority through lower voting thresholds and broad dismissal grounds, with potential implications for who may become acting People's Advocate in the event of a vacancy. **It is therefore recommended to ensure that the commissioners' selection and dismissal framework is sufficiently safeguarded and stable, and that acting arrangements cannot be influenced in a manner that circumvents the qualified majority and legitimacy safeguards applicable to the election of the People's Advocate.**

RECOMMENDATION F.

To remove from Article 34 the ground for dismissal of commissioners linked to the repeated failure to meet the objectives set by the Legal Affairs Committee.

6.6. Pluralism

82. The Paris Principles require that the composition of a national institution and the appointment of its members, whether by election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure "*the pluralistic representation of social forces (of the civilian society) involved in the promotion and protection of human rights*" (Paris Principle B.1). It is important to note that pluralism is understood broadly and refers to various kinds of diversity, including ethnic and linguistic minorities, persons with disabilities and other groups in vulnerable

situations, and ensuring their representation and meaningful participation. It also implies ensuring that the institution benefits from multidisciplinary expertise and experience and have procedures enabling effective co-operation with these diverse groups. Pluralism also requires equitable representation of women and men in the NHRI at all levels, including in leadership positions (see Sub-Section 6.3 *supra*).

83. 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.*"[102] 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*."[103]

84. In this regard, it is welcome that the Draft Law includes certain provisions which aim to promote diversity and pluralism within the People's Advocate's Office. In particular, Article 35 (3) provides that recruitment should aim to include representatives from ethnic minorities, the Roma and Egyptian communities, persons with disabilities and other marginalized groups. Article 35 (5) further refers to open and transparent selection procedures for certain posts, respecting meritocracy, non-discrimination and pluralism. Further, the inclusion of the Human Rights Council in Article 37, composed of a range of domestic actors and selected by an open and transparent process is welcome. These elements may contribute to strengthening the accessibility, pluralism and public legitimacy of the institution.

85. At the same time, the Draft Law would benefit from ensuring that pluralism is reflected not only at staff level but also, as appropriate, in leadership and decision-making positions. The SCA has underlined that where both leadership and staff are representative of a society's social, ethnic, religious and geographic diversity, the public is more likely to have confidence that the NHRI will understand and be responsive to specific needs. It has also noted that a diverse decision-making and staff body strengthens the institution's capacity to engage on all human rights issues affecting society and promotes accessibility for all persons.

86. As already indicated above, eligibility criteria that are too narrowly drawn may limit pluralism and reduce multidisciplinary capacity[104] (Sub-Section 6.1, *supra*). In this respect, the Draft Law's approach to eligibility for the People's Advocate and commissioners, which requires completion of law studies for both the People's Advocate (Article 4 (1) (b)) and commissioners (Article 33 (7) (b)), may unduly narrow the pool of candidates and may limit the breadth of professional profiles represented in the institution's leadership. This may be of particular relevance given the wide mandate of the institution, including its functions related to places of deprivation of liberty, non-discrimination and protection of the rights of groups in a situation of vulnerability. **The Draft Law should therefore ensure that eligibility criteria for positions at all levels**

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102 SCA General Observation 1.7. See also ODIHR, Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland, 6 February 2017; ODIHR Opinion on the Draft Amendments to the Law on Civil Service of Ukraine (10 May 2016); and ODIHR, Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland, 31 October 2017.

103 *Ibid.* SCA General Observation 1.7.

104 GANHRI SCA General Observation 1.7 (2018). See also, Venice Commission, Venice Principle 8 (criteria sufficiently broad to encourage a wide range of suitable candidates).

of the People's Advocate institution, including in leadership and decision-making positions, encourage a wide range of suitable candidates and support multidisciplinary capacity, while maintaining appropriate professional expertise and experience in the field of human rights.

87. It is also important to establish human resource policies, including a zero-tolerance policy towards harassment, sexual harassment, sexism and various forms of abuse, with independent complaint mechanisms and confidential counselling,[105] and other internal organizational features that enable women and men to participate and advance in the NHRI on an equal footing.[106] Human resource policies should include parental leave and flexible work arrangements for persons with parental and/or caretaking responsibilities, while guaranteeing positions or equivalent positions upon return from leave.[107] **Such aspects could also be specifically mentioned in the Draft Law or a reference could be made to applicable policies**.

