

INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Geneva 22 to 26 October 2007

Report and Recommendations of the Sub-Committee on Accreditation

1. BACKGROUND

- 1.1. In accordance with the Rules of Procedure of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC), the Sub-Committee on Accreditation (the Sub-Committee) has the mandate to consider and review applications for accreditation received by the National Institutions Unit of the Office of the High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat, and to make recommendations to the ICC members with regard to the compliance of applicant institutions with the Paris Principles. The Sub-Committee mandate is to assess compliance with the Paris Principles in law and in practice, not to conduct an overall evaluation of performance of NHRIs.
- 1.2. In accordance with the Sub-Committee Rules of Procedure, the Sub-Committee is composed of representatives of each region: the NHRIs of Canada for the Americas (chair), Rwanda for Africa, the Republic of Korea for Asia Pacific and Germany for Europe. The Sub-Committee convened from 22 to 26 October 2007. OHCHR participated as a permanent observer and in its capacity as ICC Secretariat.
- 1.3. Pursuant to article 3(c) of the Rules of Procedure, the Sub-Committee considered applications for re-accreditation from, Colombia, Denmark, France, Greece, Honduras, Jordan, Morocco, Philippines, Poland, Portugal, Rwanda, Senegal, South Africa, Spain, and Togo. The circumstances of Sweden were also considered.
- 1.4. Pursuant to article 3(c) of the Rules of Procedure, the Sub-Committee also considered the new applications from Afghanistan, Georgia, and Slovakia.
- 1.5. Pursuant to article 3(g) of the Rules of Procedure, the Sub-Committee undertook a review of the accreditation status of the NHRIs of Nepal, Nigeria and Sri Lanka.
- 1.6. In accordance with the Paris Principles and the ICC Sub-Committee Rules of Procedure, the different classifications for accreditation used by the Committee are:
 - A: Compliance with the Paris Principles;
 - A(R): Accreditation with reserve – The Sub-Committee notes that it has de facto discontinued the use of the A(R) classification, pending elimination of this category by the ICC;
 - B: Observer status – Not fully in compliance with the Paris Principles or insufficient information provided to make a determination;
 - C: Non-compliant with the Paris Principles.
- 1.7. Following the practice commenced at the meeting of the Sub-Committee in October 2006, the Sub-Committee continued to make General Observations in relation to accreditation. These General Observations have been formulated on common or important interpretative issues

and are intended to be guidelines for members on the application process or for the implementation of the Paris Principles. The list of General Observations is not exhaustive and will continue to evolve as the Sub-Committee further reviews other applications. The list of General Observations adopted by the ICC in October 2006 is attached in Annex 1 to this report. The General Observations developed by the Sub-Committee at its March 2007 session (attached in Annex 2) and October 2007 session (attached in Annex 3) have yet to be formally adopted by the ICC.

Recommendation: The Sub-Committee recommends the adoption of General Observations attached in Annex 2 and Annex 3.

- 1.8. The Sub-Committee notes that General Observations are intended to assist NHRIs in enhancing their compliance with the Paris Principles.
- 1.9. The Sub-Committee notes that when specific concerns are raised in its report in relation to re-accreditation, new accreditation and review, NHRIs are required to address these concerns in any subsequent application or review.
- 1.10. The issues of the Chair of the Sub-Committee were also discussed. The NHRI of Germany was elected as Chair for its next session.
- 1.11. In accordance with the ICC Rules of Procedure, the Sub-Committee encourages all accredited NHRIs to advise the ICC at the first available opportunity of circumstances that would negatively affect their ability to meet the standards and obligations of the Paris Principles.
- 1.12. The Sub-Committee would like to acknowledge the high degree of support and professionalism of the staff of the ICC Secretariat (OHCHR National Institutions Unit) which has been essential for the Sub-Committee to conduct its activities.

2. ADOPTION OF NEW PROCEDURES

- 2.1. As indicated in the Sub-Committee report of its session in March 2007 adopted by the ICC, the recommendations from the October 2007 session of the Sub-Committee will be communicated to all ICC voting members, and those members will be asked to adopt them by email within 10 days (Paragraph 1.10 of the March 2007 report).
- 2.2. In its October 2007 session, the Sub-Committee agreed that in order to ensure a transparent process, the results of the accreditation review will first be communicated to the affected NHRI with a time frame of 30 days to respond to the issues addressed by the Sub-Committee members. At the expiration of the 30 days, the report will be sent to the ICC voting members. Any response obtained from NHRIs will be attached to the report sent to the ICC. Any recommendation not adopted by email will be considered by the ICC at its next session.
- 2.3. When the Sub-Committee is to review particular issues within a specified timeframe, the outcome of the review may affect the accreditation status.
- 2.4. The Chair of the Sub-Committee introduced the "Decision Paper on the Review of ICC Accreditation Procedures for National Human Rights Institutions" and "the Appeal or Review of Accreditation and Re-accreditation Decisions: An Options Paper". The Sub-Committee members agreed that the two papers would be merged and sent by the ICC Chair as a paper from the Sub-Committee and the Working Group. It was noted that the revised papers will be

reviewed at the ICC expanded Bureau meeting on 12-14 December 2007 for further input in order to present a paper to the ICC meeting in March 2008 for its finalization and for adoption by the ICC membership at its international conference in Kenya in 2008.

