

Towards a Strong UAE National Human Rights Institution: Complying with the Paris Principles and Beyond

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Abstract

National Human Rights Institutions (NHRIs) play an instrumental role in supporting States to fulfil their human rights obligations, by monitoring and reporting on human rights issues, advising the governments on policies and laws, and advocating for reforms that aim to enhance the protection of human rights for all. The Paris Principles, adopted in 1993, have set out universal minimum standards for the establishment and operation of NHRIs and provide guidance to States with regards to their NHRIs' structure, membership, operation and mandate. The Principles stipulate a broad and effective mandate, independence and pluralism as fundamental principles for credible, independent and effective NHRIs. With the establishment of its National Human Rights Institution in December 2021, the Government of the UAE sends a clear message of strong commitment to promoting and protecting human rights and engaging meaningfully with international human rights mechanisms and relevant universal standards. In this context, this essay explores the application of the Paris Principles to the UAE NHRI, considering lessons learned from the region and relevant recommendations of the Global Alliance of National Human Rights Institutions (GANHRI) and its accreditation body, the Sub-Committee on Accreditation (SCA). It critically evaluates the UAE NHRI establishment, making a number of recommendations in relation to its mandate and operation and proposes important agenda items that can inform its action plan.

Keywords

National Human Rights Institutions; Paris Principles; Human Rights; United Arab Emirates

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Introduction

In December 2021, the United Arab Emirates (UAE) formed a National Human Rights Institution (NHRI) with the intent to promote and protect human rights.¹ In doing so, the UAE government reiterated that the body is established in accordance with the UN Paris Principles,² a recommended framework for NHRIs to follow in terms of structure and operation, aimed at equipping such bodies with ‘credibility, independence, and effectiveness’.³

This step by the UAE complements its current interactions with international human rights bodies and mechanisms, indicating a commitment to engage in a meaningful dialogue with such bodies and to develop strategies to improve its human rights protection system. The need to establish a NHRI has been promulgated by a number of UN treaty bodies, noting that such a body should abide by the Paris Principles.⁴ In response, the UAE confirmed that such plans were underway, and these have now materialised. Such external international pressure has been identified as being one of the driving forces behind mobilisation in the Middle East region to establish such institutions, usually following damning reports of human rights abuses.⁵ Considering that the UAE has been re-elected as part of the Human Rights Council for 2022-2024, the expectations of addressing human rights issues in a manner meeting international standards is key. One way of doing this is for the UAE to ensure that this newly formed institution aligns itself fully with the Paris Principles.

As the body is still in its infancy, the positive proclamations made by the UAE of adhering to such international standards in the establishment and operation of the NHRI need to be considered and clear steps in materialising these set out. Accordingly, this article introduces the newly formed UAE NHRI and examines the extent to which it meets the Paris Principles, as well as steps that can be taken to do so more comprehensively.

In pursuing these objectives, Part A outlines the role of NHRIs, in the context of the scope, importance and criticisms of the Paris Principles. In providing an understanding of these Principles in practice, the article looks at the appraisal of States’ adherence to the Paris Principles by the Global Alliance of National Human Rights Institutions (GANHRI) and its Sub-Committee of Accreditation (SCA). It specifically explores some lessons from NHRIs in the region, to identify key areas that the UAE should focus on when striving to meet these international standards and ensuring this body is as effective as possible. Part B of the article then critically examines of the UAE’s NHRI and its compliance with the Paris Principles, taking into consideration the specific state and political structures in the UAE. Current good practices and intentions relating to the operation of the NHRI are identified, as well as areas in which the UAE should provide more clarity or amendments in ensuring that the potential positive impact of the NHRI is upheld. Having considered the priorities relating to the effective operation of the NHRI, Part C posits an action plan for human rights with key agenda priorities on which the UAE should focus, and the role the NHRI could carve for itself in executing this agenda.

¹ This was established by UAE Federal Law No. 12/2021 On the National Human Rights Authority (2021) (hereinafter ‘UAE Law ’or ‘Federal Law’).

² UNGA, *National Institutions for the Promotion and Protection of Human Rights*, adopted 4 March, 1994, G.A. Res. 48/134, U.N. GAOR, 48th Sess., U.N. Doc. A/Res/48/134 (hereinafter Paris Principles).

³ Paris Principles at 25: Strong National Human Rights Institutions needed More than Ever, <https://www.coe.int/en/web/commissioner/-/paris-principles-at-25-strong-national-human-rights-institutions-needed-more-than-ever?inheritRedirect=true> (last visited November 25, 2022).

⁴ See Committee on the Elimination of Discrimination against Women (2015), Concluding Observations UAE, CEDAW/C/ARE/CO/2-3, para. 18; Committee on the Elimination of Racial Discrimination (2017), Concluding Observations UAE, CERD/C/ARE/CO/18-21, para. 8; Committee on the Rights of the Child (2015), Concluding Observations UAE, CRC/C/ARE/CO/2, para. 19; UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, 5 May 2015, UN doc. A/HRC/29/26/Add.2, para. 91.

⁵ Turan Kayaoğlu, *National Human Rights Institutions: a Reason for Hope in the Middle East and North Africa?*, Brookings Doha Center, Analysis Paper Number 31, January 2021, at 23.

1. NHRI and the application of the Paris Principles in the region

1.1 The role of NHRIs

NHRIs are independent bodies, established by States, through a legislative or constitutional mandate to promote and protect human rights at the national level.⁶ They operate independently from the government and occupy ‘a unique space in the human rights protection framework’,⁷ which lies between the government and the civil society, without being neither a government body, nor a non-governmental organisation (NGO). The absolute independence of NHRIs from both the government and NGOs and the specific interests they serve and represent is an essential feature and a guiding operational principle. While being independent from the government and civil society stakeholders, they are accountable to both.⁸

NHRIs are assigned with the power to monitor the state of human rights protection in the jurisdiction in which they operate, review and report on laws, policies and practices and advise the government on the development and implementation of strategies to effectively protect and promote human rights. In this context, their role is to support the State’s compliance with the human rights obligations deriving from international human rights instruments they have ratified and to fulfil the relevant recommendations put forward by international and regional human rights bodies. In other words, NHRIs monitor how governments give affect to their human rights obligations, identify gaps and challenges, and propose laws and policies to bridge the gap between the State’s international human rights obligations and the actual fulfilment of those rights within their jurisdiction.

To carry out their mandate, however, they are expected to communicate and collaborate with all three State powers; the executive, the legislative and the judiciary, but also with different stakeholders and members of the civil society, such as NGOs, professional bodies and associations, as well as representatives of minorities and different political, economic, social and cultural groups.⁹

The NHRIs engage in research and monitoring of government practices, providing advice in areas where the incorporation of human rights is insufficient to satisfy the international standards.¹⁰ This is done through annual reports and engagement with parliamentary human rights committees, where available.¹¹ Similarly, NHRIs also work with the executive limb of the government, engaging in discussions of policies and State practices that may be incompatible with human rights.¹² Finally, NHRIs can also collaborate with the judicial branch of a State, including acting as *amicus curiae* or ‘friends of the court’.¹³ This means that they may provide insight and expertise to areas of human rights law and its application. Additionally, they may provide training to judges ensuring their proper understanding of human rights law.¹⁴ A key benefit to NHRIs and their effectiveness lies in the fact that their authority to hold the State accountable is granted by the government itself, adding to its legitimacy.¹⁵

1.2 The Paris Principles: Setting the standards for the establishment and operation of NHRIs

In order to ensure that NHRIs fulfil their functions and pursue their aims effectively, the international community established a set of universal standards for NHRIs, the Paris Principles. The Paris Principles were initially drafted in 1991 by NHRIs, but quickly gained broad consensus. As a result, they were later adopted by the UN, through the General Assembly Resolution 48/134 of 20 December 1993.¹⁶ They set out a

⁶ Article 1, Global Alliance of National Human Rights Institutions Statute.

⁷ GANHRI (2017), A Practical Guide to the work of the Sub-Committee on Accreditation (SCA), available at: https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/GANHRI_Manual_online.pdf (last visited on November 25, 2022).

⁸ Anne Smith, *The Unique Position of National Human Rights Institutions: A Mixed Blessing*, 28 HUMAN RIGHTS QUARTERLY 4, 904-946, 905-906 (2006).