RECOMMENDATION G.

To provide for pluralism in the composition of the People's Advocate's Office at all levels and include reference to various kinds of diversity, including ethnic and linguistic minorities and persons with disabilities, while ensuring the equitable representation of women in the NHRI, including in leadership positions.

7. The Powers and Functions of the People's Advocate

7.1. Restrictions and Limitations on Powers and Functions

88. A number of restrictions on the powers and functions of the People's Advocate appear to be contained in the Draft Law. These restrictions risk undermining the work of the People's Advocate and may raise questions about the independence of the NHRI. In particular, Article 21 of the Draft Law establishes a series of jurisdictional exclusions and exceptions which require care to avoid leaving gaps in human rights protection and oversight.

89. Article 21 limits the competence of the People's Advocate regarding complaints in respect of actions or inactions and decisions and individual acts issued by the President and Prime Minister. The Draft Law retains the People's Advocate's jurisdiction over administrative acts/omissions of the Office of the President and the Prime Minister's Office's supporting structures. This is potentially problematic insofar as these exclusions are framed broadly. The Venice Commission has previously recommended that "*activities of the President and First President, unless they fall into the realm/area of sovereignty exercised by the Head of State should fall within the monitoring competence of the [Commissioner]*" and further that *"[e]xemptions of jurisdiction to the activities of the President should be limited to those of an exceptional nature or of a political nature*."[108] **Article 21 of the Draft Law should be revised to more clearly circumscribe the limitations on the competence of the People's Advocate relating to the President**

105 See CEDAW Committee, *General recommendation No. 40 on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 39 (c).

106 See e.g., ODIHR, Handbook for National Human Rights Institutions on Women's Rights and Gender Equality, 4 December 2012.

107 *Ibid.* ODIHR Handbook, Section 7.7. See also CEDAW Committee, *General recommendation No. 40 on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 47 (e).

108 Venice Commission, Opinion on The Draft Law "On The Commissioner For Human Rights" of Kazakhstan, CDL-AD(2021)049, 13 December 2021, para 30.

and Prime Minister's actions/inactions and decisions or individual acts, particularly in the sphere of human rights.

90. Article 21 further excludes the review of military orders of the armed forces, subject to an exception relating to the fundamental rights and freedoms of service members and affected civilians. **This exclusion should be framed narrowly so as not to shield from scrutiny measures that affect individual rights, and should not permit the categorization of an act as 'military in nature' to prevent review where the substance of the measure has human rights implications for service members or civilians.**

91. Article 21 also contains further limitations, including exclusions relating to judicial decisions, subject to an exception for acts or omissions of the judicial administration which may affect procedural rights or standards of administration of justice, and matters under examination by a court or prosecutorial authorities, in respect of which the People's Advocate may request information but may not interfere. While certain limits designed to safeguard judicial and prosecutorial independence are legitimate in principle, **the Draft Law should ensure that these exclusions are formulated and applied in a manner that does not unduly restrict the People's Advocate's ability to address systemic procedural shortcomings and administrative failings affecting access to justice and fair trial rights.**

92. Article 10 provides the People's Advocate with the right to request information, documents and data, including those containing state, professional or commercial secrets, while referring to access "*in accordance with applicable legislation*". It is unclear from the text how such restrictions will operate in practice and whether they could be invoked broadly so as to obstruct the People's Advocate's work. Similar issues may arise in the application of the co-operation obligation in Article 25, which requires public authorities and private entities to provide information and grant access to relevant premises. In principle, the People's Advocate should have a legally enforceable right to unrestricted access to all relevant documents, databases and materials. This may include materials that might otherwise be legally privileged or confidential.[109] The Draft Law should provide for the grounds and the procedure for requesting and accessing such information. Any restriction, for instance on the ground of national security, should not be unreasonably or arbitrarily applied and it should be possible to challenge a refusal to communicate so-called "secret" information.[110] **In order to ensure that the People's Advocate has full access to all materials required for their work, the Draft Law should clarify the relationship between the reference in Article 10 (2) to access 'in accordance with applicable legislation' and the broad co-operation obligation in Article 25, so that secrecy or confidentiality regulations cannot be invoked in a manner that unduly obstructs the institution's mandate.** Further, it may be beneficial to consider ways of strengthening the People's Advocate's mandate to compel authorities and private entities within scope to provide requested information and access, and to ensure that refusals are subject to effective and timely remedies, including in light of the enforcement mechanisms set out in Articles 24 to 27 of the Draft Law.[111]

