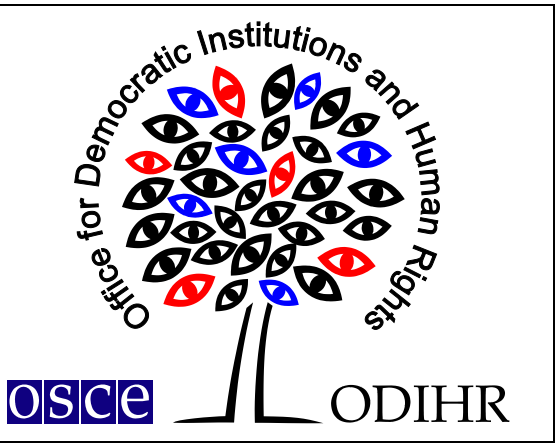
Warsaw, 31 October 2017 Opinion-Nr.: NHRI-CHE/312/2017 [AlC] www.legislationline.org	

OPINION

ON THE DRAFT FEDERAL LAW ON THE SUPPORT TO THE NATIONAL HUMAN RIGHTS INSTITUTION OF SWITZERLAND

based on an unofficial English translation of the Draft Act commissioned by the OSCE Office for Democratic Institutions and Human Rights

This Opinion has benefited from contributions made by Mr. Marek Antoni Nowicki, former international Ombudsperson in Kosovo; the National Institutions and Regional Mechanisms Section of the Office of the United Nations High Commissioner for Human Rights (OHCHR); and Ms. Alice Thomas, International Human Rights Law Expert.

OSCE Office for Democratic Institutions and Human Rights
Ulica Miodowa 10 PL-00-251 Warsaw ph. +48 22 520 06 00 fax. +48 22 520 0605

TABLE OF CONTENT

I. INTRODUCTION

1. *On 12 July 2017, the OSCE Office for Democratic Institutions and Human Rights (hereinafter "OSCE/ODIHR") received a request from the Permanent Mission of Switzerland to the OSCE in Vienna to review the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland (hereinafter "the Draft Act").*
2. *On 13 July 2017, the OSCE/ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of the Draft Act with international human rights standards and OSCE human dimension commitments.*
3. *This Opinion was prepared in response to the above-mentioned request.*

II. SCOPE OF REVIEW

4. The scope of this Opinion covers only the Draft Act submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the protection and promotion of human rights and fundamental freedoms in Switzerland.
5. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the Draft Act. The ensuing recommendations are based on international and regional standards and practices governing national human rights institutions (hereinafter "NHRIs"), as well as relevant OSCE commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field.
6. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[1] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, programmes and projects, the Opinion analyses the potentially different impact of the Draft Act on women and men.[2]
7. This Opinion is based on an unofficial English translation of the Draft Act commissioned by the OSCE/ODIHR, which is attached to this document as an Annex. Errors from translation may result.
8. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation pertaining to the legal and institutional framework on the protection and promotion of human rights in Switzerland in the future.

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[1] *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Switzerland ratified this Convention on 27 March 1997.

[2] See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), <http://www.osce.org/mc/23295?download=true>.

III. EXECUTIVE SUMMARY

9. At the outset, it should be noted that in principle, the Draft Act is welcome, as it seeks to create the basis for the establishment of an NHRI in Switzerland, in compliance with the United Nations Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (hereinafter "the Paris Principles").[3] This is a significant first step in addressing the recommendations made to Switzerland previously by various human rights monitoring bodies.[4] At the same time, it would be advisable to expand the Draft Act significantly (or to adopt a separate law for this purpose), so as to include important aspects pertaining to the NHRI and its functioning, especially those at the core of the institution's basic guarantees of independence, and to ensure full compliance with the Paris Principles.

10. In particular, the fact that the NHRI would be attached to universities or higher education institutions and be governed by a contract between an administrative unit of the Federal Council and the NHRI raises concerns, as this approach could call into question the permanence and independence of this new entity. Instead, it would be preferable if the Swiss decision-makers would establish an independent and autonomous body in compliance with the Paris Principles.

11. In addition, the legal drafters should introduce into the Draft Act (or separate act) specific safeguards to protect the NHRI's independence, while including provisions concerning this body's management and ensuring that its appointment process complies with the NHRI's institutional independence. In particular, the NHRI's leadership should be protected from civil, administrative and criminal liability for words spoken or

[3] The UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (hereinafter "the Paris Principles") were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris (7-9 October 1991), and adopted by UN General Assembly Resolution 48/134 of 20 December 1993, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

[4] See, in particular, Recommendations 123.17 to 123.23 of the *Second Cycle Report of the Working Group on the Universal Periodic Review (UPR) for Switzerland*, A/HRC/22/11, 7 December 2012 (next review will take place in November 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/186/16/PDF/G1218616.pdf?OpenElement>; UN Human Rights Committee (UN HRC), *Concluding Observations on Switzerland*, CCPR/C/CHE/CO/4, 22 August 2017, pars 14-15, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CHE/CO/4&Lang=En>; UN Committee on the Elimination of Discrimination against Women, *Concluding Observations on Switzerland*, CEDAW/C/CHE/CO/4-5, 25 November 2016, pars 18-19, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHE/CO/4-5&Lang=En>, which recommends in particular to "[s]trengthen the mandate of the Swiss Centre of Expertise on Human Rights, in particular with regard to gender equality, and ensure that it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)"; UN Committee against Torture, *Concluding Observations on Switzerland*, CAT/C/CHE/CO/7, 7 September 2015, par 9, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CHE/CO/7&Lang=En>; UN Committee on the Rights of the Child, *Concluding Observations on Switzerland*, CRC/C/CHE/CO/2-4, 26 February 2015, pars 18-19, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CHE/CO/2-4&Lang=En>, where the Committee urged "the State party to take measures to establish expeditiously an independent mechanism for monitoring human rights in general, and a specific mechanism for monitoring children's rights that is able to receive, investigate and address complaints by children in a child-sensitive manner, ensure the privacy and protection of victims, and undertake monitoring and follow-up activities for victims"; UN Committee on the Elimination of Racial Discrimination, *Concluding Observations on Switzerland*, CERD/C/CHE/CO/7-9, 13 March 2014, par 10, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CHE/CO/7-9&Lang=En>; UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations on Switzerland*, E/C.12/CHE/CO/2-3, 26 November 2010, par 6, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/CHE/CO/2-3&Lang=En>. See also the preliminary summary conclusions of the Council of Europe's Commissioner for Human Rights following a visit to Switzerland from 22 to 24 may 2017, available at http://www.coe.int/en/web/commissioner/-/switzerland-commissioner-welcomes-progress-on-asylum-but-the-most-vulnerable-need-better-protection, where the Commissioner welcomed "the decision of the Swiss government to set up a national institution for human rights, which would reinforce the legal and institutional framework for the protection and promotion of human rights in Switzerland" although encouraging "the Swiss authorities to be 'more ambitious with their plans and create an institution that is pluralistic, adequately funded and fully independent'" and recommending that the institution "receive a broad mandate and monitor the implementation of human rights standards at all levels of Swiss administration".

written, decisions made, or acts performed in good faith in its official capacities ("functional immunity"). To be fully in line with the Paris Principles, the legal drafters should also broaden the scope of the NHRI's mandate to cover not only the promotion of human rights but also a protection mandate. The Draft Act should further be supplemented to ensure that the NHRI has the powers to perform its mandate, to guarantee the institution's financial independence and autonomy in human resources management as well as to ensure its pluralist and gender-balanced composition at all levels.

12. In order to ensure full compliance of the Draft Act with international standards on NHRIs and good practices, the OSCE/ODIHR makes the following key recommendations:

A. to reconsider the contemplated scheme whereby the NHRI is attached to universities or higher education institutions and whereby the NHRI's funding is granted on the basis of a contract between the Federal Council and the NHRI governing the operating grant, and instead provide for the establishment of an autonomous and independent entity with a separate budget line; [pars 34, 39 and 87]

B. to supplement Article 3 of the Draft Act by expanding the NHRI's mandate as follows:

- expressly state that the NHRI will be vested with competences to both *protect* and promote human rights, while specifying that this will include monitoring, inquiring, investigating, advising and reporting on human rights violations; [pars 47-49]
- include an explicit mandate to cover acts and omissions of both the public and private sectors; [par 50]
- provide that the NHRI should encourage the ratification or accession to international instruments and their effective implementation, as well as promote and encourage the harmonization of national legislation and practices with these instruments, and reporting in this field; [par 51]
- specify more clearly key aspects relating to co-operation at the domestic and international levels, including co-operation with civil society and non-governmental organizations, and with the UN and other international/regional human rights mechanisms; [pars 54-55]

C. to supplement the Draft Act by providing that all legal entities in Switzerland shall communicate to the NHRI any document or information deemed necessary to perform its mandate, while granting the NHRI unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice, and providing for sanctions in case of violation; [pars 61-62]

D. to clearly specify in the Draft Act that the members of the NHRI's governing body and NHRI staff shall benefit from functional immunity, even after the end of their mandate or employment with the NHRI, while also setting out clear rules and procedures for lifting such immunity; [pars 43-46]

E. to lay out in the Draft Act the composition of the NHRI's governing body, with due regard to the principle of pluralism, the conditions and modalities of its selection/appointment and termination of mandate or dismissal, as well as the

terms and conditions of office, including the terms of remuneration; [pars 64 and 67-75]

F. to amend and supplement Article 5 to specify that the NHRI's governing body and its staff should be gender balanced and representative of Swiss society's social, ethnic, religious and geographic diversity at all levels of responsibility, while also reflecting diverse professions and backgrounds; [par 79] and

G. to include provisions regarding the NHRI's financial autonomy, meaning that the allocated budgetary funds – contained in a separate budget line dedicated only to the NHRI – should be such as to ensure the full, independent and effective discharge of the responsibilities and functions of the institution, which shall include the allocation of funds for the NHRI's own premises, while ensuring the NHRI's autonomous management of such budgetary allocation and considering the introduction of safeguards to protect against unwarranted budgetary cutbacks. [pars 85-88]

Additional Recommendations, highlighted in bold, are also included in the text of the opinion.

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards on National Human Rights Institutions

13. 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.[5] 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".[6] Thus, NHRIs link the responsibilities of the State stemming from international human rights obligations to the rights of individuals in the country and constitute "a bridge between government and civil society, as well as between the national and international systems".[7] Although part of the state apparatus, NHRIs' independence from the executive, legislative and judicial branches ensures that they are able to fulfil their mandate.

14. 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 means allowing it to effectively carry out its mandate and stimulate the legal sphere and practice in the human rights field. An important characteristic of an effectively operating institution of this type must be its independence, including financial independence, from other branches of

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

[6] See UN High Commissioner for Human Rights, *Report to the UN General Assembly* (2007), A/62/36, par 15, <https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/62/A_62_36_EN.pdf>.

[7] *Op. cit.* footnote 5 (2016 Joint Statement).

government, especially the executive. Therefore, special statutory safeguards need to protect such independence, including those involving the institution's budget. The success of an NHRI also very much depends on its integrity, professionalism and authority within the structures of the state and of society in general. Thus, it is of the utmost importance to establish, *inter alia*, appropriate criteria and an adequately transparent procedure for selecting or appointing persons to serve in the NHRI's decision-making body and to recruit staff with professional qualifications of the highest possible level.