⁹ Asia Pacific Forum: Fact Sheet 9: Responsibilities and functions of NHRIs: Cooperating at the national level, <https://www.asiapacificforum.net/members/what-are-nhris/fact-sheet-9-cooperation/> (last visited November 25, 2022).

¹⁰ European Network of National Human Rights Institutions, <https://ennhri.org/about-nhris/> (last visited November 25, 2022).

¹¹ Asia Pacific Forum: Fact Sheet 9, *supra* note 9.

¹² European Network of National Human Rights Institutions, <https://ennhri.org/about-nhris/> (last visited November 25, 2022).

¹³ Asia Pacific Forum: Fact Sheet 9, *supra* note 9.

¹⁴ *Ibid.*

¹⁵ UN OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities* (UN, New York and Geneva, 2010), at 20.

¹⁶ *Supra* note 2.

recommended framework for NHRIs to consider when being established and when operating, as well as minimum standards relating to their independence, jurisdiction, mandate and composition, in order to support their effectiveness.¹⁷ The key pillars around which the Paris Principles standards are set are pluralism, independence and effectiveness.¹⁸ Across those pillars, a number of requirements are outlined for NHRIs to meet. Those relate to their mandate and competence, their autonomy from government, independence, pluralism, adequate resources, and adequate powers of investigation.¹⁹ The standards set by the Paris Principles are explored in more detail in Part B and applied in the context of the newly established UAE NHRI.

Although the Paris Principles serve a significant purpose for the effective operation of NHRIs, they have been subject to criticism, particularly in relation to their reach. De Beco and Murray argue that the Principles reflect a strong focus on the establishment of the NHRIs, which does not extend to their way of operation, thus creating a lacuna, as far as standards of operation are concerned.²⁰ They explain that this gap is evident in the lack of clarity on the nature of the relationship between stakeholders at national, regional, and international levels.²¹

A further criticism of the Paris Principles, particularly relevant to the current discussion on the UAE NHRI, has been that they have been formulated to operate and thrive within a democratic political structure, wherein pluralism, independence and freedom of information constitute principles of fundamental importance, associated with the very existence of the State.²² In States that operate in different political structures, such as the UAE, the implementation of such principles could therefore prove challenging to implement. However, as elaborated below, this does not render the credible and legitimate establishment and operation of a NHRI in such States impossible.

Such limitations and challenges need to be acknowledged and borne in mind by States establishing such bodies, as well as institutions that evaluate them. The Paris Principles should not be viewed as the end result, but as a good foundation for the effective functioning of such institutions. In this context and to this aim, the Global Alliance of National Human Rights Institutions (GANHRI) was established to support a more realistic application of the Principles, guide NHRIs from inception to operation, and help them realise their full potential.

1.3 The Global Alliance of National Human Rights Institutions and its Sub-Committee of Accreditation

GANHRI, composed of 118 NHRIs across the four regions of Africa, Asia and the Pacific, the Americas, and Europe, aims to coordinate a unified standard for the establishment and operation of NHRIs.²³ Being a part of this collaborative network helps NHRIs to ensure that they are on the right track, both in terms of their compliance with the Paris Principles,²⁴ as well as in relation to their ongoing operations, through training courses and other support for executing their mandate of promotion and protection of human rights.²⁵ This body can be seen as the practical application and monitoring mechanism of the Paris Principles. A lot of its work and effectiveness is undertaken by its sub-body, the Sub-Committee of Accreditation (SCA).

The SCA was established by GANHRI in 1999 and has been given the role of reviewing the work of NHRIs and their compliance with the Paris Principles.²⁶ It does this through its accreditation system, offering band

¹⁷ UNDP and UN OHCHR, 'Toolkit for Collaboration with National Human Rights Institutions' (New York and Geneva, 2010), at 235.

¹⁸ GANHRI (2017), A Practical Guide to the work of the Sub-Committee on Accreditation (SCA), available at: https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/GANHRI_Manual_online.pdf

¹⁹ *Supra* note 17, at 11.

²⁰ GAUTHIER DE BECO & RACHEL MURRAY, CHALLENGES, In A COMMENTARY ON THE PARIS PRINCIPLES ON NATIONAL HUMAN RIGHTS INSTITUTIONS, 20-30 (2014).

²¹ *Ibid.*

²² The International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions* (Switzerland, 2004), at 106, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/FF47DFA40E24F7ECC12574FE0051F4F9-ichrp_dec2004.pdf.

²³ Global Alliance of National Human Rights Institutions, Our Identity, <https://ganhri.org/> (last visited November 25, 2022).

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ GANHRI (2017), *supra* note 18.

A, B, and C accreditations to NHRIs depending on their compliance with the Paris Principles. Such accreditations, according to the SCA, 'confer substantial legitimacy to the NHRI'.²⁷ Achieving Band 'A', through full compliance with the Paris Principles, allows States to partake in the decision-making of the GANHRI and gain international recognition and acceptance.²⁸ It is therefore key for the UAE NHRI to align itself with these standards and achieve such status.

The process in which this accreditation is attained is detailed, rigorous, and all-encompassing. Although the standard of work expected from NHRIs is unified, the SCA takes into account the particular circumstances of the States in which NHRIs operate. This is reflected in the 'General Observations' set out by the SCA, a guidance instrument for States seeking accreditation, specifically aimed at remedying the lack of precision within the Paris Principles, and their application within different NHRIs with their varying political structures.²⁹ The General Observations clarify the meaning and interpretation of the Paris Principles in a two-part document focusing on: a detailed interpretation of the main requirements of Paris Principles, and a showcase of NHRI case-studies that set out models of good practices of compliance with the Paris Principles.³⁰ Though the method of accreditation strongly relies on meeting a standardised outline, it is also tailored to consider the individual circumstances of States.³¹

The SCA's acknowledgment of such differences amongst States confirms the importance of looking at the recently established UAE NHRI, its compliance with the Paris Principles and its potential to reach SCA 'A' status. However, prior to looking at this, it is important to consider what lessons can be learned from NHRIs in the region. To do so, it is interesting to explore the SCA reports on NHRIs in the MENA region that reflect demographics and socio-political milieus similar to the UAE.

1.4 Lessons from the region

As of December 2021, 86 out of the 128 reviewed NHRIs have been given an A status by GANHRI.³² In order to investigate the functionality of NHRIs when faced with a multitude of variables, one must consider institutions from a variety of socio-cultural, political, economic, and religious contexts. An examination of other established NHRIs in the region provides a holistic view of the parameters wherein the UAE NHRI would operate. For example, the Kingdom of Bahrain's political system, parallels that of the UAE; therefore, a closer look at its NHRI provides valuable insights.

A recurring theme in the NHRI reports in the Gulf Region (Oman, Bahrain, Qatar and Iraq), is that selection processes are 'not sufficiently broad or transparent'.³³ Most NHRIs which have maintained a B status have been criticised for not having a pre-determined and objective method of appointment, not advertising their vacancies effectively, and not having a broad potential pool of candidates. Conversely, in Qatar, which has consistently maintained an A status, the NHRI has successfully kept a relatively transparent selection process, though there are still issues raised relating to its merit-based approach.³⁴ This key difference displays the importance GANHRI places on the appointment and selection process, as it underpins all efforts to maintain impartiality and independence. Therefore, transparency must be a top priority, when establishing a NHRI in the UAE.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ ICC Sub-Committee on Accreditation Report, Report and Recommendations of the Session of the Sub-Committee on Accreditation (Geneva, 18-22 November 2013), at 13 (Oman), available at: https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_NOVEMBER_2013_FINAL_REPORT_ENGL ISH.pdf; GANHRI (SCA), Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (18-29 October 2021), at 17 (Qatar), available at: https://ganhri.org/wp-content/uploads/2021/12/SCA-Report-October-2021_EN.pdf; GANHRI (SCA), Report and Recommendations of the Session of the Sub-Committee on Accreditation (Geneva, 9-13 May 2016), at 8 (Bahrain); GANHRI (SCA), Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (14-24 June 2021), at 24 (Iraq), available at: <https://ganhri.org/wp-content/uploads/2021/08/EN-SCA-Report-June-2021.pdf>.

³⁴ GANHRI (SCA) Qatar (October 2021), *supra*, at 18.