93. The SCA has issued specific guidance for NHRIs operating during states of emergency, emphasizing that they are expected to conduct themselves *"with a heightened level of*

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109 See e.g., Venice Commission Principles, CDL-AD(2019)005, Principle 16.

110 See e.g., ODIHR, Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland, 6 February 2017.

111 See 2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions, page 149. On reinforcement, see ODIHR, Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland, 31 October 2017, para. 63. See also Venice Commission, Opinion on the Draft Constitutional Law on the Human Rights Defender of Armenia, CDL-AD(2016)033, para. 29.

vigilance and independence, and in strict accordance with its mandate".[112] Any restrictions on its mandate must not be unreasonably or arbitrarily applied and should only be exercised under due process.[113] There is no reference in the Draft Law to situations of states of emergency, nor to safeguards specifying that the exercise of any limitations on the People's Advocate's mandate during a state of emergency will be applied strictly in line with the Paris Principles. Such explicit reference would be welcome.[114] Moreover, although beyond the scope of this Opinion, if there is no legal requirement for the body authorized to declare/introduce a state of emergency to obtain a prior opinion from the People's Advocate, about intended derogations of human rights, it would be recommended to amend applicable legislation to that effect.[115]

RECOMMENDATION H.

To revise and/or further clarify the jurisdictional limitations in Article 21 so that any exclusions are narrowly framed and do not create gaps in human rights protection, including by (i) more clearly circumscribing the carve-outs relating to acts of the President and the Prime Minister while retaining oversight over their administrative apparatus, (ii) ensuring that the exclusion for orders of a military nature cannot be used to shield measures with human rights implications for service members or civilians, and (iii) ensuring that the exclusions relating to judicial decisions and pending proceedings preserve the People's Advocate's ability to address systemic administrative and procedural shortcomings affecting access to justice and fair trial rights, with appropriate safeguards for judicial and prosecutorial independence.

7.2. Engagement with the International Human Rights System

94. The Paris Principles envisage that national institutions shall co-operate with the United Nations and any other organizations in the UN system, as well as with regional institutions and the national institutions of other countries. The SCA has further emphasized that monitoring and engaging with the international human rights system, including the UN Human Rights Council and its mechanisms, as well as UN treaty bodies, can be an effective tool for NHRIs in the promotion and protection of human rights domestically. 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*."[116]

95. It is welcome that the Draft Law explicitly provides for engagement with international and regional human rights mechanisms. In particular, Article 30 (2) provides that the People's Advocate has the right to submit and publish parallel reports to international organizations, reflecting independent assessments and recommendations for improving the human rights situation. Article 10 (1) (f) further provides for co-operation with international institutions and human rights organizations, while Article 10 (1) (j) states that the People's Advocate monitors the implementation of Albania's treaty obligations.

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112 SCA General Observation 2.5 (2018).
113 SCA General Observation 2.6 (2018).
114 ODIHR Report on NHRIs in a Public Emergency (2020) can serve as a useful reference tool for the People's Advocate's Office on the role of NHRIs and preconditions to continue and intensify the work during emergencies.
115 ODIHR, National Human Rights Institutions in a Public Emergency: A Reference Tool (6 October 2020), p. 12.
116 SCA General Observation 1.4 (2018).