15. The main instrument relevant to NHRIs at the international level are the United Nations Paris Principles. While they do not prescribe any particular model for NHRIs, these principles outline minimum standards in this respect, including a broad human rights mandate, autonomy from government, guarantees of functional and institutional independence, pluralism, adequate resources and adequate powers of investigation, where applicable. The implementation of the Paris Principles and evaluation of NHRIs against these principles is undertaken by the Global Alliance of National Human Rights Institution's (hereinafter "GANHRI")[8] Sub-Committee on Accreditation (hereinafter "SCA"), which awards A, B or C Status to the NHRIs depending on their level of compliance with the Paris Principles, with A Status meaning that the NHRI is fully compliant. The ensuing recommendations are also based on the General Observations of the GANHRI, developed by its SCA, which serve as interpretive tools of the Paris Principles.[9]

16. The need for effective, independent, and pluralistic NHRIs has also been reiterated in numerous resolutions adopted by the UN General Assembly and the UN Human Rights Council.[10]

17. At the Council of Europe (hereinafter "CoE") level, the key role of NHRIs and the main principles regulating their establishment and functioning, including compliance with the Paris Principles, are highlighted in various documents.[11]

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[8] The Global Alliance of National Human Rights Institution (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 (NHRIs) 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. Through its Sub-Committee on Accreditation (SCA), it also reviews and accredits national human rights institutions in compliance with Paris Principles. The GANHRI may also assist those NHRIs under threat and encourage the reform of NHRI statutory legislation and the provision of technical assistance, such as education and training opportunities, to strengthen the status and capacities of NHRIs. See <http://nhri.ohchr.org/EN/Pages/default.aspx>.

[9] The latest revised General Observations of the Sub-Committee on Accreditation, as adopted by the GANHRI Bureau (hereinafter "General Observations") at its meeting in Geneva on 6 March 2017, are available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/Forms/Default%20View.aspx>.

[10] See e.g., UN General Assembly, *Resolution no. 70/163 on National Institutions for the Promotion and Protection of Human Rights*, A/RES/70/163, adopted on 17 December 2015, <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/163>; *Resolutions nos. 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/63/169 and A/RES/65/207, adopted on 18 December 2008 and on 21 December 2010 respectively; *Resolutions nos. 63/172 and 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 no. 48/134 on National Institutions for the Promotion and Protection of Human Rights*, A/RES/48/134, adopted on 4 March 1994 – all available at <http://www.un.org/en/sections/documents/general-assembly-resolutions/index.html>. See also the *Resolution no. 27/18 on National Institutions for the Promotion and Protection of Human Rights of the UN Human Rights Council*, A/HRC/RES/27/18, adopted on 7 October 2014, <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/L.25>; and *the Report of the UN Secretary-General to the UN Human Rights Council*, HRC/27/39, 30 June 2014, <http://undocs.org/A/HRC/27/39>.

[11] See e.g., CoE Committee of Minister, *Recommendation Rec(97)14E on the Establishment of Independent National Institutions for the Promotion and Protection of Human Rights*, 30 September 1997, <https://wcd.coe.int/ViewDoc.jsp?id=589191>; Parliamentary Assembly of the Council of Europe (PACE), *Recommendation 1615(2003) on the Institution of Ombudsman*, 8 September 2003, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17133&lang=en>; PACE, *Recommendation 1959 (2013) on Strengthening the Institution of Ombudsman in Europe*, adopted on 4 October 2013, <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20232&lang=en>.

18. Finally, 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".[12] The OSCE/ODIHR has also been specifically tasked to "continue and increase efforts to promote and assist in building democratic institutions at the request of States, *inter alia* by helping to strengthen […] Ombudsman[13] institutions",[14] which should be impartial and independent.[15]

19. 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 UNDP-OHCHR's *Toolkit for Collaboration with National Human Rights Institutions* (2010);[16]
- the *Compilation of Venice Commission Opinions concerning the Ombudsman Institution* (2016);[17] and
- the OSCE/ODIHR's *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality (2012)*, which provides useful guidance regarding measures and initiatives to strengthen NHRIs' capacity and practical work on women's rights and gender equality.[18]

2. General Comments

20. At the outset, it is noted that the Draft Act under review is quite brief and contains only nine short articles. Perhaps for this reason, it does not contain certain essential aspects pertaining to the institution and its functioning, especially those at the core of the institution's basic guarantees of independence. The Explanatory Statement to the Draft Act[19] specifies that the proposed law only focuses on financial support to the NHRI and that the main organizational elements of the latter will not be set out in the Draft Act. It must be emphasized, however, that General Observation 1.1 of GANHRI's SCA specifically states that relevant NHRI legislation should specify in detail the Institution's role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members. While not every practical aspect needs to be provided in NHRI legislation, it should at least lay out the basic guarantees of its independence and specify other overarching principles, in particular as regards the NHRI's mandate and the composition of its decision-making body (including appointment mechanisms, terms and conditions of office, mandate,

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12 See par 27 of the OSCE Copenhagen Document (1990), <http://www.osce.org/odihr/elections/14304?download=true>.

13 For the purposes of this Opinion, and while acknowledging that the Scandinavian term "Ombudsman" is considered to be gender-neutral in origin, the term "ombudsperson" is generally preferred, in line with the increasing international practice to ensure the use of gender-sensitive language (see e.g., <https://www.unescwa.org/sites/www.unescwa.org/files/page_attachments/1400199_0.pdf>).

14 See par 10 of the *Bucharest Plan of Action for Combating Terrorism* (2001), Annex to OSCE Ministerial Council Decision on Combating Terrorism, MC(9).DEC/1, 4 December 2001, <http://www.osce.org/atu/42524?download=true>.

15 See e.g., *op. cit.* footnote 2, par 42 (second indent) (2004 OSCE Action Plan for the Promotion of Gender Equality). See also *op. cit.* footnote 5 (2016 Joint Statement).

16 UNDP-OHCHR, *Toolkit for Collaboration with National Human Rights Institutions* (December 2010), <http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>.

17 Available at <http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)001-e>.

18 OSCE/ODIHR, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, 4 December 2012, pages 9 and 78, <http://www.osce.org/odihr/97756>.

19 The Explanatory Statement to the Draft Act is available at <https://www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2017/2017-06-281.html>, see particularly Sub-Section 1.3.6 on page 11.

powers, funding and lines of accountability).[20] The said legislation may then refer to another law or secondary legislation for further elaboration of these aspects.

21. Currently, the Draft Act does not specify these elements, which raises the question of whether such legislation can serve or is even intended as a sufficient legal basis for establishing an NHRI according to the Paris Principles. **This means that in order to comply with the Paris Principles, Switzerland should either significantly expand the Draft Act to address all the above-mentioned elements** (see also Sub-Sections 3 to 5 *infra*) **or adopt a separate act officially establishing an NHRI that would cover all these aspects.**

2.1. Institutional Framework on the Protection and Promotion of Human Rights in Switzerland

22. The Draft Act provides the legal basis for the financing of an NHRI for Switzerland, whose main role is to "promote human rights in Switzerland" (Article 3 par 1). The Explanatory Statement to the Draft Act specifies that the decision to set up the NHRI builds upon a pilot project launched in 2011, which established a university network in the form of the Swiss Centre of Expertise in Human Rights (hereinafter "SCEHR").[21] Same as the SCEHR, the new institution will be attached to universities or higher education institutions (Article 2). However, contrary to the existing scheme whereby the Confederation purchases specific services from the SCEHR, the Draft Act will provide an overall operating grant of about one million Swiss Francs to the NHRI,[22] which will then be free to allocate these funds in accordance to its needs and identified priorities.

23. In its latest Concluding Observations on Switzerland from August 2017, the UN Human Rights Committee, while welcoming the Draft Act, expressed concerns regarding, among others, the contemplated budget, which will remain the same as the one currently provided to the SCEHR.[23] The Human Rights Committee also regretted the fact that the new institution will have no human rights protection mandate and that it will be attached to universities or higher education institutions.[24] Moreover, in previous recommendations to Switzerland, various human rights monitoring bodies emphasized the need to strengthen the SCEHR's gender equality mandate[25] and to establish a specific independent mechanism for monitoring children's rights that is able to receive, investigate and address complaints by children in a child-sensitive manner, ensure the privacy and protection of victims, and undertake monitoring and follow-up activities for them.[26] These bodies also recommended that the future NHRI should have a broad human rights mandate that includes economic, social and cultural rights,[27] and that it be provided with adequate financial and human resources, in conformity with the Paris Principles.[28] **These aspects should be further discussed in the context of preparing the Draft Act, and could be integrated into a substantially expanded revised**

[20] See *op. cit.* footnote 9, Justification to General Observation 1.1.
[21] *Op. cit.* footnote 19, Sub-sections 1.1 to 1.3 (Explanatory Statement to the Draft Act).
[22] ibid. Sub-Section 1.2 (Explanatory Statement to the Draft Act).
[23] *Op. cit.* footnote 4, par 14 (2017 UN HRC's Concluding Observations on Switzerland).
[24] ibid. par 14 (2017 UN HRC's Concluding Observations on Switzerland).
[25] *Op. cit.* footnote 4, pars 18-19 (2016 UN CEDAW's Concluding Observations on Switzerland).
[26] *Op. cit.* footnote 4, pars 18-19 (2015 UN CRC's Concluding Observations on Switzerland).
[27] *Op. cit.* footnote 4, par 6 (2010 UN CESCR's Concluding Observations on Switzerland).
[28] *Op. cit.* footnote 4, par 15 (2017 UN HRC's Concluding Observations on Switzerland); and ibid. par 6 (2010 UN CESCR's Concluding Observations on Switzerland).

version of the Draft Act or included in a separate act officially establishing the NHRI (see par 21 *supra*)**.**

24. It is all the more important to create a legal framework for the establishment of an NHRI in Switzerland since, as noted in par 9 *supra*, the Confederation currently does not have a national independent mechanism for promoting and protecting human rights in general. As indicated in the Explanatory Statement to the Draft Act,[29] the Swiss legal drafters contemplated different models and options, including the establishment of an independent institute, and then decided to build upon the existing pilot project (see par 22 *supra*) as a structure complementary to the human rights mechanisms existing at the cantonal level.

25. In addition to these sub-national mechanisms, there are a number of other federal entities in Switzerland that have also been entrusted with some functions in the area of human rights, such as the Federal Office for Gender Equality and the Federal Commission for Women's Issues,[30] the Federal Commission Against Racism[31] and the the Federal Bureau for Equality of People with Disabilities (FBED), which serves as the National Implementation and Monitoring Mechanism (NIMM) under the UN Convention on the Rights of Persons with Disabilities (UN CRPD).[32] In addition, the National Commission for the Prevention of Torture serves as the national preventive mechanism (NPM) under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).[33] According to the Explanatory Statement to the Draft Act, the NHRI should support and complement the work of the existing thematic structures, and should be able to address any human rights area.[34]

26. It should be highlighted that generally, the Sub-Committee on Accreditation of NHRIs encourages a strong national human rights protection system in a State in the form of one consolidated and comprehensive NHRI.[35] At the same time, the Paris Principles do not prescribe any specific type of NHRI, but rather set out the basic necessary elements to ensure functioning NHRIs and guarantee their independence. There are thus a variety of different NHRI models all over the world. Regardless of which model Switzerland follows, the NHRI should be strong and independent, and the law-makers should ensure that its mandate is clearly defined, especially *vis-à-vis* the mandates of the sub-national human rights mechanisms and the already existing federal bodies described in par 25 *supra* (see also recommendation in par 29 *infra*).