Furthermore, transparency also connotes access to information by the public. In the Gulf Region, Qatar's National Human Rights Committee (NHRC) publicly releases its annual reports outlining its investigations and findings over the previous year.³⁵ Public release of NHRI's reports seems to be a high priority in the accreditation process conducted by the SCA. To successfully operate a NHRI in the UAE and achieve accreditation, public access to an independent complaint system, annual reports, and press releases through an official NHRI website should be guaranteed in order to ensure legitimacy, public support and streamlined effectiveness.

With regards to the composition of the membership of NHRIs, GANHRI is primarily concerned with potential conflicts of interest. Conflicts of interest, either due to members' strong government affiliations put A status at serious risk.³⁶ On the other hand, lack of equal gender representation will more likely give rise to a strong recommendation in relation to the promotion of diversity and pluralism.³⁷ These are useful points for the UAE to consider, in relation to the composition of its NHRI membership and the pluralism and diversity reflected therein.

Finally, with regards to the mandate, GANHRI places great significance on a broad mandate that is clearly enshrined in law, is interpreted in a 'liberal and progressive manner to promote a progressive definition of human rights', and is undertaken effectively. NHRIs that do not adequately fulfil this requirement, such as in the case of Oman and Bahrain, won't be awarded A Status.³⁸

1.5 The Kingdom of Bahrain – The Bahrain National Institute for Human Rights – B Status

In GANHRI's May 2016 review, Bahrain was awarded with a 'B' status after the SCA examined the Bahraini NHRI in terms of its compliance with the Paris Principles and noted a number of areas where the institution did not satisfy GANHRI requirements.

The main concern the SCA raised was regarding the NHRI's appointment process. Though Bahrain does have an appointment process enshrined in law, the SCA deemed it not sufficiently broad and transparent.³⁹ It found that the procedures in place to select members lacked a clear merit-based appointment process.⁴⁰ The SCA encouraged Bahrain to advertise and publicise their vacancies more broadly, to diversify applicants, whilst assessing these applicants on the basis of pre-determined and objective criteria. Moreover, in order to maintain meritocracy and independence from other organisations, Bahrain was called to select individuals who would serve in their individual capacity, rather than on behalf of an organisation.⁴¹

Furthermore, the SCA criticised the government affiliations of the Bahraini NHRI's representatives. It stated that four of its members are sitting Parliamentarians and two are members of the Shura Council, who the King directly appoints. The Paris Principles require the NHRIs to be independent of the government to sufficiently conduct their duties, with a potential conflict of interest arising from members holding such dual roles. The SCA referred to General Observation 1.9 on 'Government representatives on NHRIs' and stated that the inclusion of government members has the 'potential to impact on the real and perceived independence of the NHRI'. The SCA further stated that if individuals who are affiliated with the government are to be appointed roles in the NHRI, it should be clearly stated that their role is one of an advisory capacity, and the total number of such members should not outweigh other members of the NHRI's governing body.⁴²

Moreover, the SCA found that the Bahraini NHRI did not meet the effectiveness standards enshrined in the Paris Principles, for failing to effectively respond and investigate complaints submitted with regards to breaches of rights of human rights defenders. The SCA advised Bahrain to interpret their human rights mandate in a 'broad and purposeful manner' and to protect the rights of all citizens, without a bias based on

³⁵ Qatar National Human Rights Committee, Annual Reports, <https://nhrc-qa.org/en/annual-reports/> (last visited November 25, 2022).

³⁶ GANHRI (SCA) Bahrain (May 2016), *supra* note 33, at 9.

³⁷ GANHRI (SCA) Qatar (October 2021), *supra* note 33, at 19.

³⁸ GANHRI (SCA) Oman (November 2013), *supra* note 33, at 13; GANHRI (SCA) Bahrain (May 2016), *supra* note 33, at 10.

³⁹ GANHRI (SCA) Bahrain (May 2016), *supra* note 33, at 8.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*, at 9.

political alignments and religion. To improve this, the SCA recommended that the NHRI collaborates with regional and international NGOs and civil society organizations to widen their scope.⁴³

Additionally, the Bahraini institution failed to publicly release their findings through the media. The SCA report specifically referred to the visit to Drydock Detention Centre in August 2013,⁴⁴ which the NHRI has refused to release to GANHRI, or the public. This lack of transparency in their field visits and failure to release human rights reports impacts the institution's credibility, which inhibits the attainment of A Status.

Bahrain's failure to achieve an A status shows the importance GANHRI places on independence, structural transparency, and eliminating potential conflicts of interest. Overall, the NHRI has been unable to fulfil its mandate or meet the standards of autonomy, independence, and compositional pluralism.

Taking on board these considerations, it is important to now identify where the recently established UAE NHRI stands in terms of compliance with the Paris Principles, as well as steps that can be taken to enable it to fully align with the Principles, to work towards achieving an 'A' status, and to gain the approval and support of the international community.

2. The UAE NHRI, the Paris Principles and beyond

2.1 Applying the Paris Principles to the UAE NHRI

The Paris Principles require NHRIs to have a number of characteristics which can be grouped under the following categories: a broad mandate based on universal human rights standards, autonomy and independence from government, and pluralism in their composition.⁴⁵ These ought to be examined in the context of the UAE NHRI to both ascertain compliance, as well as generate key recommendations to assist the UAE in fulfilling their declaration of aligning this body with the Principles.

2.2 Autonomy and independence

This principle has been broken down to relate specifically to legal, financial, and operational autonomy.⁴⁶ Legal autonomy looks at the founding law establishing the institution, requiring this to provide the NHRI with a distinct legal personality, separate from governmental departments.⁴⁷ This is affirmed in Article 3 of the UAE Law.⁴⁸ However, the objective behind such legal autonomy, namely to allow the body to make decisions and act independently, is inhibited by a number of factors considered below. Therefore, it is important to consider the other two forms of autonomy and whether these are safeguarded in law and practice. In doing so, the paradox of NHRIs generally needs to be borne in mind, namely that these are 'institutions that will or should act as a watchdog of the very body that created them.'⁴⁹ This innately raises questions as to the extent to which such bodies can ever be fully independent from government.

One way of working towards this, as per the Paris Principles, is through ensuring financial independence.⁵⁰ This entails adequate funding, allowing them to determine their priorities and activities without external pressures. It is key for this to be reiterated in the founding law, and the UAE refer to the same, stipulating that the authority shall have an independent budget, appropriate to enable it to carry out its work.⁵¹ Yet the paradox of such bodies arises once more since it is the responsibility of the State to ensure such body's core budget, jeopardising the independence of such institutions.⁵² The UAE Federal Law indicates that the body's budget will be included in the Federation's annual general budget law.⁵³ The wording selected raises questions as to the prospects of independence since it is advised that a separate budget line over which the

⁴³ *Ibid.*, at 11.

⁴⁴ *Ibid.*, at 10.

⁴⁵ UN OHCHR, *supra* note 15, at 31.

⁴⁶ *Ibid.*, at 40; UNDP and UN OHCHR, *supra* note 17, at 235.

⁴⁷ UN OHCHR, *supra* note 15, at 40.

⁴⁸ UAE Federal Law, *supra* note 1, article 3.

⁴⁹ Anne Smith, *supra* note 8, 909.

⁵⁰ Paris Principles, *supra* note 2, Principle B(2).

⁵¹ UAE Federal Law, *supra* note 1, articles 19 and 20.

⁵² SCA General Observations, as adopted by the GANHRI Bureau at its meeting held in Geneva on 21 February 2018, at 28.

⁵³ UAE Federal Law, *supra* note 1, article 10(8).