96. The SCA has underlined that while it is appropriate for governments to consult with NHRIs in the preparation of a State's reports to human rights mechanisms, NHRIs should neither prepare the State report nor report on behalf of the government.[117] While the Draft Law does not assign the People's Advocate any role of preparing State reports, for the avoidance of doubt, **it would be beneficial to ensure that any participation in national reporting processes is understood as a consultation and does not limit or substitute the People's Advocate's independent engagement, including through parallel reporting and direct interaction with international mechanisms**.

97. Finally, the Draft Law already contains elements that may support follow-up to international recommendations, including through the monitoring of treaty obligations issued by international organizations and treaty standards (Article 10 (1) (g)) and through the monitoring of the implementation of recommendations from international organizations and conventional standards (Article 36). **To further strengthen the effectiveness of this engagement, it would be useful to ensure that follow-up to recommendations from UN treaty bodies, the Universal Periodic Review and other relevant mechanisms are clearly integrated into the institution's reporting and follow-up mechanisms, including through the annual report and any special reports.**

7.3. Other Aspects

98. One of the major concerns related to the People's Advocate's functions relates to the low level of implementation of its recommendations.[118] Articles 24 and 27 of the Draft Law seeks to strengthen the mechanisms to compel public authorities to respond to and implement the recommendations, which is welcome in principle, although their effectiveness will need to be assessed once the law is adopted and implemented. Pursuant to Article 28 of the Draft Law, the annual report should also elaborate on the level of implementation of the recommendations, which should allow for greater transparency and accountability.

99. At the same time, it would be useful for Article 28 to also require that the annual report include gender, age, and disability and other relevant disaggregated data with respect not only to the composition of the NHRI's staff, but also with respect to the complaints received,[119] the alleged grounds for discrimination, alleged perpetrators, and/or on the type of alleged violations or abuses. Sex-disaggregated data on complainants in complaints handled by the NHRI would be useful not only for assessing the accessibility of the complaints mechanism to women, but may also help identifying structural patterns, disparities or implicit bias, and more generally evaluating progress in equality rights, women's rights and gender equality.

8. Adequate Funding

100. 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*

117 See, e.g., GANHRI SCA General Observation 1.4 (2018) and General Observation 1.11 (annual reports and engagement by the legislature).

118 See e.g., European Commission, *Commission Staff Working Document – Albania 2025 Report*, SWD(2025) 750 final, 4 November 2025, p. 34; and *2025 Rule of Law Report - Country Chapter on the rule of law situation in Albania*, SWD(2025) 928 final, 8 July 2025, pp. 16-17.

119 ODIHR, Handbook for National Human Rights Institutions on Women's Rights and Gender Equality, 4 December 2012, pp. 36 and 84.

to freely determine its priorities and activities".[120] 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)1 similarly emphasizes the importance of funding.[121] According to the Recommendation, adequate funding includes allocation of funding for accessible premises, staff salaries, well-functioning communications systems and sufficient resources for mandated activities, including in times of financial constraint.[122] This is additionally important where the institution is entrusted with additional specialized responsibilities, including functions as the NPM under the OPCAT, which requires that States Parties make available the necessary resources for its functioning.

101. In its most recent published re-accreditation decision on the People's Advocate, the SCA acknowledged increases in staff and budget since 2014, but noted that the level of funding remained insufficient to meet human-resources needs, "*including retaining full-time staff in its regional offices*", and emphasized that an NHRI must have an appropriate level of funding to guarantee independence and the ability to determine its own priorities, encouraging continued advocacy for adequate funding.[123] These concerns have been reiterated in recent UN treaty body concluding observations and other reports by regional bodies.[124]

102. The Draft Law contains a detailed framework on financing in Article 39, which includes a number of safeguards that are, in principle, consistent with relevant international standards and good practices. The budget of the People's Advocate is approved by the Assembly as part of the State Budget (Article 39 (1)), and is proposed by the People's Advocate (Article 39 (2)), with an express requirement that it be sufficient to enable the independent and effective fulfilment of the institution's responsibilities and functions (Article 39 (3)). It is welcome that the People's Advocate has the initiative to propose the budget and the submission of the budget to the parliament is in line with good practice.[125] It is also welcome that the Draft Law provides that the People's Advocate has the right to participate in and be heard by the relevant committee on the draft budget bill allocated to the institution (Article 39 (4)). In addition, Article 39 (6) contains an important safeguard against unwarranted budgetary cutbacks, by providing that the People's Advocate's budget may be reduced only by the same percentage as the overall reduction in the Government's budget compared to the previous financial year, in line with good

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120 SCA General Observation 1.10.