27. It is noted that the Federal Commission for Women's Issues was accredited by the SCA with C status in March 2009,[36] in light of the strong government influence on the functioning of the Commission, the lack of immunity of its members, the fact that it received an annual credit from the government to support its activities and the lack of regulation of key aspects to ensure the independence of the institution, particularly

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29 *Op. cit.* footnote 19, Sub-sections 1.3.1, 1.3.7 and 5.1 (Explanatory Statement to the Draft Act).
30 *Op. cit.* footnote 4, pars 18-19 (2016 UN CEDAW's Concluding Observations on Switzerland).
31 *Op. cit.* footnote 4, par 10 (2014 UN CERD's Concluding Observations on Switzerland).
32 *UN Convention on the Rights of Persons with Disabilities* (UN CRPD), adopted by General Assembly resolution A/RES/61/106 on 13 December 2006 and which entered into force on 3 May 2008. Switzerland acceded to the UN CRPD on 15 April 2014.
33 *UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (UN CAT), adopted by General Assembly resolution A/RES/39/46 on 10 December 1984; and its Optional Protocol (OPCAT), adopted by General Assembly resolution A/RES/57/199 on 9 January 2003. Switzerland ratified this Convention on 2 December 1986 and the OPCAT on 24 September 2009.
34 *Op. cit.* footnote 19, Sub-section 1.3.3 on page 8 (Explanatory Statement to the Draft Act).
35 *Op. cit.* footnote 9, General Observation 6.6.
36 See SCA, *Report and Recommendations of the Session* (March 2009), page 6, <http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/2009_March%20SCA%20REPORT.pdf>.

regarding the status and dismissal of its members. The Federal Commission against Racism (FCR) was also accredited with C status in March 2010, likewise due to its lack of independence from the Government, the fact that it does not have its own premises and the gaps in the enabling legislation, particularly regarding the selection, appointment and dismissal process of the FCR's members, among others.[37] Some of these key findings are particularly relevant to this Opinion since, in the Draft Act, the lawmakers seem to have adopted, to a certain extent, a similar approach.

28. It is worth emphasizing that in its First Report on the Status of Implementation of the UN CRPD from June 2016,[38] the Federal Council specified that in the context of establishing a future NHRI, the issue of monitoring the implementation of the UN CRPD should also be reviewed, given the shortcomings identified regarding the existing implementation mechanisms. The Explanatory Statement is silent as to this aspect and it is not clear whether the new NHRI of Switzerland will play a role in that respect or whether the FBED will continue to serve as NIMM for the UN CRPD. At the same time, the Draft Act also does not specifically provide the NHRI with a formal legal mandate as NIMM, as recommended by General Observation 2.9. **If the New NHRI is to serve as NIMM, the Draft Act should be supplemented accordingly, while 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 par 2 of the CRPD). Moreover, sufficient funding should be provided to allow this new body to have the adequate human, financial, material and technical capacity to guarantee the proper implementation of its mandate both as NHRI and as NIMM. In this case, additional resources and capacities should also be allocated to the NHRI, to ensure that its staff possesses the appropriate skills and expertise to fulfil this part of its mandate as well.

29. Article 3 par 2 (d) of the Draft Act provides that the NHRI will be in charge of promoting dialogue and collaboration between departments and organizations involved in the implementation and promotion of human rights. As it stands, however, the Draft Act does not elaborate on the specific relationships between the NHRI and the above-mentioned existing federal human rights bodies in Switzerland. In this context, General Observation 1.5 specifies that "NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including […] thematic institutions, as well as civil society and non-governmental organizations". This means that NHRIs should co-operate with and support the functions of other institutions that work on human rights issues, directly or indirectly.[39] While the intention is there, the **Draft Act or another separate act should be more specific and elaborate upon the relationships between the NHRIs and the other domestic institutions in charge of the promotion and protection of human rights, the division of competences between them and modalities of their co-operation.** Furthermore, practice has shown that in States that have both an NHRI in compliance with the Paris Principles and other human rights institutions dealing with specialized thematic areas, formal work arrangements such as MoUs are put in place to ensure good coordination and collaboration.

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[37] See SCA, *Report and Recommendations of the Session* (March 2010), pages 11-12, <http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20REPORT%20MARCH%202010%20-%20FINAL%20%28with%20annexes%29.pdf>.

[38] Available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCHE%2f1&Lang=en>; see particularly pars 207 and 208.

[39] See *op. cit.* footnote 16, page 144 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).

2.2. The Non-Permanent Nature of the NHRI

30. According to Article 1 of the Draft Act, the NHRI may be granted financial assistance by the Confederation in the form of a contribution to operating costs. Article 6 par 1 further provides that the financial assistance is paid on the basis of a contract of indefinite duration, which governs the amount of the operating grant, the payment terms and the grounds for termination (Article 6 par 2). The Explanatory Statement to the Draft Act specifies, however, that termination may still occur on the basis of "usual termination grounds", such as a change of the legal basis or the incomplete performance of the legal and contractual conditions of the grant.[40] This ability to terminate the contract that forms the basis of the NHRI's funding calls into question the permanence of the new institution. General Observation 1.1 provides that the legal basis for the establishment of NHRIs should provide sufficient protection to ensure *permanency* and independence of the institution. The Draft Act does not appear to provide such safeguards, given that the contract providing funding for the NHRI can be terminated by an administrative entity without the intervention of the legislator (see also pars 31-32 *infra*).

31. Article 6 par 3 provides that an administrative unit of the Federal Council is responsible for the conclusion and implementation of the contract. The Sub-Committee on Accreditation has noted that the creation of an NHRI by a decision of the executive (through a decree, regulation, motion, or administrative action) and not by the legislature also raises concerns regarding permanency, independence from Government and the ability to exercise its mandate in an unfettered manner.[41] This is because such decisions may be modified or cancelled at the discretion of the executive, and do not require legislative scrutiny.[42]

32. The Explanatory Statement to the Draft Act specifies that the management or control of the use of the grant is governed by the general rules applicable to grants, as reflected in the contract referred to in Article 6 of the Draft Act.[43] In Switzerland, grants are generally regulated by the Federal Law on Financial Aid and Allowances of 5 October 1990.[44] A number of provisions of this Federal Law may be problematic if applied to the NHRI from the viewpoint of its institutional independence, for instance the fact that the beneficiary of a grant is required to provide information and give access to its files and premises (Article 11), subject to administrative sanctions in case of violation (Article 40), or the competent authority's control over the performance of the tasks in accordance with the applicable legislation and conditions (Article 25). The Law also specifies that the competent authority may interrupt payment of the grant in case of non- or faulty performance (Article 28) or that the contract may be revoked (Article 31).

33. In that respect, Paris Principle B.2 specifically states that an NHRI should not be subject to any financial control that may affect its independence. Contrary to this principle, the above-mentioned rules mean that overall, the NHRI would be subject to a certain control by the Federal Council/the Confederation and that its source of funding is not necessarily guaranteed in the long term (see also Sub-Section 5.4 *infra* on budget and funding of the NHRI), which could potentially jeopardize the independence of this new

[40] See *op. cit.* footnote 19, Sub-Section 2 on page 22 (Explanatory Statement to the Draft Act)
[41] *Op. cit.* footnote 9, Justification to General Observation 1.1.
[42] ibid.
[43] *Op. cit.* footnote 19, Sub-Section 5.4.2 (Explanatory Statement to the Draft Act).
[44] Available at <https://www.admin.ch/opc/fr/classified-compilation/19900241/index.html>.

institution. In this context, although Article 8 of the Draft Act states that the NHRI is independent in the performance of its tasks with regard to the universities/higher education institutions and the Confederation, the applicable legislation *de facto* confers on the Confederation a certain oversight over the NHRI.

34. **In light of the foregoing, the contemplated scheme should be reconsidered in its entirety and the Swiss legislator should rather provide for the establishment of an autonomous and independent entity, which shall benefit from a separate budget line** (see Sub-Section 5.4 *infra* on budget and funding of the NHRI), and whose role and mandate would be in full compliance with the Paris Principles.

3. The Independence of the NHRI of Switzerland

3.1. Safeguards to Protect the NHRI's Independence

35. Article 2 of the Draft Act provides that the NHRI will be attached to one or more universities or other higher education institutions, which shall provide it with the necessary infrastructure, including premises and computer equipment, free of charge. Article 8 of the Draft Act further states that the NHRI "is independent in the performance of its tasks with regard to the universities or other institutions in the field of higher education to which it is attached and to the Confederation". While it is overall welcome that the principle of independence of the NHRI is expressly stated in its Article 8, the Draft Act fails to detail what is meant by "independence" and the safeguards that will be in place to protect and guarantee such independence.

36. As mentioned in pars 22 and 24 *supra*, the future NHRI should support and complement the cantonal human rights mechanisms, while at the same time overcoming the shortcomings identified in the pilot project, particularly as regards the lack of independence of the SCEHR.[45] There are various ways in which to guarantee the independence of an NHRI, including by granting the entity a distinct legal personality and functional immunity (see Sub-Section 3.2 *infra*), ensuring its operational and financial independence and autonomy (see Sub-Section 5 *infra*), and through the terms and conditions governing the appointment and dismissal of the NHRI's governing body (see Sub-Section 5.1 *infra*).

37. The enabling legislation establishing an NHRI should in principle give the institution **a separate legal personality** sufficient to allow it to make decisions and undertake responsibilities independently,[46] as contemplated in the Explanatory Statement,[47] although this is not expressly mentioned in the Draft Act. Moreover, Article 8 only refers to the **NHRI's independence** *vis-à-vis* the universities and higher education institutions as well as the Confederation, but not its protection **from any other outside influence**. **It is recommended to supplement the Draft Act accordingly.**

38. At the same time, the planned connection with universities or higher education institutions raises certain doubts with regard to the NHRI's independence from such entities. In light of the need to maintain its complete autonomy and independence from

[45] *Op. cit.* footnote 19, Sub-Sections 11.3 and 1.3.3 (Explanatory Statement to the Draft Act).
[46] *Op. cit.* footnote 16, Sub-Section 10.1.4 on page 247 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).
[47] *Op. cit.* footnote 19, Sub-Section 2, comments concerning Article 8, on page 23 (Explanatory Statement to the Draft Act).

any outside influence, including the public's perception thereof, it would be preferable if the relationship with the above-mentioned educational entities would be limited to that which is important for the performance of the NHRI's mandate, particularly in the field of research. In contrast, the connection mentioned in the Draft Act suggests the existence of a special relationship, and a potential risk of dependence, as also noted in the Explanatory Statement to the Draft Act.[48] This is reinforced by the fact that Article 2 par 2 requires the educational institutions to provide the NHRI with the necessary basic infrastructure free of charge (including premises and equipment), thus implying some form of material dependency. In that respect, the Paris Principles require the NHRI to have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding to enable it to have its *own premises* and staff (Paris Principle B.2) as a key guarantee of its independence. The obligation to assure the necessary infrastructure, including appropriate facilities enabling the NHRI to perform its tasks, should be a natural consequence of the State's decision to establish such a body and should rest primarily with the State and not with other entities.