NHRI has absolute control should be ensured.⁵⁴ This may require the UAE to provide further clarity on the financial system in place for the NHRI, including how this budget is drawn and how it is linked to other governmental ministries.⁵⁵

Whilst such financial independence may be difficult to fully realise, the institution's operational details can support this objective. To this end, the Paris Principles stipulate that the body should freely consider questions and information presented to it, where such material falls within its competence, and overall have the ability to conduct their mandate freely.⁵⁶ As expanded on, this requires freedom in drafting their rules of procedure, as well as ensuring their reporting mandate does not require prior governmental approval.⁵⁷

Looking at the UAE law, general reference is made to the maintenance of operational independence.⁵⁸ In terms of procedural rules, reference is made to The Board's role in approving such plan, yet there is no clarity on who is responsible in drafting this and the role of the government in the same.⁵⁹ In January 2022 a 100-day plan for the institutional and organisational workings of the body was approved.⁶⁰ Whilst the plan itself has not been made available to the public, in a statement by the Chairperson of the NHRI in May 2022, announcing the completion of the same, some information was provided in terms of the organisational infrastructure and extent of governmental involvement.⁶¹ Specifically, five non-voting government representatives were nominated to participate in the meetings of the Board of Trustees.⁶² This is, on its face, in line with the Paris Principles which stipulate that if government departments are to participate, they should only do so in an advisory capacity.⁶³ Nevertheless, going forward, the UAE should provide further clarity on the input of such bodies in the deliberations of the Board to prevent questions of independence.

In terms of the NHRI's reporting mandate and issuance of the annual report, Article 21 of the Federal Law stipulates that this shall be submitted to the President of the State, the Cabinet and the Federal National Council (FNC) prior to being shared with the public. This may cast some doubt on the body's independence and impartiality of the report, which is stipulated to include a part on the human rights situation in the country and their recommendations.⁶⁴ As already highlighted, release of information to the public is of high priority when the SCA examines a NHRI's adherence to the Paris Principles. Thus, for the UAE to strive towards an 'A' status, such reporting and the release of its annual report should be done without the involvement of the State apparatus.

In the context of such operational independence, emphasis is also put on the members' appointment and dismissal procedures, with the relevant law clearly stipulating the method of appointment, criteria, duration, and dismissal process. Looking at the UAE Law, the criteria and duration of membership are clearly set out.⁶⁵ Whether the former meets the principle of pluralism is considered in the next section. From a procedural level, the appointment process is unclear from the law. The law states that the mechanism shall be determined by a decision of the President of the State. Yet, no information could be retrieved on how this was implemented in the selection of the first Board of Trustees. Reference has been made to a 'consultative mechanism' in selecting the Board',⁶⁶ yet it is unclear what the process entailed and the involvement of the

⁵⁴ UN OHCHR, *supra* note 15, at 41.

⁵⁵ *Ibid.*

⁵⁶ Paris Principles, *supra* note 2, Principle C.

⁵⁷ UN OHCHR, *supra* note 15, at 40.

⁵⁸ UAE Federal Law, *supra* note 1, article 12.

⁵⁹ UAE Federal Law, *supra* note 1, article 10 (2), (3).

⁶⁰ Emirates News Agency, NHRI Chairperson announces '100-day plan' for institutional and organisational workings (Thursday, 13 January 2022), <https://www.wam.ae/en/details/1395303010831> (last visited November 25, 2022).

⁶¹ Emirates News Agency, UAE's National Human Rights Institution announces completion of its accelerated 100-day plan to set up its operations (9 May 2022), <https://www.mediaoffice.ae/en/news/2022/May/09-05/UAE-National-Human-Rights-Institution> (last visited November 25, 2022).

⁶² Head of State Decision No. (22) of 2021 regarding representatives of government entities in the meetings of the Board of Trustees of the National Human Rights Institutions.

⁶³ Paris Principles, *supra* note 2.

⁶⁴ UAE Federal Law, *supra* note 1, article 21.

⁶⁵ *Ibid.*, article 7, 8.

⁶⁶ Emirates News Agency, President issues decisions on Board of Trustees of National Human Rights Institution (Sunday, 19 December 2021), <https://www.wam.ae/en/details/1395303004501> (last visited November 25, 2022).

legislative part of the UAE and civil society in this, which have been suggested as possible means of ensuring independence in the selection process.⁶⁷

Regarding the dismissal of members, the guidance stipulates that the founding legislation should specify the instances in which this can be pursued and limited to severe wrongdoing or other serious incapacities. Notably, the Office of the High Commissioner for Human Rights (OHCHR) states that the dismissal mechanism should be independent of the executive.⁶⁸ Whilst the UAE Law sets out the dismissal process, it stipulates that this can be done by virtue of a decision of the President, on the recommendation of the Board. It is advisable for the UAE to fully separate this decision-making from the executive. One may argue that an adequate safeguard is already in place since the Board of Trustees is tasked with making such a recommendation to the President. Yet, as examined below, the Board's current composition may also raise questions of independence and thus put such decision-making into question.

2.3 Composition and pluralism

The NHRI's autonomy begins by ensuring that the body itself comprises of independent members, able to effectively execute their human rights mandate. The Paris Principles stipulate that a 'pluralist representation' of society should be reflected in the body's composition.⁶⁹ The SCA expands on this, indicating that there are several ways to demonstrate pluralism in this context which would, at least from an accreditation point of view, meet the requirements. The clear route to meeting the standards would be to have different segments of society in the membership. Alternatively, it is also suggested that this can be achieved through pluralism in the appointment process, with diversity coming from the people electing the members; through ensuring cooperation with diverse societal groups; or through diversity in the staff, which then represent the different societal groups.⁷⁰

The UAE Federal Law indicates that the NHRI shall have 11 members 'from advisory and academic bodies, civil society institutions and those with technical and professional expertise, in their personal capacity, taking into account the appropriate representation of women'.⁷¹ Whilst reference is made to gender, no such reference is made to ethnic representation. Focusing on ethnic diversity is key in ensuring a pluralistic composition of the UAE NHRI, especially considering the particular demographics of the country. UAE citizens only make up around 10% of the total population, with more than 200 other nationalities residing in the country.⁷² The current composition of the NHRI's Board of Trustees, as per the Federal Law, reflects gender diversity, yet it does not appear to clearly meet requirements of ethnic, philosophical and religious diversity, ensuring full alignment with the Paris Principles.⁷³

Furthermore, considering the discussion above on GANHRI's priorities in terms of pluralism and awarding States an A status, whilst gender disparity may be overlooked, potential conflicts of interest due to members being former government officials or part-time government employees may lead to immediate preclusion from obtaining an A status. Therefore, the UAE should strive, not only for gender, ethnic and economic class representation but also representation by individuals, who will work in an individual capacity and not viewed as part of the government apparatus.

While working towards ensuring diversity in the composition of the Board of Trustees, the UAE should also provide clarity on the appointment process, as this may allow them to still meet the pluralism principle as accepted by GANHRI, if they demonstrate diversity in those involved in the selection process. As already noted, limited information exists on how the appointment was conducted in order to confirm this. Accordingly, going forward, it will be beneficial for the UAE to provide such clarity and ensure such diversity

⁶⁷ UNDP and UN OHCHR, *supra* note 17, at 248.

⁶⁸ UN OHCHR, *supra* note 15, at 42.

⁶⁹ Paris Principles, *supra* note 2, Principle B(1).

⁷⁰ ICC Sub-Committee On Accreditation *General Observations* (Geneva, June 2009), https://www.ihrec.ie/app/uploads/download/pdf/genera_observations_sca.pdf

⁷¹ UAE Federal Law, *supra* note 1, article 6.

⁷² United Arab Emirates Government Portal, Population and Demographic mix, <https://u.ae/en/information-and-services/social-affairs/preserving-the-emirati-national-identity/population-and-demographic-mix> (last visited November 25, 2022).

⁷³ SCA General Observations, *supra* note 52.

exists in the appointment process, particularly through the involvement of civil society and different societal groups.

2.4 Mandate and competence

When it comes to this principle, one needs to consider both the mandate's scope, and where its power derives from. Considering the latter first, it is held that this 'shall be clearly outlined in a constitutional or legislative text'.⁷⁴ This is key in enhancing the likelihood of such institution's permanency, as well as its independence.⁷⁵ However, affirming the latter would require more than simply looking at its founding document, since the legislative process and the involvement of the government of the day therein differs immensely from State to State.