- 2.5. The Sub-Committee agreed that if further clarification was requested during its deliberations, it would make conference calls with relevant NHRIs. This new procedure was applied in a few cases during the present session of the Sub-Committee. Prior to the meeting all concerned NHRIs were informed about this new way of seeking clarifications and were requested to provide a name and phone number in each NHRI in case the Sub-Committee needed to contact the Institution. In addition, desk officers and, as appropriate, field offices were available to the Sub-Committee members to introduce individual NHRIs considered by the Sub-Committee and provide further information, as needed.

3. SPECIFIC RECOMMENDATIONS – RE-ACCREDITATION APPLICATIONS

3.1. Rwanda: National Commission for Human Rights

The Rwandan representative recused herself in accordance with standard practice when the Sub-Committee reviewed this application.

Recommendation: The Sub-Committee recommends that the Commission be accredited **status A**.

The Sub-Committee refers to the General Observation on the “Selection and appointment of the governing body”, in particular sub-paragraphs a), b) and c).

3.2. Colombia: Defensoría del Pueblo

Recommendation: The Sub-Committee recommends that the Defensoria del Pueblo be accredited **status A**.

The Sub-Committee notes the following:

- 1) It refers to the General Observation on the “Selection and appointment of the governing body”, in particular sub-paragraphs a), b), and c).
- 2) It refers to the General Observation on “Ensuring Pluralism” with respect to the composition of the staff.
- 3) It refers to the General Observation on “Interaction with the International Human Rights System”, in particular with regard to engagement with the United Nations Human Rights Treaty Bodies, the Human Rights Council, with the ICC and the OHCHR office in Colombia.
- 4) It refers to the General Observation on “Adequate Funding”, in particular with regard to the critical importance for the State to provide sufficient resources when an NHRI is requested to address additional tasks - such as a demobilisation process.

3.3. Denmark: Danish Institute for Human Rights

Recommendation: The Sub-Committee recommends that the Danish Institute be accredited **status A**.

The Sub-Committee notes the following:

- 1) While appreciating the international engagement of the NHRI, the Sub-Committee notes that 9% of the budget of the NHRI comes from the State and stresses the importance of ensuring

adequate funding in a sustainable manner to address core domestic responsibilities and activities.

- 2) It refers to the General Observation on “Ensuring Pluralism” in the composition of the governing bodies.
- 3) It notes the importance for the Danish Institution on Human Rights to have a legal mandate to issue reports or be accountable for its activities to the Parliament.
- 4) It refers to the General Observation on the “Selection and appointment of the governing body”, in particular sub-paragraphs b), c), and d).

3.4. France: Commission National Consultative des Droits de l’Homme

Recommendation: The Sub-Committee recommends that the Commission be accredited **status A**.

The Sub-Committee notes with satisfaction the adoption of the law and the decree to improve the compliance of the NHRI with the Paris Principles.

However, the Sub-Committee notes the following:

- 1) It refers to the General Observation on the “Selection and appointment of the governing body”, in particular the continuous involvement of the Prime Minister office in relevant issues related to the Commission.
- 2) It refers to the General Observation on “Adequate funding”, in particular with regard to financial autonomy and to enable the NHRI to have its own staff and premises.
- 3) It refers to the General Observation on “Full time members”.

3.5. Greece: National Commission for Human Rights

Recommendation: The Sub-Committee recommends that the Commission be accredited **status A**.

The Sub-Committee expresses concern regarding adequate funding, in particular with regard to the process for the approval of core functions and to recruit staff.

The Sub-Committee will again consider this issue at its October 2009 session.

The Sub-Committee also notes the need for the NHRI to provide for adequate resources for staff, and for sufficient staffing. The Sub-Committee refers to its General Observation on “Full time members”.

3.6. Honduras: Comisionado Nacional de Derechos Humanos

Recommendation: The Sub-Committee recommends that the Comisionado be accredited **status A**.

The Sub-Committee welcomes the provisions in the legal documents referring to access to military personnel and premises and the obligations for these to answer the queries from the NHRI.

The Sub-Committee notes the following:

- 1) It refers to the General Observation on “Ensuring Pluralism”, in particular the need to avoid eligibility criteria that are too restrictive.
- 2) It refers to the General Observation on “Interaction with the International Human Rights System” and to encourage the NHRI to engage with the regional and international human

rights system, in particular the Human Rights Council, the UN human rights Treaty Bodies and the ICC.

3.7. Jordan: National Centre for Human Rights

Recommendation: The Sub-Committee recommends that the Centre be accredited **status A**.

The Sub-Committee notes that the jurisdiction of the NHRI includes non-citizens.

The Sub-Committee notes the following concerns:

- 1) It refers to the General Observation on “Selection and appointment of the governing body”, in particular with regard to the need to ensure a transparent and open selection of candidates;
- 2) It refers to the General Observation on “Ensuring Pluralism”, especially with respect to engagement with civil society;
- 3) It refers to the General Observation on “Adequate Funding”, in particular the need to ensuring financial autonomy of the NHRI to enable it to achieve its mandate throughout Jordan;
- 4) It refers to the General Observation on “Encouraging ratification or accession to international human rights instruments”, including the encouraging of removal of reservations.