121 Article 6 of the CoE 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."

122 SCA General Observation 1.10.

123 GANHRI SCA Report, December 2020, Section 2.1 on Albania.

124 The Committee on Economic, Social and Cultural Rights (October 2024) expressed concern that funding is insufficient to meet the People's Advocate Office's human-resources needs, including retaining full-time regional staff, and recommended adequate financial and human resources to enable the Office to fully discharge its mandate (see CESCR, Concluding observations on the fourth periodic report of Albania, E/C.12/ALB/CO/4 (17 October 2024), paras. 8-9); the Committee on the Elimination of Discrimination against Women in November 2023 similarly recommended implementation of the SCA's recommendations, including continued advocacy for adequate funding to ensure full-time staff in regional offices (see CEDAW, Concluding observations on the fifth periodic report of Albania, CEDAW/C/ALB/CO/5 (14 November 2023), paras. 17-18); the UN Human Rights Committee also raised concerns in April 2025 that, notwithstanding budget increases, the People's Advocate still lacks the human and financial resources needed to effectively fulfil its mandate "across all regions" and noted shortcomings in implementation of its recommendations (see UN Human Rights Committee, Concluding observations on the third periodic report of Albania, CCPR/C/ALB/CO/3 (30 April 2025), paras. 5-6). See also e.g., European Commission, *Commission Staff Working Document – Albania 2025 Report*, SWD(2025) 750 final, 4 November 2025, p. 34; and *2025 Rule of Law Report - Country Chapter on the rule of law situation in Albania*, SWD(2025) 928 final, 8 July 2025, pp. 16-17.

125 ODIHR, Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland, 6 February 2017, para. 76. See also e.g., Venice Commission, Opinion on the possible reform of the Ombudsman Institution in Kazakhstan, adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007), CDLAD(2007)020, paras. 8 and 30.VI. See also e.g., Venice Commission, Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova, CDLAD(2015)017, para. 60.

practices.[126] Article 10 further provides that, for each new duty or mandate assigned by special laws, the Assembly must also approve additional funding for the People's Advocate, which is welcome in principle. To be effective, such additional funding should be adequate and timely, in line with the scope of the additional responsibilities, including NPM functions.

103. International standards emphasize that adequate funding is closely linked to financial autonomy. The SCA has underlined 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*."[127] The Draft Law would therefore benefit from explicitly guaranteeing that the People's Advocate has full control over the execution of its approved budget and that allocated resources are released in a timely and predictable manner throughout the financial year, so that budgetary processes cannot be used, in practice, to undermine independence. This is also particularly relevant for NPM functions, for which the SPT has underlined the importance of financial autonomy and dedicated resources to enable regular visits and effective follow-up. Indeed, the NHRI requires considerable funding to guarantee its ability to fulfil its mandate, including its NPM functions, in its entirety. The addition of any mandate must be accompanied by adequate additional funding. **To ensure that regional offices are also able to fulfil their mandates, adequate funding must also be explicitly provided to them, ensuring adequate financial, technical and (full-time) human resources to ensure the full, independent and effective discharge of the responsibilities and functions of the institution regionally, including its role as NPM. Explicit reference should be made to funding for the NPM.**

104. In addition, there is no reference in the Draft Law to the principle of financial autonomy of the People's Advocate'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*."[128] 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 People's Advocate's Office must be in the control of the institution, in line with their independence.[129] Financial autonomy has also been emphasized as important for NPMs by the SPT. **Article 39 should explicitly provide for the NHRI's financial autonomy and independent control over the execution of its approved budget.**

105. Additionally, to enhance the NHRI's financial independence, some complementary additional safeguards may also be considered. For instance, the Draft Law may specify that the budgetary process should not be used to allocate/reduce funds from the budget in a manner that interferes with the NHRI's independence.[130] To further strengthen financial