39. Moreover, it is worth referring to the example of the Norwegian Centre for Human Rights, which was accredited with B status in 2012,[49] because the SCA considered that the strong affiliation of the Centre to a university could call into question the independence of the institution. Indeed, the connection with a university can cause several problems regarding institutional independence both at the substantial and at the structural levels, including potentially conflicting methodologies, the lack of visibility to the public, and the setting of priorities for research and studies, which may then be influenced by an academic research community and not based on a thorough analysis of domestic human rights issues, among others.[50] The lack of pluralism in the governing body and the lack of collaboration with civil society when carrying out its role could also be issues of concern.[51] In light of the above, and as already stated in Sub-Section 2.2 *supra*, the **Swiss legislator should reconsider the contemplated scheme, and particularly the connection with universities and higher education institutions, and rather provide for the establishment of an autonomous and independent entity.**

40. In addition, Paris Principle C (a) states that an NHRI must be able to "freely consider any question falling within its competence […] on the proposal of its members or of any petitioner". By clearly promoting independence in the NHRI's method of operation, this provision seeks to avoid any possible interference in the institution's assessment of the human rights situation in a given state and the subsequent determination of its strategic priorities.[52] This means that external entities should not be in a position to influence the work and operation of the NHRI.[53] This is important to ensure that this body is fully independent in its decision-making and its operation, and to avoid potential conflicts of interest. **The Draft Act could be supplemented by adding that the NHRI will base its strategic priorities and activities solely on its determination of the human rights priorities in the country, in co-operation with diverse societal groups as**

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48 ibid. Sub-Section 1.3 on page 13 (Explanatory Statement to the Draft Act).

49 See Sub-Committee on Accreditation, *Report and Recommendations of the Session* (November 2012), pages 19-20, Sub-Section 3.7 on the Norwegian Centre for Human Rights, <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20November%202012%20(English).pdf>.

50 See particularly, UNDP, *Study for the Ministry of Foreign Affairs of the People's Republic of Viet Nam on Building a National Human Rights Institution* (July 2012), Section 3.1.7 on page 11, which refers to the Norwegian Centre for Human Rights, <http://www.vn.undp.org/content/vietnam/en/home/library/democratic_governance/Building-a-National-Human-Rights-Institution-A-study-for-the-Ministry-of-Foreign-Affairs-of-the-Peoples-Republic-of-Viet-Nam.html>.

51 ibid. Section 3.1.7 on page 11.

52 *Op. cit.* footnote 9, Justification to General Observation 1.9.

53 ibid. General Observation 1.9.

appropriate (see General Observation 1.7). Permanent or *ad hoc* advisory boards with a pluralist composition could for instance assist the NHRI in determining its programming, annual work plans and priorities. At the same time, the independence of the NHRI is without prejudice to the importance of effective co-operation between NHRIs and other institutions, including Parliament, non-governmental organizations and supra-national human rights bodies.[54]

41. Finally, Article 4 of the Draft Act states that within the framework of its tasks, the NHRI shall provide, against payment, services to authorities and private persons. Although the Explanatory Statement to the Draft Act notes the importance of keeping the NHRI as a service provider under the contemplated scheme,[55] this provision appears to be problematic in terms of the NHRI's independence. Indeed, an extensive "commercialization" of its activities/services may threaten the institution's autonomy when carrying out its statutory tasks, as well as its independence, primarily its financial independence, particularly if the Confederation's annual allocation is insufficient to carry out its core functions (see pars 22-23 *supra* and Sub-Section 5.4 *infra*). This also means that private actors have the potential to influence the setting of priorities for the NHRI's research and studies (see par 90 *infra*). Such "commercialization" may also have potentially negative consequences for the public perception of the institution's role in society, with the NHRI potentially being considered as a private commercial entity rather than a public body (see also Sub-Section 5.4 *infra*). It is recommended **to include in the Draft Act an explicit guarantee protecting against any excessive "commercialization" of the NHRI's activities, for instance by specifying that income and revenues from such activities should not represent more than a certain percentage of the total allocation provided by the Confederation.**

3.2. The Need to Ensure the NHRI's Functional Immunity

42. The functional immunity[56] of members of NHRIs' governing bodies exists as an essential corollary of their institutional independence[57] and protects their ability to engage in critical analysis and commentary on human rights issues.[58] Because their 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 motivated by political or other interests. Functional immunity is therefore essential to ensure that NHRIs' independence is not compromised through fear of criminal proceedings or civil action by an allegedly aggrieved individual or entity, including public authorities.[59] On several

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[54] See *op. cit.* footnote 9, General Observation 1.5 and its justification. See also the *2012 Belgrade Principles on the Relationship between National Human Rights Institutions (NHRIs) and Parliaments*, developed during a Seminar co-organized by the Office of the United Nations High Commissioner for Human Rights, the International Coordinating Committee of National Institutions for the promotion and protection of human rights, the National Assembly and the Protector of Citizens of the Republic of Serbia, with the support of the United Nations Country Team in the Republic of Serbia, <http://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf>.

[55] *Op. cit.* footnote 19, Sub-Sections 1.3.3 on page 9 and 1.3.7 on page 13 (Explanatory Statement to the Draft Act).

[56] i.e., the protection from liability for the words spoken and written and the actions and decisions undertaken in good faith in one's official capacity ("functional immunity" or "non-liability").

[57] *Op. cit.* footnote 9, General Observation 1.1 and Justification to General Observation 2.3 which considers functional immunity as being an "essential hallmark of institutional independence".

[58] ibid. Justification to General Observation 2.3.

[59] See e.g., regarding the similar case of the immunity of judges, the case of *Ernst v. Belgium*, ECtHR Judgment of 15 October 2003 (Application No. 33400/96, only in French), par 85, <http://hudoc.echr.coe.int/eng#{"fulltext":["33400/96"],"languageisocode":["FRE"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-65779"]}>, holding that immunity ('privilège de juridiction') pursues the legitimate aim of ensuring that judges are protected against undue lawsuits and enabling them to exercise their judicial function peacefully and independently.

occasions, the Sub-Committee on Accreditation has recommended that the relevant legislation be supplemented to include express provisions that clearly establish the functional immunity of an NHRI's decision-making body.[60] Although not expressly required by the Paris Principles, it is generally considered positive to extend the functional immunity to NHRI staff.[61]

43. The Draft Act in its current form does not contain any provisions aiming to protect the functional immunity of members of the NHRI's leadership body or of the NHRI's staff. In the underlying legislation, **the scope of functional immunity should thus generally be drafted in a broad manner to protect the NHRI's decision-making body and staff from civil, administrative and criminal liability for words spoken or written, decisions made, or acts performed in good faith in their official capacity.[62] It is recommended to introduce such wording in the Draft Act (or separate act). The relevant provision should specify that functional immunity should apply even after the end of the leadership body's mandate or after a staff member ceases his/her employment with the NHRI**.[63]

44. An additional safeguard to protect functional immunity is also to **guarantee in legislation the inviolability of the NHRI's premises, property, means of communication and all documents, including internal notes and correspondence**,[64] **as well as of baggage, correspondence and means of communication belonging to the members of the NHRI's leadership body and professional staff**.[65] **It is recommended to supplement the Draft Act (or separate act) accordingly.**

45. 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 members of an NHRI governing body, should be above the law.[66] This concept derives from the principle of equality before the law, which is also an element of the rule of law.[67] Indeed, the Sub-Committee on Accreditation has recognized this, and has stated that **the law should clearly establish the grounds, and a clear and transparent process, by which the**

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60 See e.g., Sub-Committee on Accreditation, *Report and Recommendations of the Session* (May 2016), page 37, <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>.

61 See e.g., OSCE/ODIHR, *Final Opinion on the Draft Act Amending the Act on the Commissioner for Human Rights of Poland*, 16 February 2016, Sub-Section 3.2 on the Personal and Temporal Scope of the Functional Immunity, <http://www.legislationline.org/documents/id/19896>; and Venice Commission, *Opinion on Draft Amendments to Article 23(5) of the Law on the Human Rights Defender of Armenia*, adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008), CDL-AD(2008)028, pars 7-8, <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)028-e>.

62 *Op. cit.* footnote 9, General Observation 2.3, which refers to the protection from legal liability for "actions and decisions that are 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, adopted by the Venice Commission at its 69th Plenary Session (Venice, 15-16 December 2006), pars 74 and 76, <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2006)038-e>; and *op. cit.* footnote 11, par 7.5 (PACE Recommendation 1615(2003)).

63 See Venice Commission, *Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina*, adopted by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015), CDL-AD(2015)034, par 69, <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)034-e>; and OSCE/ODIHR-Venice Commission, *Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro*, adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), par 23, <http://www.legislationline.org/documents/id/16665>.

64 See OSCE/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, par 52, <http://www.legislationline.org/documents/id/17976>.

65 See e.g., *op. cit.* footnote 63, par 23 (2011 OSCE/ODIHR-Venice Commission Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro).

66 *Op. cit.* footnote 9, 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".

67 See Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, 18 March 2016, pages 18-19, <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e>.

functional immunity of members of the decision-making body may be lifted.[68] **This aspect should also be addressed in the Draft Act (or separate act)**. At the same time, a proper mechanism is needed to prevent or stop such investigations or proceedings where there is no proper evidence to suggest criminal liability on the part of the NHRI members,[69] 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.[70]

46. It is noted that different rules and procedures may apply for lifting staff immunities; for example, the Draft Act could set out that for staff members, the NHRI's governing body may decide whether or not to waive immunity.[71]

4. The Mandate of the NHRI of Switzerland

4.1. The Scope of the Mandate

47. As mentioned above, Article 3 of the Draft Act refers to the mandate to "promote human rights". As noted by the UN Human Rights Committee, this is not completely in line with the Paris Principles, which require NHRIs to be vested with **competences to both *protect and promote* human rights** (Paris Principle A.1). **Article 3 of the Draft Act should be amended this effect.**

48. Article 3 of the Draft Act lists a number of tasks that the institution will carry out to fulfil its mandate, including information and documentation, research, the preparation of opinions and recommendations, the promotion of dialogue and collaboration between entities involved in the implementation and promotion of human rights, education and awareness-raising on human rights and exchanges at the international level. These primarily encompass functions pertaining to the NHRI's promotional mandate.

49. In principle, the institution's tasks should, at the very minimum, encompass the scope defined in the Paris Principles. General Observation 1.2 provides further detail by stating that the protection mandate of NHRIs should include functions such as "those that address and seek to prevent actual human rights violations [including] monitoring, inquiring, investigating and reporting on human rights violations" and may also include individual complaints handling.[72] It is thus **recommended to expand Article 3 of the Draft Act to include concrete examples of what the NHRI's protection mandate would entail in line with General Observation 1.2**. It is also crucial to **ensure that the NHRI is endowed with adequate resources to effectively fulfill such a protection mandate** (see also Sub-Section 5.4 *infra*).

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[68] See e.g., *op. cit.* footnote 60, page 37 (SCA Report and Recommendations of May 2016).