Considering the UAE institution, this has been established by law. This is, at a first level, aligning with the objectives of this Principle, as laws in the UAE are passed by the FNC, considered to be the parliamentary body of the country, before being approved by the President and ratified by the Supreme Council.⁷⁶ The process is different to the issuing of a decree, which can simply be passed by the President and the Cabinet, without the involvement of the FNC. This is a welcome approach by the UAE, considering that many of the regional NHRIs have been established by an executive decree,⁷⁷ which would not satisfy the Paris Principles, bearing in mind the objective of independence as well as permanency of such a body.⁷⁸

In an effort to maintain the separation of powers principle in this legislative task, the FNC members are prohibited from holding, at the same time, a public office in the UAE, including ministerial portfolios.⁷⁹ Yet, a closer look at the legislative process of the UAE raises some questions on whether the founding law provides the NHRI with full independence from the executive. The Electoral College system established in 2006 has provided for each emirate to have its own electoral college with members equal to at least 300 times the number of seats allotted. These members are chosen by the Ruler of that Emirate, who also decides on the demographics of the voters. The members can then apply to run for the FNC.⁸⁰ The involvement of the Rulers in the composition of the colleges and thus also the pool of candidates indicates an overlap between the executive and legislative branch which may therefore not fully comply with the objective behind the Paris Principle discussed here. Having said that, the reality remains that, at least when it comes to the legislative process, it is difficult to find a single jurisdiction which has achieved a clear separation of powers between the executive and the legislative. It is, therefore, important to look at the scope of the law and the extent of powers given to the NHRI to assess its potential more thoroughly.

In terms of the mandate's scope, the Paris Principles note that the NHRI should be given as 'broad a mandate as possible'⁸¹ for both promoting and protecting human rights.⁸² Elaborating on this, the SCA notes that in terms of promoting, this includes functions such as 'education, training, advising, public outreach and advocacy'; whilst in terms of protecting, this includes actions such as 'monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling'.⁸³

The UAE Law seems to be taking on board this principle, reflected in the competences of the body's part therein. In terms of promotion, the mandate of the UAE NHRI refers specifically to nurturing a culture of human rights through various educational activities, as well as advising the federal and local government on the compatibility of proposed and exiting legislation with international human rights standards as per the commitments of the UAE through the various ratifications.⁸⁴ Yet, in fully meeting the objectives of promoting human rights through their mandate, States should rely on 'a progressive definition of human rights which

⁷⁴ Paris Principles, *supra* note 2, Principle A(2).

⁷⁵ SCA General Observations, *supra* note 52, at 5.

⁷⁶ United Arab Emirates Constitution, article 110.

⁷⁷ Turan Kayaoglou, *supra* note 5, at 13.

⁷⁸ SCA General Observations, *supra* note 52, at 5.

⁷⁹ United Arab Emirates Constitution, articles 70-71.

⁸⁰ The United Arab Emirates Government portal, About the UAE, The UAE Government, <https://u.ae/en/about-the-uae/the-uae-government/the-federal-national-council-> (last visited November 25, 2022).

⁸¹ Paris Principles, *supra* note 2, Principle A(2).

⁸² *Ibid.*, Principle A (1).

⁸³ SCA General Observations, *supra* note 52, at 7.

⁸⁴ UAE Federal Law, *supra* note 1, article 5.

includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights.⁸⁵ For the UAE, this should include ratifying the International Covenant on Civil and Political Rights (ICCPR)⁸⁶ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁸⁷ Delay in doing so will bring into question the institution's full alignment with the Paris Principle of mandate. Whilst the NHRI is at its infancy, the Chairperson of the body has stipulated that six main committees have been approved already to address specific aspects, including the Civil and Political Rights Committee, and the Economic, Social, Cultural and Environmental Rights Committee.⁸⁸ It remains to be seen what the particular committees will be tasked with, but this provides the perfect ground for them to push for such ratification.

Whilst the promotional mandate is, to a great extent, met in the UAE, the protection mandate is harder to fully meet, both due to the generally more interventionist steps required for this to be fulfilled by any NHRI, as well as due to the regional context in particular. It has been observed that many MENA NHRIs whilst having extensive promotional functions, lack in the protection responsibilities due to the political systems in place and the often wrong motivations behind the establishment of such institutions, such as appeasing international critics and controlling the human rights agenda.⁸⁹ Having said that, Article 5 of the UAE law possesses key attributes which, if implemented properly, could initiate efforts in actively protecting peoples' human rights and allowing them some recourse when such rights have been violated.

The Federal Law stipulates that the body is tasked with monitoring any human rights violations and reporting them to the Competent Authorities, as well as receiving individual complaints in accordance with the criteria set by the body and then referring those confirmed to the Authorities.⁹⁰ The latter is a particularly positive addition, bearing in mind that the Paris Principles accept that not all NHRIs may have the power to receive individual complaints.⁹¹ Yet this welcome addition, giving the body a so called 'quasi-jurisdictional competence',⁹² means that additional steps should be taken by the UAE to make this work.

In terms of the Complaints Procedure stipulated in the law, the Chairperson of the institution has explained that the Complaints, Monitoring and Field Visits Committee has been set up to look into the files and issues brought before it for review and assessment. Whilst acknowledging that the set-up of the sub-committees is still in its infancy, the specifics on how the institution will receive such complaints should be fully outlined. According to the Chairperson, the NHRI is in the process of launching a Complaints system for individuals both within and outside of the UAE, including a toll-free number to facilitate further interaction with the public.⁹³ The very fact that the Complaints Procedure is only now being developed should encourage the UAE to draft specific guidelines, including rules of procedure, relating to such reporting and investigations and for these to be accessible to the public. This is reflective of the relevant provision within the law that indicates that such complaints are to be managed as per the criteria set by the institution.⁹⁴ In outlining the specifics, the institution should, as per the OHCHR, address specifically three aspects; intake, investigation and the eventual decision.⁹⁵ If the intention is for victims to reach out to the body directly, as indicated in the law, then the procedure of lodging the complaint should be straightforward and accessible to all, regardless of socio-economic status and literacy levels.

Considering recurring reports on human rights violations in the UAE, it is clear that many relate to the exploitation of labour workers, who are often the most vulnerable in any society, due to their working

⁸⁵ SCA General Observations, *supra* note 52, at 7.

⁸⁶ *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171.

⁸⁷ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3.

⁸⁸ Emirates News Agency, *supra* note 60.

⁸⁹ Turan Kayaoglou, *supra* note 5, at 23.

⁹⁰ UAE Federal Law, *supra* note 1, article 5.

⁹¹ UNDP and UN OHCHR, *supra* note 17, at 2.

⁹² UNDP and UN OHCHR, *supra* note 17, at 21.

⁹³ ⁹³Emirates News Agency, UAE's National Human Rights Institution announces completion of its accelerated 100-day plan to set up its operations (9 May 2022), <https://www.mediaoffice.ae/en/news/2022/May/09-05/UAE-National-Human-Rights-Institution> (last visited November 25, 2022).

⁹⁴ UAE Federal Law, *supra* note 1, article 5 (8).

⁹⁵ UN OHCHR, *supra* note 15, at 81.

conditions and lack of access to the authorities.⁹⁶ Whilst this is not easy to rectify, potentially making the complaints mechanism outlined in the NHRI's mandate mute for the majority of human rights victims, the UAE should strive to find ways to enhance accessibility to these procedures both through its awareness mandate, as well as its inspection mandate, giving them the opportunity to come in contact with such potential victims. The latter, addressed below, should be supported by a power to initiate investigations, where human rights violations have been identified post-inspection.⁹⁷

Ensuring accessibility and clarity in lodging the complaint is key, yet this needs to be then followed by effective investigation and decision-making. The former requires the UAE NHRI to have clarity on its jurisdiction and powers of investigation. Many laws setting up NHRIs restrict the subject-matter jurisdiction, allowing it for example to only deal with complaints on civil and political and not social and economic rights.⁹⁸ This is not a restriction evident in the UAE law and, in the spirit of the Principles, it should maintain a broad mandate and allow for complaints on all human rights. To solidify this obligation, the UAE should start the process of ratifying the two UN International Covenants. Jurisdictional clarity and an expansive scope should also exist when it comes to object-matter jurisdiction, namely the ability to investigate the State, State organs and also the private sector when conducting public functions, as well as time jurisdiction, namely able to investigate both ongoing and past acts.⁹⁹

In terms of the ability to issue a decision after an investigation, as well as the enforceability of such a decision, the UAE Law is silent. Reference is made to a referral power to the Competent Authorities of those cases they deem appropriate,¹⁰⁰ yet this needs clarification on two fronts. First, on whether the NHRI is empowered to make decisions on some of the cases and refer others, which, it may not be in a position to fully address, or whether it only has a referral mandate, with no decision-making powers. If the former is the case, clarification is required on whether the NHRI can make recommendations on how to resolve the matter and/or take such remedies themselves. Additionally, clarification is required on who the Competent Authorities referred to in the law are. It is noted that this includes the federal and local government agencies. The UAE government, in line with the obligation under Article 13 of the UAE Law to cooperate with NHRI, should better stipulate who, within the government, will be specifically tasked with receiving such referrals and ensure the correct procedures are set in place to address these complaints and provide resolution to the victims.