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126 See e.g., ODIHR, Urgent Opinion on the Draft Constitutional Law of Kazakhstan on the Commissioner for Human Rights, para. 89; ODIHR, Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland, 6 February 2017, para. 76. See also Venice Commission, Opinion on the Draft Constitutional Law on the Human Rights Defender of Armenia, CDL-AD(2016)033, para. 69

127 SCA General Observation 1.10.

128 SCA General Observation 1.10.

129 Ibid. See also ODIHR Opinion on the Draft Law Amending Article 8 of the Law on the Human Rights Defender in Armenia. 117 SCA Report on South Africa (November 2017), p. 33.

130 ODIHR, Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland, 6 February 2017, para. 76.

autonomy, the Draft Law could clarify that the People's Advocate retains full authority to allocate the approved budget in line with its mandate and priorities, subject to standard public financial accountability mechanisms. In this regard, Article 39 (6) provides an important protection linked to overall Government budget reductions and could be complemented by safeguards that ensure that any reductions are justified, transparent and cannot be targeted so as to affect the effective performance of the People's Advocate's core mandate or its additional mandates, including the NPM.

106. Article 39 (8) permits the People's Advocate to accept financial or material donations from national and international organizations, provided that they do not compromise the institution's independence, impartiality or constitutionality, and requires that donations be recorded in a dedicated register and publicly disclosed (Article 39 (9)). These safeguards are welcome. At the same time, it is important that the Draft Law makes clear that donations are supplementary and cannot substitute for the State's obligation to provide adequate core funding. It would also be useful to ensure that the legal framework governing donations cannot be applied in a manner that creates undue leverage over the institution or that is used to cast doubt on the institution's independence where transparency requirements are met.

107. Finally, it would also be recommended to specify in Article 39 that the institution's budget shall be gender- and diversity-responsive, meaning that it should ensure that the needs and interests of individuals from different social groups (gender, age, ethnic origin, disability, rural v. urban, etc.) are taken into account; the People's Advocate should also report on its budget from a gender and diversity perspective, with a view to identify how resources are allocated to or directed at programmes and policies aimed at advancing women's rights and gender quality, and the rights and interests of other groups.[131] This would also be in line with Article 12 of the new Law on Gender Equality of Albania.

RECOMMENDATION I.

Article 39 should be strengthened to ensure that the State will provide the People's Advocate's office with adequate funding to cover the costs of human, financial, material and technical capacity to guarantee the proper implementation of its broad mandate, including as National Preventive Mechanism under OPCAT, while explicitly providing for the institution's financial autonomy, full control over the execution of its approved budget, appropriate timing of release of funding, and safeguards against unwarranted budgetary cutbacks. The framework on donations should be clarified to ensure that such funding is supplementary, transparent and cannot undermine, or be used to undermine, the independence of the institution.

9. Staffing

108. Article 35 provides that staff of the People's Advocate are civil servants and subjects them to the general civil service framework, while also introducing welcome requirements of meritocracy, non-discrimination and pluralism in recruitment.

109. 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.[132] Staff should be recruited according to an open,

131 ODIHR, Handbook for National Human Rights Institutions on Women's Rights and Gender Equality, 4 December 2012, Section 7.6. See also ODIHR, Guidelines on Democratic Lawmaking for Better Laws (2024), para. 225.

132 SCA General Observation 2.4.

transparent and merit-based selection process that ensures pluralism (including in the context of gender, ethnicity, persons belonging to minority groups and persons with disabilities) 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, at all levels.[133] The Venice Principles similarly provide that the Ombudsperson "*shall be able to recruit his or her staff*" as does the CoE Recommendation (2021)1.[134] The Venice Commission has previously recommended that NHRI staff should not be civil servants, but have "distinct special status" regulated by the law.[135]