[69] See e.g., regarding the immunity of judges, par 54 of Opinion No. 3 of the Consultative Council of European Judges to the attention of the CoE Committee of Ministers on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality (2002), <https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2002)OP3&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3>.

[70] See e.g., *op. cit.* footnote 61, Sub-Section 4 on the Procedure for Lifting the Commissioner's Immunity from Criminal Proceedings (2016 OSCE/ODIHR Final Opinion on the Draft Act Amending the Act on the Commissioner for Human Rights of Poland).

[71] ibid. par 42 (2016 OSCE/ODIHR Final Opinion on the Draft Act Amending the Act on the Commissioner for Human Rights of Poland).

[72] *Op. cit.* footnote 9, General Observation 1.2.

50. Moreover, General Observation 1.2 requires that an NHRI mandate shall extend to **acts and omissions of both the public and private sectors**. It is thus recommended **to supplement Article 3 of the Draft Act accordingly**.

51. It is also worth reiterating that according to Paris Principles A.1 and A.2, an NHRI should possess "as broad a mandate as possible". In its General Observation 1.3, the Sub-Committee on Accreditation emphasizes that the NHRI should also be legislatively empowered **to encourage ratification of, or accession to international human rights instruments and their effective implementation, while also promoting and encouraging the harmonization of national legislation and practices with these instruments, and reporting in this field**. **Such tasks should also be added under Article 3 of the Draft Act.**

52. It may further be advisable **to include in the Draft Act a broader statement specifying that the NHRI is entitled to look into, investigate or comment on any human rights situation, without any form of prior approval or impediment,** to ensure and strengthen its independence and autonomy.[73]

53. Article 3 par 1 (c) of the Draft Act refers to the "preparation of opinions and recommendations". It is not clear whether this refers to advice on the general human rights situation in Switzerland or topical issues, or whether the NHRI will also be able to submit opinions and recommendations on any draft or existing legislative or administrative provisions, as stated in Paris Principle A.3(a)(i).

54. Article 3 par 1 (f) of the Draft Act refers to exchanges at the international level. This seems to fall short of what is stated in section A.3 (d) and (e) of the Paris Principles, which specifies that NHRIs should contribute and possibly also, pursuant to their independent mandate, comment on the reports which States are required to submit to UN bodies and committees, and regional institutions. They should also actively engage with the international human rights system, regional institutions and other NHRIs, as well as international and national NGOs and civil society organizations (see also General Observation 1.4). **Unless Article 3 is given a broad interpretation, these aspects do not seem to be adequately covered and the drafters should consider supplementing the Draft Act accordingly.**

55. More generally, an NHRI should likewise ensure close co-operation with civil society and non-governmental organizations (NGOs). In that respect, Article 3 par 1 (d) refers to dialogue and collaboration between departments and organizations involved in the implementation and promotion of human rights. It is not clear whether this would also encompass civil society and NGOs. **This should be clarified, or supplemented as appropriate.**

56. It is also worth highlighting that the Committee on the Elimination of Discrimination against Women (CEDAW) has expressly stated that it "expects NHRIs to ensure that their work […] is based on the principle of formal and substantive equality between women and men and non-discrimination (…) and that women have easy access to all services for the protection of their rights provided by NHRIs".[74] Hence, NHRIs should ensure that gender and diversity are mainstreamed[75] into their broader work of

[73] See *op. cit.* footnote 16, page 144 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).

[74] See Committee on the Elimination of all forms of Discrimination against Women (CEDAW), *Statement on its Relationship with NHRIs*, E/CN.6/2008/CRP.1, 11 February 2008, par 4, <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/E_CN-6_2008_CRP-1_21158_E.pdf>.

[75] i.e., assessing the implication of any planned action, including legislation, policies and programmes, for women and men, and other persons or groups in a specific situation or facing specific challenges, such as persons with disabilities, older persons, children, members

protecting and promoting human rights.[76] **It would be helpful to expressly include this in the Draft Act as a general aim of the NHRI.**[77]

57. The role of the **NHRI would be further strengthened if it were also mandated to apply to the constitutional court for an abstract judgment on questions concerning the constitutionality of laws or other regulatory acts, which raise issues affecting human rights and freedoms**.[78] **The right of the NHRI to appear as a third party in domestic and international judicial proceedings could also be included**, especially in cases raising important issues concerning human rights matters of a systemic or structural character.[79] Some other functions may include assistance to victims taking cases to courts and strategic litigation.[80] **The legal drafters should consider reflecting these aspects in Article 3 of the Draft Act.** This may also require amendments to other relevant legislation to ensure that the NHRI has proper access to files and other documents related to the case prior to submitting *amicus curiae* briefs. Courts should be obliged to deal with and respond to the NHRI's arguments in the written reasoning of their decisions.

4.2. Complaints-Handling Mandate

58. Article 3 of the Draft Act does not provide for a mandate to handle individual complaints alleging human rights violations, as also stressed in the Explanatory Statement to the Draft Act.[81] This is not contrary to international standards, since the Paris Principles do not require that NHRIs shall receive and investigate complaints or petitions from individuals or groups regarding alleged violations of their human rights. However, an optional provision is included in the Paris Principles, for states that wish to include this mandate.[82] Such a complaints-handling mandate presents both benefits and difficulties. On the one hand, it may benefit individuals who suffer human rights abuses and may otherwise be unable to access other venues or achieve redress, which at the same time enhances the public's confidence in the NHRI. On the other hand, such a mandate can also be overwhelming and costly and may undermine the institution's ability to devote resources to other programme areas or to deal with systemic issues.[83]

59. Any complaints-handling mechanism, whether falling within the competency of an NHRI or another thematic human rights institution, should ensure that complaints are handled fairly, quickly and effectively through processes which are clear and readily accessible to the public.[84] While this is a policy decision that may go beyond the scope of this opinion, it is nevertheless recommended that the legal drafters and stakeholders re-discuss the existing complaints-handling systems in Switzerland, both at the cantonal

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of national or ethnic minorities, stateless persons, foreigners, asylum-seekers, refugees and other persons potentially discriminated on other grounds such as sexual orientation or gender identity.

[76] For instance, NHRIs can implement gender mainstreaming by developing gender/diversity-assessment strategies or impact analyses for draft legislation and existing laws, policies, programmes and activities; see *op. cit.* footnote 18, pages 50-51 (2012 OSCE/ODIHR Handbook for NHRIs on Women's Rights and Gender Equality).

[77] See also e.g., OSCE/ODIHR, *Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland*, 6 February 2017, par 32, <http://www.legislationline.org/download/action/download/id/6947/file/301_NHRI_ISL_6Feb2017_en.pdf>.

[78] See *op. cit.* footnote 63, par 36 (2015 Venice Commission's Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina).

[79] See *op. cit.* footnote 16, pages 4 and 185 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).

[80] ibid. page 32 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).

[81] *Op. cit.* footnote 19, Sub-Section 2 on page 20 (comments on Article 3) (Explanatory Statement to the Draft Act).

[82] *Op. cit.* footnote 9, Justification to General Observation 2.10.

[83] See *op. cit.* footnote 16, page 23 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).

[84] ibid. General Observation 2.10 regarding specifically the handling of complaints by NHRIs, which should *a fortiori* be applicable to other complaints-handling mechanisms.

and federal levels, to ensure that they are coherent, not overly complex and easily accessible. In particular, **the legislator should assess whether existing mechanisms are adequate to deal effectively with individual complaints of human rights violations and ensure effective protection. If not, the legislator may consider including the possibility for the future NHRI to review individual complaints of human rights violations in the Draft Act, or other relevant legislation; in this case, adequate funding should also be allocated for that purpose**.

60. In this respect, it is worth mentioning General Observation 2.10, which provides useful guidance as to the powers and functions of an NHRI that has a mandate to receive, consider and/or resolve complaints alleging violations of human rights. In any case, there should be adequate co-ordination between all human rights-related complaints-handling systems in Switzerland. Moreover, information and statistics on all human rights-related complaints should be transmitted to the NHRI as the main human rights protection mechanism in Switzerland, to allow it to gain a comprehensive overview of the human rights situation in the country.

4.3. The NHRI's Powers to Perform its Mandate

61. General Observation 1.2 requires that an NHRI's mandate should provide it with the authority to obtain the statements or documents that it needs in order to assess situations raising human rights issues. The Draft Act is silent as to any obligation for **legal entities in Switzerland to provide the NHRI with any document or information deemed necessary to perform its mandate.**[85]

62. Moreover, General Observation 1.2 further provides that the NHRI should be **granted unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice, and be authorized to conduct a full investigation into all alleged human rights violations, including those committed by the military, police and security services.** Specifically, **the NHRI, through its representatives, should be guaranteed free access at any time to all places where individuals deprived of their liberty are or may be detained, without the need for consent from any agency and without prior notification**. This is one of the most important safeguards for the effective operation of the NHRI in the areas related to the rights of detainees or prisoners and should be clearly stipulated in underlying legislation. A person deprived of liberty should also have the opportunity to freely communicate either in person or through any other means of communication, without any supervision, with NHRI representatives. At the same time, the work under this aspect of the NHRI's mandate should be closely coordinated with the National Commission for the Prevention of Torture (see Sub-Section 2.1 *supra*). **All of the above elements should be directly and properly reflected in the text of the Draft Act (or separate act).**

63. Moreover, the Draft Act does not foresee specific sanctions that could be imposed on public officials or authorities if they hinder the NHRI in its work. In this context, it may be beneficial to discuss further ways of strengthening the NHRI's mandate to compel

[85] See e.g., Section 6 of the Parliamentary Ombudsman Act of Finland (197/2002), <http://www.legislationline.org/topics/country/32/topic/82>, which states that "[t]he Ombudsman has the right to executive assistance free of charge from the authorities as he or she deems necessary, as well as the right to obtain the required copies or printouts of the documents and files of the authorities and other subjects".

authorities to provide requested information and above-mentioned access.[86] To ensure this, the power to request information, which is central to the proper execution of the NHRI's mandate**, should be supported by specific sanctions for non-compliance, which should be set out in the Draft Act**.[87] Such sanctions should be adequate, meaning that they should not be excessive, and should at the same time be serious enough to dissuade public officials (and possibly representatives of other entities) from ignoring the NHRI's requests. Alternatively, at a minimum, other applicable legislation could be cross-referenced in the Draft Act.

5. The Leadership, Staffing, Operation and Funding of the NHRI

5.1. Governing Body

64. Nothing is said in the Draft Act as to the composition of the NHRI's governing body or the modalities of its members' appointments and terms and conditions of office, as well as their dismissal. Aspects concerning the institution's organisation and structure, in particular that of its governing bodies, their tasks and personnel, are key to determining whether an entity is independent or not, and to assess compliance with the Paris Principles. **The Draft Act (or a new, separate act) should specify the composition of the NHRI's governing body, the modalities of its members' selection/appointment and termination of mandate or dismissal, as well as the terms and conditions of office.**

65. There are many different governance models for NHRIs. Whichever option is chosen, it must guarantee the NHRI's independence, as well as a high level of professionalism, and needs to ensure public trust in the institution. Generally, NHRIs follow different variants of a two-level structure consisting of a management board in charge of key strategic decisions, financial matters and the administration of the NHRI, while a director conducts the daily management of the institution.[88] In the case of NHRIs in the United Kingdom and Ireland, for instance, the governing body or members of the NHRI are commissioners, whose appointment is confirmed by the Parliament. They deal with general policy and governance issues, and have a secretariat to deal with the daily management of the institution. In addition, many NHRIs have established an advisory committee consisting of representatives of various social forces, including representatives of disadvantaged or marginalized groups, to ensure input from a larger group of stakeholders.[89]

66. The Explanatory Statement to the Draft Act specifies that the policy-makers have chosen the option "status quo +", meaning that they will adopt a model similar to the existing SCEHR, while addressing some of the shortcomings identified when evaluating this structure.[90] It is therefore likely that the organizational structure of the SCEHR will be retained, meaning that there will be a Board of Directors composed of representatives from partner Universities and chaired by a Director, as well as a Manager with an

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[86] See *op. cit.* footnote 16, page 149 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).