The wider question then arises is what happens next and the extent to which the State is in a position, considering the UAE's political and judicial system, to efficiently address such cases. Whilst this is not the focus of this article, the NHRI can play a role in streamlining the procedure and keeping a check on the development of such cases and how they are addressed. Providing the government with a clear recommendation and steps for rectifying the violation is the first step in doing so. For example, if the particular case involves potential criminal prosecution, this should be stipulated therein. This will, of course, depend on the detailed mandate of the body, since it has been identified that whilst most NHRIs in the region outline some sort of complaints procedure, their decision-making and recommendation powers seem limited.¹⁰¹ The NHRI can also play a key role in supporting the government to prevent recurring violations. Where cases before them relate to lack of appropriate laws, regulations or policies, the NHRI can provide the relevant authorities with specific steps in addressing the systemic cause of such human rights violations.¹⁰²

As mentioned, the Complaints, Monitoring and Field Visits Committee is also tasked under the UAE Law with conducting field visits to penal, detention, labour and other facilities, as part of their monitoring and reporting mechanism. In terms of reporting, the Paris Principles require that the body has been vested with the power to provide such advice on their own initiative and not only at the request of the State.¹⁰³ It is unclear

⁹⁶ United States of America Department of State (2021), 2020 Country Reports on Human Rights Practices: United Arab Emirates, available at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/united-arab-emirates/> (last visited November 25, 2022).

⁹⁷ UN OHCHR, *supra* note 15, at 79.

⁹⁸ *Ibid.* at 33.

⁹⁹ UN OHCHR, *supra* note 15, at 50.

¹⁰⁰ UAE Federal Law, *supra* note 1, article 5(8).

¹⁰¹ Turan Kayaoglou, *supra* note 5, at 25.

¹⁰² UN OHCHR, *supra* note 15, at 90.

¹⁰³ UNDP and UN OHCHR, *supra* note 17, at 243.

from the law what the dynamic on this is, thus this should also be clarified. As to monitoring, this is a pivotal power, especially considering that human rights violations often occur against labour workers and others hidden due to the nature of their work or employers' intentions. In fully aligning with the Paris Principles, the UAE NHRI should be empowered to conduct impromptu visits without prior government authorisation, as well as speak to potential victims.¹⁰⁴ For example, it is key to be able to access detention centres and speak to detainees, as well as labour workers in labour camps.

Finally, in addition to cooperating with the relevant government authorities in addressing human rights violations and preventing future violations, the NHRI's mandate should, according to the Paris Principles, enable it to engage with both regional and international human rights bodies.¹⁰⁵ This is echoed in the UAE law, referring to the institution's role in supporting the preparation of national reports to be submitted to the UN bodies, as well as liaising with the international bodies.¹⁰⁶ The NHRI's Chairperson also reinstated this objective, noting that the institution is ready to work with both UN organisations, as well as civil society, such as Human Rights Watch and Amnesty International.¹⁰⁷ Their government-sanctioned status can become a key resource for such organisations, allowing them access to information which they would not be able to retrieve independently.¹⁰⁸

A significant element of the scope of the mandate of the UAE NHRI is the formulation of its agenda that will inform its strategic priorities. The next section provides some recommendations with regards to human rights themes that the UAE NHRI may wish to prioritise when setting up its Action Plan.

3. UAE Action Plan and Agenda priorities

3.1 Action Plan

In recent years the UAE has demonstrated a strong commitment to engage in a meaningful dialogue with international human rights bodies and to develop strategies to improve its human rights record. In this framework, it has ratified or/and acceded to a number of core international human rights treaties and International Labour Organisation (ILO) Conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (UNCRC) and the Convention on the Rights of Persons with Disabilities.¹⁰⁹ By doing so, it demonstrates its consent to be bound by the human rights obligations established by those instruments and, to this aim, engage with those Conventions' treaty bodies. At the same time, the UAE maintains a good communication with the Special Procedures, the UN Charter-based human rights monitoring bodies, most notably with the Special Rapporteurs on the sale of children, child prostitution, and child pornography and trafficking in persons, especially women and children, as well as participates in the United Nations Peer Review system (UPR). In

¹⁰⁴ UN OHCHR, *supra* note 15, at 123.

¹⁰⁵ Paris Principles, *supra* note 2, Principle A 3(5).

¹⁰⁶ UAE Federal Law, *supra* note 1, article 5(9).

¹⁰⁷ The National, 'UAE's human rights institute to be accessible to all members of the public, chairman says' <https://www.thenationalnews.com/uae/2022/01/13/uaes-human-rights-institute-to-be-accessible-to-all-members-of-the-public-chairman-says/> (last visited Apr. 21, 2022).

¹⁰⁸ Anne Smith, *supra* note 8, 909.

¹⁰⁹ International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (1965), entered into force 4 January 1969. The UAE ratified this Convention on 20 June 1974. Convention on the Elimination of All Forms of Discrimination Against Women, 1249 UNTS 13 (1979), entered into force 3 September 1981. The UAE ratified this Convention on 6 October 2004; Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85 (1984), entered into force 26 June 1987. The UAE ratified this Convention on 19 July 2012; Convention on the Rights of the Child, 1577 UNTS 3 (1989), entered into force 2 September 1990. The UAE ratified this Convention on 3 January 1997; Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (2006), entered into force 3 May 2008. The UAE ratified this Convention on 19 March 2010; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by UN General Assembly Resolution A/RES/54/263 of 25 May 2000, entered into force 18 January 2002. The UAE ratified this Convention on 2 March 2016; Forced Labour Convention, 1930 (No 29), 39 UNTS 55, adopted 28 June 1930, entered into force 1 May 1932. The UAE ratified this Convention on 27 May 1982; Abolition of Forced Labour Convention, 1957 (No 105), 320 UNTS 291, adopted 25 June 1957, entered into force 17 January 1959. The UAE ratified this Convention on 24 February 1997; Equal Remuneration Convention, 1951 (No 100), 165 UNTS 303, adopted 29 June 1951, entered into force 23 May 1953. The UAE ratified this Convention on 24 February 1997; Convention for the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No 182), 2133 UNTS 161, adopted 17 June 1999, entered into force 19 November 2000. The UAE ratified this Convention on 28 June 2001; Discrimination (Employment and Occupation) Convention, (No 111), 362 UNTS 31, adopted 26 June 1958, entered into force 15 June 1960. The UAE ratified this Convention on 28 June 2001.

the context of the latter, as noted, the UAE had expressed its support of the recommendations to establish a NHRI¹¹⁰ and has actively complied with them by setting up the UAE NHRI in December 2021.

The UAE's engagement with international human rights bodies has produced a rich body of recommendations that can support the UAE in its efforts to enhance the protection of human rights and the fulfilment of its international human rights obligations. This is valuable and can inform the agenda of the UAE NHRI. It is, therefore, key to explore the main areas that have emerged from the dialogue of the UAE with international human rights bodies. Those are important for the UAE to address and, as such, should be prioritised in the UAE NHRI action plan. Those areas include, most notably, the need for the UAE to become a State Party to core international human rights treaties and withdraw its reservations to the treaties that it is already a State party to; the improvement of conditions of detention; the respect of the right to fair trial; the protection of freedom of expression; the reform of the kafala system of sponsorship; the protection of women's rights, particularly in the context of inheritance and divorce; and the fulfilment of the right to education.

3.2 Agenda priorities

A. *Enhancing the UAE's engagement with fundamental human rights instruments*

As mentioned, the UAE has demonstrated a clear intention to engage with the UN human rights system by becoming a State Party to a number of fundamental human rights treaties. However, as noted, it has still not ratified some core instruments that are extremely important for the enhancement of its human rights record.