110. At the same time, most countries have human resources policies pertaining to their public services that apply to all public agencies and entities, including NHRIs.[136] It is generally considered that in such cases, NHRIs should nevertheless benefit from a certain flexibility in applying public service rules on recruitment and career advancement.[137] More generally, an NHRI does not only need to be independent, but it must also be "seen" to be independent.[138] NHRI members and staff should not be too closely connected to the public service or considered or perceived as government employees.[139] ODIHR has specifically recommended in previous opinions that if public service rules are applicable to NHRI staff, then the legal framework applicable to the staff should exempt them, to a certain extent, from the general rules on civil service to ensure the institution's autonomy to recruit and manage its/her own staff, which constitutes an essential guarantee of this institution's independence, and avoids the risk that the institution may be perceived as being under the executive's control.[140]

111. **Given that the independence of staff is critical to NHRIs, consideration should be given to including specific mention in the Draft Law of the autonomy and independence of staff (including staff working in regional offices) and confirming that the terms and conditions for staff are equivalent and not lower than that of other public servants undertaking similar work and with similar qualifications and responsibilities**, which is in keeping with the recommendations of the SCA.[141] Further, it is for the NHRI to determine the required skills and selection criteria for its staff,[142] including with a view to ensure diversity and gender balance at all levels.

112. The SCA has made it clear that the majority of NHRI staff should not be secondees, nor redeployed from other branches of the public sector. Further, senior staff should never be secondees.[143] The Draft Law should more clearly specify that the People's Advocate shall have the authority to determine the criteria, procedures and methods for recruiting all of their staff. In addition, the Draft Law should provide for the autonomy and independence for the staff of the Office. The provisions on staff functional immunity are also relevant here (see *supra* section 4.2).

133 *Ibid.* and SCA General Observation 1.7.

134 See Venice Commission, Venice Principle 22. See also the CoE Committee of Ministers' Recommendation CM/Rec(2021)1 on NHRIs, Appendix, Article 7.

135 See e.g., Venice Commission, Armenia - Opinion on the legislation related to the Ombudsman's staff, CDL-AD(2021)35, para. 26.

136 OHCHR, Handbook on National Human Rights Institutions - History, Principles, Roles and Responsibilities (2010), page 156.

137 *Ibid.* page 156 (2010 OHCHR Handbook on National Human Rights Institutions). See also UNDP-OHCHR, Toolkit for Collaboration with National Human Rights Institutions (December 2010), pages 173-174.

138 *Ibid.* page 39 (2010 OHCHR Handbook on NHRIs). See also, ODIHR- Venice Commission, Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro, (Venice, 14-15 October 2011), paras. 12, 27 and 29.

139 International Council on Human Rights Policy and OHCHR, Report on Assessing the Effectiveness of National Human Rights Institutions (2005), page 8.

140 See e.g., ODIHR, Opinion on the Draft Amendments to the Law on Civil Service of Ukraine (10 May 2016), paras. 8 and 19-20. Venice Commission, Armenia -Opinion on the legislation related to the Ombudsman's staff, CDL-AD(2021)35, paras. 16-19.

141 SCA, Accreditation Report - Slovenia (HRORS) (March/April 2010), p. 9.

142 SCA, Accreditation Report - Belgium (CEOOR) (March/April 2010), p. 11.

143 See Langtry & Roberts Lyer, National Human Rights Institutions: Rules, Requirements, and Practice (2021), chapter 4.8, citing SCA, 'Accreditation Report - Thailand (NHRC)' (November 2008) 11; SCA, 'Accreditation Report - Mauritania (CNDH)' (May 2011) 16; SCA, 'Accreditation Report - Mali (CNDH)' (March 2012) 13-14; SCA, 'Accreditation Report - Bangladesh (NHRCB)' (May 2011) 7; SCA, 'Accreditation Report - Congo (CNDH)' (October 2010) 4; SCA, 'Accreditation Report - Tanzania (CHRAGG)' (November 2016) 52.

113. To further safeguard independence in practice and perception, **the Draft Law could more explicitly guarantee the People's Advocate's autonomy to determine the institution's staffing structure and required skills profiles and to recruit and manage staff through open, transparent and merit-based procedures conducted by the institution that aim to ensure pluralism in terms of ethnicity, persons belonging to minority groups and persons with disabilities, as well as gender balance at all levels.** As noted above, adequate resourcing and staffing continuity should also be guaranteed for regional presences.