[87] See e.g., Venice Commission, *Opinion on the Draft Constitutional Law on the Human Rights Defender of Armenia*, adopted by the Venice Commission at its 109th Session (Venice, 9-10 December 2016), CDL-AD(2016)033, par 29, <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)033-e>.

[88] See <http://www.legislationline.org/topics/topic/82>.

[89] See *op. cit.* footnote 9, General Observation 1.7.

[90] *Op. cit.* footnote 19, page 2 (Explanatory Statement to the Draft Act).

advisory role, and several thematic clusters on various human rights-related issues, all of them supported by a Secretariat.[91] Under the current scheme, there is also a Steering Committee consisting of representatives of the Federal Department of Foreign Affairs (FDFA) and the Federal Department of Justice and Police (FDJP), which approves the service contracts and regularly monitors the use of the funds from the Confederation, as well as an Advisory Board comprised of representatives from the public administration, politics, economy and civil society spheres.[92] As it stands, the composition of the leadership body, which consists exclusively of representatives of partner universities, fails to meet the requirements of the Paris Principles, in particular in terms of pluralism. Similarly, the oversight exercised by the Steering Committee calls into question the independence of the NHRI.

67. In that respect, General Observation 1.8 requires that NHRI legislation or other binding instruments provide a clear, transparent and participatory selection and appointment process of the NHRI's governing body,[93] which promotes merit-based selection and pluralism. This aims to ensure the independence of, and public confidence in the senior leadership of the institution. Moreover, the process for **selecting and appointing the members of an NHRI's governing body should be made on the basis of clear, pre-determined, objective and publicly-available criteria,[94] which should be precisely formulated in relevant legislation or other binding legal instruments**. That being said, the eligibility criteria for appointment should not be unduly narrow nor too restrictive,[95] in order to not unduly exclude persons from diverse societal groups (see also Sub-Section 5.2 *infra* concerning the pluralism of the NHRI, including of its governing body).[96]

68. The Draft Act or secondary legislation should also specify possible roles or activities that are incompatible with membership in the NHRI's governing body. It is noted that the Explanatory Statement mentions that pluralist representation covered by Article 5 of the Draft Act refers not only to civil society representatives, but also to representatives from the Parliament and from ministries (see also additional comments on Article 5 in Sub-Section 5.2 *infra*). In that respect, General Observation 1.9 expressly states that government representatives and members of parliament should not be members of, or participate in, the decision-making organs of an NHRI, since this has the potential to impact on both the real and perceived independence of the NHRI. As expressly stated in Paris Principle B.1, if government representatives participate in the NHRI's deliberations, this should only be in an advisory capacity. **The Draft Act should specifically address this issue, either by excluding the possibility for members of Parliament and government representatives to be members of the governing body of the NHRI, or by specifying that they should only participate in an advisory**

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91 See <http://www.skmr.ch/en/about/structure/structure1133.html>.

92 See <http://www.skmr.ch/?idart=1133#lenkungsausschuss>.

93 The SCA generally considers that such 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 (see *op. cit.* footnote 9, General Observation 1.8).

94 e.g., no conviction for a serious criminal offence, recognized competencies, personal history of integrity and independence, etc. For examples of such provisions in NHRI legislation, see e.g., Section 3 of the Law on the Public Defender of Rights (1999, as amended 2009) of the Czech Republic and Articles 3 and 4 of the Ombudsman Act (1995) of Malta, <http://www.legislationline.org/topics/topic/82>. See also *op. cit.* footnote 16, pages 123 and 152 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions); and *op. cit.* footnote 17, Section 2.1 on General Criteria for Office (2016 Venice Commission's Compilation of Opinions concerning the Ombudsman Institution).

95 *Op. cit.* footnote 9, General Observation 1.7.

96 ibid. General Observations 1.7 and 1.8.

capacity. This should not prevent the NHRI from developing and maintaining effective links with relevant ministries, government agencies and the Parliament, although this should be done in a manner that ensures the real and perceived independence of decision-making and operation, and avoids conflicts of interest.[97]

69. More generally, **NHRI functions are not compatible with the performance of other functions or professions, public or private, or with membership in political parties or unions – although certain educational, scientific or artistic activities may be undertaken, provided that they do not impact negatively on the proper performance of the NHRI's duties, its impartiality and public confidence therein**.[98] **It is recommended to supplement the Draft Act accordingly**.

70. The **Draft Act should also expressly state that members of the governing body serve in their own individual capacity rather than on behalf of the organization that they represent** (see General Observation 1.8). According to applicable international good practice, to protect the NHRI's real and perceived independence, members of its governing body should not take part in decisions in cases where they may have an actual or perceived conflict of interest. On several occasions, the Sub-Committee on Accreditation has encouraged NHRIs to advocate for the inclusion of express legal provisions protecting against such conflicts.[99] **Members should be required to disclose such conflicts of interest and to withdraw from discussions and decisions where these arise. The Draft Act (or a separate act) should reflect this**.

71. The Draft Act should also specify the duration of the mandates of members of the governing body. In its General Observation 2.2, the Sub-Committee on Accreditation advocates for a term of three to seven years, which may be renewed once.[100] At the same time, if there is no possibility of renewal, this could further enhance the institutional independence, as members would not be affected by the possibility of future re-appointment.[101] In any case, for the sake of clarity, **the legislator should specify the duration of the term of office of members of the governing body and whether their mandates are renewable once or not.**

72. Pursuant to General Observation 2.2., the underlying NHRI legislation should provide that members of its governing body include full-time remunerated members. This helps ensure the independence of the NHRI, a stable tenure for the members, regular and appropriate direction for staff, and the on-going and effective fulfilment of the NHRI's functions.[102] The legal drafters should supplement the Draft Act by providing that some, if not all members of the leadership body, shall work full-time and be adequately remunerated. In cases where some members of the Board only serve in a part-time capacity, any other professional activity that they engage in needs to be such as to allow the proper performance of the NHRI's duties, its independence and impartiality and public confidence therein.

73. As to the level of their remuneration, **it would be advisable, and more in keeping with the independence of the NHRI, if the terms of remuneration would be stated**

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97 ibid. Justification to General Observations 1.7.

98 Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe, *Joint Opinion on the Draft Law on the Ombudsman of Serbia*, adopted by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004), CDL-AD(2004)041, par 13, <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)041-e>.

99 See e.g., *op. cit.* footnote 60, pages 16 and 31 (SCA Report and Recommendations of May 2016).

100 *Op. cit.* footnote 9, General Observation 2.2.

101 See *op. cit.* footnote 64, par 43 (2013 OSCE/ODIHR-Venice Commission Joint Opinion on the Law relating to the Higher Committee for Human Rights and Fundamental Freedoms of Tunisia).

102 *Op. cit.* footnote 9, General Observation 2.2 and Justification.

clearly in the Draft Act (or a separate act).[103] In that respect, practice varies greatly across the OSCE region with ombudspersons or human rights commissioners being recognized as having equal status to judges of the Constitutional or Supreme Courts, the Public Prosecutor or the Governor of the National Bank. Generally, the status and remuneration of Board members should correspond to other high-ranking positions within the state apparatus.[104]

74. Finally, the Draft Act does not outline the criteria and procedures for terminating the mandates of the leadership body, including cases of dismissal, or the consequences arising from such termination. Further, the Draft Act does not elaborate on the **circumstances in which the mandate of the members of the Board may be terminated prior to the expiry of their term**. Clear regulations and objective criteria are needed for cases of dismissal, but also for situations where the Chairperson is not able to perform his/her duties due to certain circumstances such as resignation, death, illness, conviction for a serious criminal offence, etc. **It would be advisable to specify such cases in the Draft Act (or a separate act).**

75. According to General Observation 2.1, in order to address the Paris Principles' requirements for a stable mandate, without which there can be no independence, NHRI legislation must also contain an independent and objective dismissal process following pre-defined criteria, similar to that accorded to members of other independent State agencies. The grounds for dismissal must be clearly defined and appropriately confined to those actions and situations, which impact adversely on the capacity of the members to fulfill their mandates.[105] 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.[106] **The legal drafters should supplement the Draft Act (or a separate act) accordingly. The relevant legislation should provide for a public procedure whereby the members of the governing body should be heard prior to the decision on dismissal; there should also be a procedure in place allowing them to challenge such decisions in court**.[107]

76. Finally, it is also good practice for the **NHRI legislation to provide for the adoption of a code of ethics that is binding on the members of the NHRI's governing body, as well as all its employees and other co-operating persons or entities**.

5.2. Pluralism

77. Article 5 of the Draft Act provides for the pluralist representation of relevant social forces within the organization of the NHRI. This generally reflects the wording of Paris Principles B.1, which refers to the need to ensure "the pluralistic representation of social forces (of the civilian society) involved in the promotion and protection of human

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[103] See also e.g., *op. cit.* footnote 77, par 58 (2017 ODIHR Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland).

[104] See e.g., Article 10 (5) of the Ombudsman Act (1995) of Malta referring to remuneration equivalent to the judge of superior courts; Section 8 of the Law on the Public Defender of Rights (1999, as amended 2009) of the Czech Republic which refers to the salary, severance pay, reimbursement of expenses and benefits in kind equal to that of the President of the Supreme Audit Office; Article 12 of the Law on Establishment of a Mediator of Luxembourg (2003) referring to the specific upper salary scale applicable in the public service; all are available at <http://www.legislationline.org/topics/topic/82>. See also *op. cit.* footnote 17, Section 4.1.1 on Rank and Salary (2016 Venice Commission's Compilation of Opinions concerning the Ombudsman Institution).

[105] *Op. cit.* footnote 9, General Observation 2.1.

[106] ibid.