The ICCPR¹¹¹ and the ICESCR¹¹² give legal voice to the Universal Declaration of Human Rights and, along with the latter, are collectively referred to as the International Bill of Human Rights. Being the cornerstone of the UN human rights system, those two instruments enshrine the most fundamental of human rights, some of them being recognised as International Customary Law.¹¹³ Therefore, States Non-Parties to those two treaties, currently ratified by 173 and 171 States respectively, are inevitably positioning themselves at the periphery of the human rights system.

Considering the indivisibility of human rights, the treaty bodies monitoring the implementation of the Conventions that the UAE is party to have repeatedly urged it to ratify/accede to the International instruments that it has not ratified,¹¹⁴ particularly the two Covenants, but also other core treaties, whose scope is extremely relevant to the UAE. These include the Convention on the Protection of All Persons from Enforced Disappearance,¹¹⁵ the International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families,¹¹⁶ and the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict.¹¹⁷ Recognisably, ratifying the two Covenants and the other treaties will require radical reforms to be undertaken, such as establishing the right of workers to organise and bargain collectively, protecting the freedom of expression, and taking measures to ensure gender equality. However, the recent legislative reforms demonstrate the clear determination of the UAE to conform with international human rights standards. This determination and commitment can be greatly facilitated by the work of the newly appointed NHRI.

¹¹⁰UN Human Rights Council (2018), Report of the Working Group on the Universal Periodic Review: The United Arab Emirates Views on Conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/38/14/Add.1, para. 5.

¹¹¹ ICCPR, *supra* note 86.

¹¹² ICESCR, *supra* note 87.

¹¹³ WILLIAM SCHABAS, *THE CUSTOMARY INTERNATIONAL LAW OF HUMAN RIGHTS* (2021) Oxford University Press; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, ICJ Reports 1971, 16, Separate Opinion of Vice-President Ammoun, 76.

¹¹⁴ Committee on the Elimination of Racial Discrimination (2017), Concluding Observations UAE, CERD/C/ARE/CO/18-21; UN Human Rights Council (2018), Report of the Working Group on the Universal Periodic Review: The United Arab Emirates, A/HRC/38/14, paras. 141.28, 141.17, 141.18, 141.32, 141.8, 141.9, 141.16, 141.1, 141.2, 141.3, 141.4, 141.5, 141.29, 141.30, 141.31, 141.6, 141.7, 141.20, 141.25, 141.26, 141.27.

¹¹⁵ *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, A/RES/61/177, 2716 UNTS 3.

¹¹⁶ *International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families*, 18 December 1990, A/RES/45/158, 2220 UNTS 93.

¹¹⁷ *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, 25 May 2000, A/RES/54/263, 2173 UNTS 222.

In the same vein, the UAE has been called to withdraw its existing reservations in human rights treaties.¹¹⁸ Similarly to most Islamic States, the UAE has made reservations in some human rights treaties that it is a State Party to, excluding the application of fundamental treaty provisions that impose State obligations, which it deems to be in conflict with Sharia law. Examples of such provisions include CEDAW 2(f) on the abolition of practices, laws and traditions that constitute discrimination against women, CEDAW 16 on equality between men and women in marriage and family relations, UNCRC 14 on freedom of religion, UNCRC 7 on the right to birth registration and UNCAT 1 on the definition of torture and inhumane and degrading treatment or punishment. The UAE has been criticised for those reservations on the basis that, to a great extent, they are of general and indeterminate scope, and, as such, are perceived to be incompatible with the object and purpose of the treaties.¹¹⁹ It is important to note that the UAE reservations have been objected to by 28 States Parties to the Conventions (12 to the CEDAW, 2 to the CRC and 10 to UNCAT). There is no doubt that the UAE's NHRI can contribute to a great extent in supporting the government to set up policies and adopt measures that will allow it to withdraw those reservations and fulfil its obligations under the treaties in full.

B. Protecting freedom of expression and the right to a fair trial and improving the criminal justice system

Freedom of expression is guaranteed by Article 30 of the UAE Constitution for both individuals and the press. However, UAE law prohibits criticism of the government and speech that creates or fosters social unrest. Whilst important to pursue political stability and social peace, striking a balance between those legitimate aims and the right to freedom of expression is of primary importance. Laws, such as the 2012 UAE Cybercrime Law, the 1980 Publications and Publishing Law, and other measures seem to impose severe restrictions on free speech, including government control of the press, censorship of media content and excessive scrutiny of social media posts. Such legislative and policy measures would have to be reviewed by an independent authority mandated to monitor human rights to ensure that they make enough room for pluralism and tolerance. These are fundamental principles promoted by the UAE leadership and necessary elements of a society that fosters intercultural dialogue and understanding and pursues innovation and entrepreneurship. It is important to note that the UAE has expressed its support to the UPR recommendations calling the State to guarantee the full respect and protection of freedom of expression.¹²⁰ To this aim, the UAE NHRI can play an important role in promoting a strong and open civil society with strong citizenship values.

At the same time, ensuring the independence of the judiciary, respecting the right to a fair trial, improving conditions of detention, abolishing practices of arbitrary arrests and lengthy pre-trial detentions, as well as monitoring and investigating allegations of relevant human rights violations seem to be areas to which the UAE NHRI can make a valuable contribution. Specific recommendations on these issues have been addressed to the UAE in the context of the latest UN UPR process in 2018.¹²¹ In her 2015 Report after her visit to the UAE, the Special Rapporteur on the independence of judges and lawyers, noted significant concerns and made important recommendations in this area.¹²² Most crucially, the report notes that, despite commendable progress, access to and delivery of justice face notable challenges, which inevitably affects the respect of human rights.¹²³ The principle of separation of powers is neither enshrined in the Constitution nor protected through legal and administrative measures. As a result, the independence of judges is not guaranteed.¹²⁴

¹¹⁸ Committee on the Elimination of Racial Discrimination (2017), Concluding Observations UAE, CERD/C/ARE/CO/18-21; UN Human Rights Council (2018), Report of the Working Group on the Universal Periodic Review: The United Arab Emirates, A/HRC/38/14, paras. 141.45, 141.46, 141.44, 141.47, 141.42, 141.43.

¹¹⁹ Committee on the Elimination of Discrimination against Women (2015), Concluding Observations UAE, CEDAW/C/ARE/CO/2-3; Committee on the Rights of the Child (2015), Concluding Observations UAE, CRC/C/ARE/CO/2.

¹²⁰ UN Human Rights Council (2018), Report of the Working Group on the Universal Periodic Review: The United Arab Emirates Views on Conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/38/14/Add.1, para. 5.

¹²¹ UN Human Rights Council (2018), Report of the Working Group on the Universal Periodic Review: The United Arab Emirates, A/HRC/38/14, paras. 141.133, 141.134, 141.135, 141.141, 141.127, 141.128, 141.129, 141.111, 141.126, 141.143, 141.142, 141.140, 141.130, 141.131.

¹²² UN Human Rights Council (2015), Report of the Special Rapporteur on the independence of judges and lawyers, *supra* note 4.

¹²³ *Ibid*, para. 86.

¹²⁴ *Ibid*, paras. 85, 96, 97, 98.

Moreover, the report stresses that violations of the right to a fair trial and due process are not investigated and addressed effectively, which reflects important shortcomings relating to the independence, impartiality, transparency, competency, and efficiency of the justice system.¹²⁵

The UAE Constitution explicitly prohibits arbitrary arrest and detention in Article 26. Nevertheless, it has been reported that government authorities have undertaken arrests without charge. Individuals may still be held in custody for extended periods of time without charge or a preliminary judicial hearing, and without access to lawyers and family members. This seems to be happening in cases of individuals arrested for political or security reasons, which seem to be treated differently than other prisoners. Suspects for terrorism-related cases may be held for up to six months without a charge. There have also been reports about mistreatment of detainees that remain unaddressed.¹²⁶

Additionally, penalties and punishments imposed in case of breaches of local laws would have to be reviewed to ensure that they are compatible with minimum human rights standards and respect for human dignity. It has been reported, for example, that corporal punishment is still imposed as a punishment by Sharia courts for breaches of laws, such as adult prostitution, consensual premarital sex, pregnancy outside marriage, defamation of character and drug or alcohol charges.¹²⁷

Furthermore, respecting and fulfilling the right to a fair trial is an equally important area of focus. In relation to the fulfilment of the right to a fair trial, it is important to ensure the independence of the judiciary and its freedom from political interference. Reports about government review of court decisions and discrimination of treatment of non-citizens and women during the judicial process need to be scrutinised. Similarly, it is imperative to ensure the protection of the rights of the defendants, such as their access to legal representation and an interpreter throughout the investigation, prosecution, and trial.