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

114. 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).[144] 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).[145] The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input throughout the lawmaking process.[146]

115. The SCA has emphasized that where NHRI laws are amended, an open, transparent and meaningful consultative process should be undertaken, including with the NHRI itself.[147] Similarly, concerning NPMs, the UN Sub-Committee on the Prevention of Torture requires that the NPM be consulted on changes to laws relevant to its mandate.[148] It is thus essential that the NHRI be meaningfully consulted at all stages of the law-making process, from the preparation of the initial draft, during parliamentary debates and until the adoption, as well as future evaluation of the legislation.[149]

116. Public consultations constitute a means of open and democratic governance as they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.[150] Consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide relevant stakeholders with sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to

144 Available at <http://www.osce.org/fr/odihr/elections/14304>.

145 Available at <http://www.osce.org/fr/odihr/elections/14310>.

146 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), in particular Principles 5, 6, 7 and 12. See also Venice Commission, Updated Rule of Law Checklist, CDL-AD(2025)002, 16 December 2025, Part II.A.6.

147 For example, concerning the development of the NHRI in Norway, the SCA recommended that "[a]n inclusive and consultative process to ensure broad support for a new NHRI should be initiated by the Government without delay", emphasizing that "[t]he process should include the [existing institution], civil society groups and other stakeholders"; see SCA, 2011 Report, Norway, October 2011, pp. 1516.

148 UN SPT, Guidelines on National Preventive Mechanisms, 9 December 2010, UN Doc CAT/OP/12/5, para. 28.

149 See also the Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments (2012), which the OHCHR recommends to use as guidelines to strengthen co-operation between NHRIs and parliaments for the promotion and protection of human rights at the national level, especially para. 4, which states that "Parliaments, during the consideration and adoption of possible amendments to the founding law of a NHRI, should scrutinize such proposed amendments with a view to ensuring the independence and effective functioning of such institution, and carry out consultation with the members of NHRIs and with other stakeholders such as civil society organizations"; and paras. 27-28, which provide that "*NHRIs should be consulted by Parliaments on the content and applicability of a proposed new law with respect to ensuring human rights norms and principles are reflected therein" and "Parliaments should involve NHRIs in the legislative processes, including by inviting them to give evidence and advice about the human rights compatibility of proposed laws and policies*".

150 See Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (from the participants to the Civil Society Forum organized by ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

contributions.[151] To guarantee effective participation, consultation mechanisms should allow for input at an early stage, from the initial policymaking phase *and throughout the process*,[152] meaning not only when the draft is being prepared but also when it is discussed before Parliament, be it during public hearings or during the meetings of the parliamentary committees. Particularly legislation that may have an impact on human rights and fundamental freedoms, as is the case here, should undergo extensive consultation processes throughout the drafting and adoption process, to ensure that the NHRI, human rights organizations and the general public, including under-represented and marginalized groups, are fully informed and able to submit their views prior to the adoption of the law.[153]

117. Given the potential impact of the Draft Law on the exercise of human rights and fundamental freedoms, an in-depth regulatory impact assessment, is essential, which should contain a proper problem analysis, using evidence-based techniques to identify the most efficient and effective regulatory option.[154]

118. In light of the above, the public authorities are encouraged to ensure that the Draft Law is subjected to inclusive, extensive and effective consultations, including with the NHRI, civil society, as well as representatives of underrepresented communities, offering equal opportunities for women and men to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including at the time of developing the initial as well as before Parliament. 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.[155]

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151 See ODIHR, Guidelines on Democratic Lawmaking for Better Laws (2024), Principle 7.

152 See ODIHR, Guidelines on Democratic Lawmaking for Better Laws (2024), Principle 7.

153 See e.g., ODIHR, Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland, Warsaw, 31 October 2017, para. 95.

154 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, Updated Rule of Law Checklist, CDL-AD(2025)002, 16 December 2025Part II.A.6.

155 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), para. 2. See also OECD, International Practices on Ex Post Evaluation (2010).