[107] See e.g., Venice Commission, *Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova*, adopted by the Venice Commission at its 103rd Plenary Meeting (Venice, 19-20 June 2015), CDL-AD(2015)017, par 61, <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)017-e>.

rights". At the same time, Article 5 does not specify whether this means that pluralism shall be ensured at the level of the leadership of the institution, as well as at staff level. While there are diverse models for ensuring pluralism in the composition of NHRIs,[108] it is generally acknowledged that when both the leadership and the staff are representative of a society's social, ethnic, religious and geographic diversity and are gender-balanced, this helps promote public confidence in the institution.[109] Such an approach also ensures that the NHRI has relevant experience and insights as to the needs of diverse sectors of society and enhances the effectiveness of the NHRI, as well as its accessibility and real and perceived independence.[110] As specifically stated in General Observation 1.7, 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".[111]

78. Moreover, Article 5 only makes reference to pluralism in terms of social forces, which encompass, as specified in the Explanatory Statement, non-governmental organizations, professional associations, trade unions, philosophical or religious communities, universities and experts, as well as representatives from the Parliament and from ministries (see par 68 *supra*). However, it does not refer to a balanced representation in terms of gender, ethnicity or minority status, as required by General Observation 1.7.[112] It is worth noting that General Observation 1.7 expressly refers to the equitable participation of women in the NHRI and that the Sub-Committee on Accreditation has generally welcomed legal provisions requiring a balanced representation of both women and men in the composition of NHRI governing bodies.[113]

79. **Article 5 should therefore be amended and supplemented to specify that the NHRI's governing body and its staff, at all levels of responsibility, should be gender balanced, and should at the same time be representative of the Swiss society's social, ethnic, religious and geographic diversity, reflecting diverse segments of professions and backgrounds. Guarantees for ensuring such pluralism should also be included in the Draft Act (or separate act),[114] for instance by adding provisions clearly stating that qualification requirements, selection criteria and modalities, as well as employment conditions for NHRI staff, should ensure gender**

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[108] *Op. cit.* footnote 9, General Observation 1.7 which refers to e.g., the requirement that members of the decision-making body shall represent different segments of society, ensure pluralism via the appointment procedures of the governing body or through procedures enabling effective co-operation with diverse societal groups (e.g., advisory committees, networks, consultations or public forums) or reflect pluralism by having staff that are representative of diverse segments of society.

[109] *Op. cit.* footnote 9, Justification to General Observation 1.7. See also e.g., *op. cit.* footnote 77, par 46 (2017 ODIHR Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland); and *Opinion on the Draft Amendments to the Law on Civil Service of Ukraine*, 10 May 2016, par 42, <http://www.legislationline.org/download/action/download/id/6196/file/289_NHRI_UKR_10May2016_en.pdf>. See also Amnesty International, *National Human Rights Institutions: Amnesty International' Recommendations for Effective Protection and Promotion of Human Rights* (2001), page 10, Recommendation 2.4, <https://www.amnesty.org/en/documents/ior40/007/2001/en/>.

[110] ibid.

[111] See also *op. cit.* footnote 9, Justification to General Observation 1.7, which states that the SCA considers the "pluralistic composition of the NHRI to be fundamentally linked to the requirement of independence, credibility, effectiveness and accessibility".

[112] *Op. cit.* footnote 9, General Observation 1.7.

[113] See e.g., Article 5 par 2 of the Irish Human Rights Commission Act, requiring that out of a total number of nine members, no less than four members of the Commission shall be men, and that no less than four shall be women; and Section 5 of the Act relating to the Norwegian National Human Rights Institution (2015). See also e.g., Sub-Committee on Accreditation, *Report and Recommendations of the Session* (October 2014), page 17, <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf>.

[114] See *op. cit.* footnote 64, par 44 (2013 OSCE/ODIHR-Venice Commission Joint Opinion on the Law relating to the Higher Committee for Human Rights and Fundamental Freedoms of Tunisia).

balance and diversity at all staff levels.[115] Alternatively, **a reference to secondary legislation that will specify the procedure and modalities for ensuring pluralism could be included.[116] To ensure an inclusive process, the legal drafters should consult with various stakeholders, including civil society, when determining the most appropriate criteria and procedures for that purpose**.[117] This can help strengthen the visibility of an NHRI's commitment to inclusiveness and diversity, positively influence the institution's overall credibility and effectiveness, and may also serve as a model for other public bodies.[118]

5.3. The NHRIs' Autonomy in Human Resources Management

80. The employment status of the NHRI's staff is not clear. In that respect, it is noted that most countries have human resources policies that apply to all public agencies and entities, including NHRIs.[119] These types of institutions should nevertheless benefit from a certain flexibility with respect to public service rules on recruitment and career advancement.[120] In any case, **the Draft Act, or other relevant legislation, should clarify the employment status of the NHRI's staff.**

81. Regarding staff salaries and benefits, General Observation 1.10 provides that they should be "comparable" to those of civil servants performing similar tasks in other independent state institutions. In many countries, however, public sector salaries may not always be adequate or appropriate and it is thus recognized that so-called "comparable" salaries should only be a minimum criterion.[121] In such situations, it is considered good practice to provide salaries that are rather at the upper end of the public sector's salary scale, particularly for professional expert staff, while taking into account similar levels of responsibilities and experience. This is useful not only to attract and retain competent staff,[122] but also to ensure their independence from the executive when carrying out their work. **The Draft Act, or other legislation, should be supplemented accordingly, while ensuring that the NHRI has some flexibility to set the levels of**

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[115] See e.g., *op. cit.* footnote 18, pages 9, 78 and 80 (2012 OSCE/ODIHR Handbook for NHRIs on Women's Rights and Gender Equality); Sub-Committee on Accreditation, *Report and Recommendations of the Session* (March 2015), page 23 on the Staffing of the Protector of Citizens (PCRS) of Serbia, <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20MARCH%202015%20FINAL%20REPORT%20-%20ENGLISH.pdf>; and Sub-Committee on Accreditation, *Report and Recommendations of the Session* (March 2012), pages 8 and 10 on the Staffing of the Commissioner for Human Rights of Kazakhstan and of the Ombudsperson (Akyikatchy) of the Kyrgyz Republic (OKR), <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20MARCH%202012%20FINAL%20REPORT%20ENG%20WITH%20ANNEXURES.pdf>.

[116] Such procedure and modalities should at a minimum provide that vacancies are advertised broadly to maximize the potential number of candidates (see Justification to General Observation 1.8). Other tools to ensure pluralism in the composition of NHRIs could be to provide for the establishment of an independent selection committee, whose composition should reflect diverse societal groups (see *op. cit.* footnote 16, page 248 of the 2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions); or to provide that such groups (e.g., non-governmental organizations, universities, trade unions, concerned social and professional organizations) could also be invited to suggest or recommend candidates (see General Observation 1.7). In any case, the rules and procedures should promote broad consultation and/or participation of these diverse societal groups throughout the application, screening, selection and appointment processes (see General Observation 1.8).

[117] *Op. cit.* footnote 9, General Observation 1.7 and its Justification.

[118] See also OHCHR, *Handbook on National Human Rights Institutions - History, Principles, Roles and Responsibilities* (2010), pages 39 and 173, <http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf>. See also e.g., Amnesty International, National Human Rights Institutions: Amnesty International' Recommendations for Effective Protection and Promotion of Human Rights (2001), page 10, Recommendation 2.4, <https://www.amnesty.org/en/documents/ior40/007/2001/en/>.

[119] See *op. cit.* footnote 109, pars 19-22 (2016 OSCE/ODIHR Opinion on the Draft Amendments to the Law on Civil Service of Ukraine). See also ibid. page 156 (2010 OHCHR Handbook on NHRIs).

[120] ibid. page 156 (2010 OHCHR Handbook on NHRIs). See also *op. cit.* footnote 16, pages 173-174 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).

[121] ibid. page 156 (2010 OHCHR Handbook on NHRIs); and page 174 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).

[122] ibid. pages 123 and 152 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).

wages and benefit packages for its staff, especially professional expert staff, which may differ from those of the public service in general;[123] **similar comments apply regarding rules on career advancement and human resources management**.[124]

82. The Sub-Committee on Accreditation has also noted positively cases where NHRIs have adopted policies to promote greater gender balance, diversity and opportunities for advancement within their institutions.[125] These include, for instance, measures to ensure equal opportunities for promotion, supporting professional development of under-represented persons[126] and human resource policies that take into consideration the needs of pregnant women and persons with parental and/or caretaking responsibilities, and that promote work-life balance for all employees, more broadly.[127] Additionally, NHRIs should pay particular attention to special requirements for employees with disabilities, in line with Article 27 of the UN CRPD, and should ensure that its human resources policies[128] accommodate such persons as far as reasonably possible. **It is recommended to supplement the Draft Act accordingly, or to include references to other applicable legislation**.

5.4. The Budget and Funding of the NHRI and its Premises and Infrastructure

83. Article 1 of the Draft Act provides that the Confederation may grant financial assistance to the NHRI, which takes the form of a contribution to its operating costs. Article 4 of the Draft Act further states that within the framework of its tasks, the NHRI provides, against payment, services to authorities and private persons. The Explanatory Statement to the Draft Act specifies that the estimated amount of the operating grant will be one million Swiss Francs per year[129] (see also Sub-Section 6 *infra*), while noting that the underlying condition for granting this amount is the provision of paid services. which will allow the NHRI to earn additional funding resources.[130] However, there is no guarantee that this level of funding will be maintained and it is rather unlikely that such an amount will be adequate to allow this body to fulfil its mandate as an NHRI in accordance with the Paris Principles.[131]

84. As it stands, the Draft Act does not seem to include the modalities by which to ensure the NHRI's financial and operational autonomy, whereas proper, detailed statutory regulations concerning this institution's budget are especially important for its independence.

85. The Paris Principles provide that an NHRI should be provided with "adequate funding" to ensure the smooth conduct of its activities and enable the institution to have its own staff and premises. General Observation 1.10 specifies that an appropriate level of funding also helps guarantee an NHRI's independence and allows it to freely determine

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123 ibid. page 152 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).
124 ibid. page 174 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).
125 Sub-Committee on Accreditation (SCA), *Report and Recommendations of the Session* (October 2014), page 17, <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf>.
126 See e.g., the good practice of special programmes for professional development addressed to women, which use different selection criteria for recruitment and then provide training and development prior to accessing permanent employment, see *op. cit.* footnote 16, page 174 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).
127 *Op. cit.* footnote 18, pages 9, 78 and 80 (2012 OSCE/ODIHR Handbook for NHRIs on Women's Rights and Gender Equality). See also ibid. pages 174-175 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).
128 ibid. page 175 (2010 UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions).
129 *Op. cit.* footnote 19, Sub-Section 1.2 (Explanatory Statement to the Draft Act).
130 ibid. Sub-Section 2 on page 21 (Explanatory Statement to the Draft Act).
131 See, in that respect, the comments made by the UN Human Rights Committee in its latest Concluding Observations on Switzerland (March 2017); see *op. cit.* footnote 4, par 14.

its priorities and activities, and to allocate funding according to these priorities. Thus, it is recommended **to include in the Draft Act specific provisions regarding the NHRI's budget and financial autonomy**. Such provisions **should prescribe that the budgetary allocation of funds shall be adequate to ensure the full, independent and effective discharge of the responsibilities and functions of the institution**.[132] **The Draft Act should be supplemented in that respect and should also specifically provide that the NHRI shall manage the budgetary allocation at its disposal in an autonomous manner**.[133]

86. Under General Observation 1.10, several elements need to be taken into account to define what constitutes "adequate funding" when drawing up the annual budget for the NHRI. In addition to an appropriate level of salaries and benefits for members of the leadership body and staff (see pars 72-73 and 81 *supra*), these should include the allocation of funds for the NHRI's *own* premises, which should be sufficient to ensure that said premises are accessible to the wider community, including to persons with disabilities, and to allow for the establishment of well-functioning communications systems, including telephone and the Internet.[134] Article 2 par 2 specifies that the universities and higher education institutions shall make available "the necessary infrastructure, including premises and computer equipment, to the NHRI free of charge". This means that the NHRI will not have its own premises and that it will in essence be dependent on the decisions of universities and/or higher education institutions in that respect.