C. Improving the protection of women's rights, effectively addressing violence against women and reforming the Kafala system

The UAE has made significant process in empowering women. However, there is still a need to take action at the legal and policy level, aiming at achieving *de jure* and *de facto* gender equality. The UAE has been called to explicitly embed equality between women and men in its Constitution and take specific measures to abolish laws, practices and traditions that directly or indirectly inhibit gender equality.¹²⁸ Currently, structural reforms are required at the legislative, policy and social level, in order to combat discrimination against women and to protect the rights of women and girls in the public and private sphere.

It is essential to combat gender stereotypes that focus on the role of women as mothers and housewives, as well as laws that impose or allow women's subordination to men (their fathers, husbands, and sometimes even their sons). These undermine women's full development and their capacity to reach their full potential, make free choices and lead meaningful lives. Several provisions in the Personal Status Law, mainly deriving from a strict interpretation of Sharia, discriminate against women and girls in family relations. The principle of male guardianship is one such example, as well as the practice of dowry, the obligation imposed on a woman to obey her husband, including sexually, and the limited grounds available to women to seek divorce while men may unilaterally ask for divorce for any reason. The limited rights of women to inheritance and custody over their children are equally problematic. Furthermore, although the minimum legal age of marriage is clearly set at 18 for both men and women, in practice, many judges are allowing exceptions and derogations for girls who have reached puberty, thus opening the door for forced under-aged marriages, which undermine women's personal and professional development. Similarly, polygamy, which is

¹²⁵ Ibid, paras. 86, 87.

¹²⁶ United States of America Department of State, (2021), *supra* note 91.

¹²⁷ Ibid.

¹²⁸ Committee on the Elimination of Discrimination against Women (2015), Concluding Observations UAE, CEDAW/C/ARE/CO/2-3; UN Human Rights Council (2018), Report of the Working Group on the Universal Periodic Review: The United Arab Emirates, A/HRC/38/14, paras. 141.177, 141.178, 141.176, 141.180, 141.184, 141.185, 141.187, 141.186, 141.182, 141.183, 141.167, 141.167, 141.175, 141.162, 141.163, 141.164, 141.165, 141.166, 141.167, 141.189, 141.188, 141.189, 141.168, 141.169, 141.172, 141.174, 141.170, 141.171, 141.192, 141.181.

incompatible with human dignity and infringes the rights and freedoms of women,¹²⁹ is still permitted under UAE law.

Another area that merits consideration is combating violence against women. Despite the commendable efforts of the UAE government to raise awareness about the phenomenon and protect women victims of violence, including victims of trafficking, domestic violence and sexual abuse, violence against women is not being addressed effectively. The Penal Code still allows men to use violence to discipline their wives and children and women victims' complaints are not dealt with appropriately, mainly due to lack of effective investigations, prosecutions, and punishments of relevant offenders.

Crucially, the UAE has been urged to abolish the system of sponsorship (kafala), whereby the legal status of foreign workers is attached to their employer, who is 'sponsoring' their visa and guarantees their employment permit.¹³⁰ Kafala has received intense criticism, including from treaty bodies and other international human rights monitoring mechanisms, for severely restricting the mobility of workers and for being 'inherently problematic', creating 'an unequal power dynamic between the employer and the worker'.¹³¹ The system fosters an environment of abuse and exploitation against women, especially domestic workers.

The recent legal reforms, especially those revising the Personal Status Law and the Penal Code, announced by the UAE government in 2020 and 2021, are without a doubt in the right direction, as they are abolishing laws and practices that are discriminatory against women and they are introducing liberal reforms to criminal law.

The amendments of the Personal Status Law¹³² brought about by Federal Decrees adopted in 2020 allow expatriates to have their marriage, as well as any ensuing divorce and financial elements, including division of assets and alimony, governed by the law of the place where the marriage was performed. In the Emirate of Dubai, non-Emiratis are allowed to apply the laws of their country of nationality to their family affairs, including marriage, divorce and inheritance. At the same time, Abu Dhabi adopted Law 14 of 2021 in November 2021, which introduced a personal status law for non-Muslim foreigners. The new law accommodated the concepts of civil marriage, no-fault divorce and joint child custody for non-Muslim residents, allowing them to opt-out from the application of Sharia in marriage, divorce, custody and inheritance. Furthermore, Federal Decree No 15 of 2020¹³³ amended a range of provisions of the UAE Penal code, including the decriminalization of alcohol possession and consumption, the introduction of strict punishments for sexual violence and rape and the decriminalization of cohabitation.

It remains to be evaluated how the legislative reforms are implemented in practice by judicial and other authorities. The newly established NHRI can be an important driver of further law and policy reform that will address existing issues effectively and will enhance the UAE's compliance with international human rights standards.

¹²⁹ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices (2014)

¹³⁰ Azfar Khan and Hélène Harroff-Tavel, *Reforming the Kafala: Challenges and Opportunities in Moving Forward*, 20 ASIAN & PACIFIC MIGRATION JOURNAL (3&4), 293-313 (2011).

Nicholas McGeehan, *Trafficking in persons or state sanctioned exploitation? The false narrative of migrant workers in the United Arab Emirates*, (2012) 26 IMMIGRATION, ASYLUM AND NATIONALITY LAW 1, 29-30 (2012).

¹³¹ Hélène Harroff-Tavel and Alix Nasri, *Tricked and Trapped: Human Trafficking in the Middle East*, ILO (2013), available at: https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_211214.pdf; at 14. See inter alia Report of the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, Sigma Huda, Bahrain, Oman, Qatar (2007), A/HRC/4/23/Add.2 (SR THB Bahrain, Oman, Qatar 2007), paras.64, 91; ILO, *Giving globalization a human face: General survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization*, 2008, Report III(1B), International Labour Conference, 101st Session, Geneva, 2012.

¹³² Federal Law 28 of 2005 Concerning Personal Status, amended by virtue of Federal Decree-Law No 8 of 29/08/2019, Federal Decree-Law No 5 of 25/08/2020 and Federal Decree-Law No 29 of 29/09/2020.

¹³³ Federal Decree No 15 of 2020 amending certain provisions of the Federal Law No 3 of 1987 Concerning the Penal Code.

Conclusion

The establishment of the UAE NHRI is without a doubt one of the most awaited developments in the area of human rights law in the UAE, and it reflects the country's commitment to engage positively with international human rights mechanisms and improve the respect, promotion and protection of human rights for all individuals under its jurisdiction.

The Paris Principles set universally accepted minimum standards relating to the mandate, independence, pluralism, and effectiveness of NHRIs and provide invaluable guidance to governments for the establishment and operational framework of such institutions. The Principles should be viewed as a solid ground from which a sustainable and efficient system on human rights can flourish, and not as the ultimate goal in legitimising such human rights bodies and achieving international acceptance for human rights adherence. In the UAE context specifically, one must also bear in mind the political reality of the country and the limitations that this may give rise to on the mandate and capacity of a NHRI, as aforementioned. This does not mean that the UAE should not strive to achieve the objectives outlined in the Paris Principles. However, it may require different structures than the ones currently established for this institution in order to make this efficient.

Taking into account lessons learned from established NHRIs in the MENA region, the challenges faced in terms of achieving an A Status accreditation, as well as existing good practices, the UAE has the opportunity to develop an effective NHRI. To this aim, it must ensure the institution's independence from the government, as well as the pluralism of its composition. Most crucially, the UAE should strive to broaden the NHRI's mandate and clarify its functions, especially in relation to its monitoring function. Creating constructive channels of communication with civil society stakeholders representing different social, economic, political and cultural interests is essential in this process. So is setting appropriate agenda priorities, as those emerge from the constructive dialogue that the UAE has maintained over the years with international human rights mechanisms. Enhancing its engagement with international human rights instruments and bodies, protecting the freedom of speech, and enhancing the protection of women's rights should top the strategic agenda of the newly established institution.