87. In principle, national law should also indicate the relevant budget source.[135] When deciding on the accreditation of NHRIs, the Sub-Committee on Accreditation reviews whether the underlying legislation provides that an **NHRI's funding is allocated to a separate budget line dedicated only to the NHRI**.[136] **This should be included in the Draft Act**. The Sub-Committee on Accreditation has stated that situations where the NHRI's budget is subject to government approval or where the executive has substantial control over budgetary decisions, as is the case here, raise concerns with respect to the NHRI's financial independence.[137] **To sustain the institution's independence, these considerations should be taken into account by the legal drafters.**

88. Additionally, to further increase the NHRI's financial independence, **some additional safeguards may also be contemplated. For instance, the Draft Act may specify that the funds allocated may not be reduced in a manner that interferes with the NHRI's independence**.[138] **The relevant legislation could also prescribe that the NHRI itself should submit its budget proposal to the relevant authority and that this proposal should in principle likewise not be reduced**.[139] **In addition, legal provisions against unwarranted budgetary cutbacks could be introduced,**

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[132] See 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), CDL-AD(2007)020, pars 8 and 30.VI, <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)020-e>.

[133] See e.g., *op. cit.* footnote 107, pars 74-75 (2015 Venice Commission's Opinion on the Law on the People's Advocate of Moldova).

[134] *Op. cit.* footnote 9, General Observation 1.10.

[135] ibid. Justification to General Observation 1.10.

[136] See e.g., *op. cit.* footnote 60, pages 19 and 26 on the accreditation of NHRIs of Montenegro and Canada (SCA Report and Recommendations of May 2016).

[137] See e.g., Sub-Committee on Accreditation, *Report and Recommendations of the Session* (November 2015), page 12, <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf>.

[138] See e.g., *op. cit.* footnote 107, pars 74-75 (2015 Venice Commission's Opinion on the Law on the People's Advocate of Moldova).

[139] See e.g., *op. cit.* footnote 132, pars 8 and 30.VI (2007 Venice Commission's Opinion on the Possible Reform of the Ombudsman Institution in Kazakhstan).

including but not limited to the principle that compared to the previous year, any reductions in the NHRI's fund allocation should not exceed the percentage of reduction of the budgets of the Parliament or the Government.[140]

89. The NHRI should also **be allowed to receive additional funding from external sources, domestic and foreign**.[141] Article 4 of the Draft Act refers to the provision of services against payment, but does not specify that other sources of funding could be sought. At the same time, General Observation 1.10 emphasizes that funding from external sources should not constitute the NHRI's core funding, as it should be the State's responsibility to ensure the NHRI's core budget. It is not clear to what extent the one million of Swiss Francs are sufficient for the NHRI to carry out its mandate in full independence and in compliance with the Paris Principles. Regarding funding of NHRIs from sources other than the state budget, the Venice Commission has expressly noted that "this may be seen as detrimental to the independence and the appearance of independence of the [NHRI]".[142]

90. The Explanatory Statement to the Draft Act specifies that the provision of paid services will allow the NHRI to earn additional funding resources[143] to perform its tasks. This, however, carries with it the risk that the topics that the NHRI engages in may be determined by financial considerations, and not based entirely on human rights considerations (see also par 41 *supra*). To avoid such situations, **the allocation made by the Federal Council should be enough to cover the NHRI's core budget.** Moreover, as mentioned in par 41 *supra*, **the Draft Act (or separate act) should provide adequate safeguards to protect against over-commercialization and other undesirable external influences that may threaten the NHRI's proper implementation of its statutory tasks.**

91. Finally, the NHRI has the obligation to ensure the coordinated, transparent and accountable management of its funding through regular public financial reporting and a regular annual independent audit,[144] and needs to comply with the financial accountability requirements applicable to other independent agencies.[145]

5.5. The NHRIs' Annual Reports

92. Article 7 of the Draft Act states that the NHRI shall, every year, prepare an activity report for the Federal Chambers, which shall be published. General Observation 1.11 recommends that the enabling NHRI law shall ensure that such reports are widely circulated, discussed and considered by the legislature, and that the NHRI has the explicit power to table reports directly to the legislature. **Such a provision should be introduced to the Draft Act along with an obligation on the side of the Federal Chambers to hold a debate on the NHRI report, for instance at the session which immediately follows the report's submission to the Federal Chambers**.

93. At the same time, the Federal Chambers should not be required to formally adopt such an annual report, since such a vote would indirectly call into question the independence

[140] See e.g., *op. cit.* footnote 87, par 69 (2016 Venice Commission Opinion on the draft Constitutional Law on the Human Rights Defender of Armenia).
[141] *Op. cit.* footnote 9, General Observation 1.10 and its justification.
[142] See *op. cit.* footnote 107, par 74 (2015 Venice Commission's Opinion on the Law on the People's Advocate of Moldova).
[143] ibid. Sub-Section 2 on page 21 (Explanatory Statement to the Draft Act).
[144] *Op. cit.* footnote 9, General Observation 1.10 and its justification.
[145] ibid. General Observation 1.10.

of the institution.[146] Indeed, the main purpose of the debate should be informational in nature, so as to bring attention to the issues raised by the report; it is then up to the Federal Chambers to take action to address them, as appropriate.

94. Moreover, consideration may be given to expanding the scope of the annual report, which, in addition to the activity report section, should also include an annual review of the state of human rights in the Swiss Confederation and the main problems in this domain from the NHRI's perspective.

6. Legislative Process and Participatory Approach

95. It is understood that the Draft Act is currently open to online public consultations for four months, from 28 June 2017 to 31 October 2017,[147] which is overall welcome. Indeed, it is worth recalling that OSCE commitments require legislation to be adopted "as the result of an open process reflecting the will of the people, either directly or through their elected representatives" (Moscow Document of 1991, par 18.1).[148] 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 human rights organizations and the general public, including marginalized groups, are fully informed and able to submit their views prior to the adoption of the Act**. Public discussions and an open and inclusive debate will increase all stakeholders' understanding of the various factors involved and enhance confidence and trust in the adopted legislation, and in the institutions in general.

96. At the same time, a meaningful consultation presupposes that any comments received are duly taken into consideration during the subsequent revision of the draft legislation. Pursuant to the *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (2015), state authorities are encouraged to develop a mechanism whereby decision-makers shall report back to those involved in consultations by providing, in due time, meaningful and qualitative feedback on the outcome of public consultations, including clear justifications for including or not including certain comments/proposals.[149] Moreover, to guarantee effective participation, consultation mechanisms must allow for input at an early stage *and throughout the process*,[150] meaning not only when the draft is being prepared by relevant government entities but also when it is discussed before the Parliament (e.g., through the organization of public hearings).

97. Further, the Explanatory Statement to the Draft Act does not provide an analysis of the overall institutional framework for the protection and promotion of human rights in Switzerland, including with respect to anti-discrimination, gender equality, children' rights, rights of persons with disabilities, prevention of torture, maladministration, and

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146 See *op. cit.* footnote 63, par 82 (2015 Venice Commission's Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina).

147 See <https://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2017/2017-06-281.html>.

148 Available at http://www.osce.org/fr/odihr/elections/14310.

149 *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015, par 16 (e), <http://www.osce.org/odihr/183991>.

150 See e.g., OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders (2014)*, Section II, Sub-Section G on the Right to Participate in Public Affairs, <http://www.osce.org/odihr/119633>.

human rights protection in general, as well as existing complaints-handling systems. Such analysis should also involve a consideration of all financial and human costs for the new entity to fulfil its mandate as an NHRI (see Sub-Sections 2.1 and 5.4 *supra*). This is fundamental to ensure that such institutional framework, including the newly-established NHRI, is effective and coherent, not overly complex and easily accessible to all.

98. In light of the above, **the Swiss legislator is encouraged to continue its efforts to ensure that the Draft Act is fully compliant with the Paris Principles and subjected to inclusive, extensive and effective consultations, which should continue at further stages of the law-making process. It is also recommended that a more in-depth financial impact assessment be carried out to ensure that the future NHRI will receive adequate funding to perform its mandate in accordance with the Paris Principle**. **As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Act and its impact should also be put in place to properly evaluate the operation and effectiveness of the Act, once adopted**.[151]

[END OF TEXT]

[151] See e.g., OECD, *International Practices on Ex Post Evaluation (2010)*, <http://www.oecd-ilibrary.org/governance/evaluating-laws-and-regulations/international-practices-on-ex-post-evaluation_9789264176263-3-en>.

Annex:

Draft

Federal Law on the Support to the National Human Rights Institution

Of ……..

The Federal Assembly of the Swiss Confederation,

based on Articles 173 par 2 and 54 par 1 of the Constitution,[152]

and having regard to the Federal Council Dispatch dated …,

decrees:

Art. 1 National Human Rights Institution

1. The Confederation may grant financial assistance, within authorized appropriations, to an independent center which performs tasks in the field of human rights.

2. Financial assistance is granted in the form of a contribution to operating costs (operating grant).

3. The conditions for providing the Confederation's grants are laid down in Articles 2 to 5 of this Law.

4. The center supported by the Confederation according to this Law shall be the National Institution for Human Rights (NHRI) of Switzerland as defined in the Annex to the United Nations General Assembly resolution 48/134 of 20 December 1993 ("Paris Principles").

Art. 2 Connection to institutions in the field of higher education

1. The NHRI is attached to one or more universities or other institutions in the field of higher education within the meaning of the law of 30 September 2011 on the promotion and coordination of universities[153].

2. The universities or other institutions in the field of higher education to which the NHRI is attached make available the necessary infrastructure, including premises and computer equipment, to the NHRI free of charge.

[152] SR 101
[153] SR 414.20

Art. 3 Tasks

1. With a view to promoting human rights in Switzerland, the center undertakes the following tasks:

a. information and documentation;

b. research;

c. preparation of opinions and recommendations;

d. promoting dialogue and collaboration between departments and organizations involved in the implementation and promotion of human rights;

e. education and awareness-raising on human rights;

f. exchanges at the international level.

3. The NHRI does not carry out any public administration tasks.

Art. 4 Provision of services

Within the framework of its tasks, the NHRI provides, against payment, services to authorities and private persons.

Art. 5 Pluralist representation of relevant social forces

The various social forces involved in the implementation and promotion of human rights are represented within the organization of the NHRI.

Art. 6 Contract

1. The financial assistance of the Confederation is paid on the basis of an indefinite-term contract.

2. The contract shall govern, in particular, the amount of the operating grant, the payment terms and the grounds for termination.

3. The Federal Council shall designate the administrative unit responsible for the conclusion and implementation of the contract.

Art. 7 Report

1. Every year, the NHRI prepares an activity report for the Federal Chambers.

2. The report is published.

Art. 8 Independence

The NHRI is independent in the performance of its tasks with regard to the universities or other institutions of the field of higher education to which it is attached and to the Confederation.

Art. 9 Referendum and entry into force

1. This Act shall be subject to referendum.

2. The Federal Council shall fix the date of entry into force.