The Sub-Committee will again consider these issues at its October 2010 session.

The Sub-Committee also refers to the General Observation on “Interaction with the International Human Rights System” to encourage the NHRI to engage with the regional and international human rights system and in particular the Human Rights Council, the Treaty Bodies and the ICC.

In addition, the Sub-Committee encourages the NHRI to adopt standard procedures to address individual complaints based on best practices and to reinforce its existing complaint handling procedure.

3.8. Morocco: Conseil Consultatif des Droits de l’Homme

Recommendation: The Sub-Committee recommends that the Conseil be accredited **status A**.

The Sub-Committee notes the following concerns:

- 1) It highlights the importance of establishing an NHRI on the grounds of a constitutional or legislative text and therefore the need to translate the 2001 Dahir into a constitutional or legislative text adopted by the Parliament.
- 2) It stresses the importance of granting the independence of the NHRI both in its enabling legislation and in practice.
- 3) It refers to the General Observation on “Selection and Appointment of the Governing Body”, in particular sub-paragraph b).
- 4) It refers to the General Observation on “Adequate funding” and notes the reduction in the budget of the NHRI.
- 5) It refers to the General Observation on “Immunity”, in particular the importance of clearly indicating the requisites for removal or dismissal of the members of an NHRI.

- 6) It stresses the importance for the NHRI to ensure its effectiveness in fulfilling its tasks in particular with regard to the tasks assigned by the Equity and Reconciliation Commission (ERC) to the NHRI.
- 7) It refers to the General Observation on “Government representatives on National Institutions”, in particular the importance for representatives of government departments to act in an advisory capacity as required by the Paris Principles.

The Sub-Committee will again consider these issues at its October 2010 session.

The Sub-Committee acknowledges the NHRI has undertaken the practice of handling complaints and notes the importance of a specific legal mandate.

3.9. Philippines: Commission on Human Rights

Recommendation: The Sub-Committee recommends that the Commission be accredited **status A**.

The Sub-Committee refers to the General Observations on “Selection and appointment of the governing body”, in particular sub-paragraphs b) and d), and “Ensuring pluralism”. It encourages the NHRI to strengthen its engagement with civil society organizations.

The Sub-Committee acknowledges that the NHRI had not, as erroneously stated in the March 2007 session of the ICC, made any reference to “Standing orders” in the documentation provided.

3.10. Poland: Commissioner for Civil Rights Protection

Recommendation: The Sub-Committee recommends that the Commissioner be accredited **status A**.

The Sub-Committee notes the following:

- 1) It refers to the General Observation on “Selection and appointment of the governing body”. The Sub-Committee notes with concern that one of the positions required by law, namely that of deputy commissioner, remains vacant.
- 2) It refers to the General Observation on “Human rights mandate”, in particular the need to include the promotion of human rights as part of its core mandate, including human rights education.
- 3) It refers to the General Observation on “Interaction with the International Human Rights System” to encourage the NHRI to engage with the regional and international human rights system and in particular the Human Rights Council, the Treaty Bodies and the ICC.

3.11. Portugal: Provedor de Justica

Recommendation: The Sub-Committee recommends that the Provedor be accredited **status A**.

The Sub-Committee refers to the General Observation on “Interaction with the International Human Rights System” to encourage the NHRI to engage with the regional and international human rights system and in particular the Human Rights Council, the Treaty Bodies and the ICC.

3.12. Senegal: Comité Senegalais des Droits de l'Homme

Recommendation: The Sub-Committee recommends that the Comité be accredited **status A**.

The Sub-Committee notes the following concerns:

- 1) It refers to the General Observation on “Adequate funding”, in particular regarding the need for an NHRI to have complete financial autonomy over its budget to fulfil its mandate.
- 2) It refers to the General Observation on “Full time members”.
- 3) It refers to the General Observation on “Staff of an NHRI”, in particular to empower the NHRI to appoint its own staff.

The Sub-Committee will again consider these issues at its October 2010 session.

3.13. South Africa: Human Rights Commission

Recommendation: The Sub-Committee recommends that the Commission be accredited **status A**.

The Sub-Committee notes the following:

- 1) It refers to the General Observation on “Selection and appointment of the governing body”, in particular the fact that important provisions on appointment procedures and grounds of removal of commissioners were not transferred from the interim Constitution to the current Constitution, although some provisions in the Human Rights Commission Act refer to the interim Constitution.
- 2) It refers to the General Observation on “Ensuring pluralism”.
- 3) The NHRI has not met the legal requirement to appoint a minimum of 5 full-time commissioners, as required by the Human Rights Commission Act.

3.14. Spain: Defensoría del Pueblo

Recommendation: The Sub-Committee recommends that the Defensoría be accredited **status A**.

The Sub-Committee notes the following:

- 1) It refers to the General Observation on “Human rights mandate”, in particular the importance of having a legal reference in the mandate to promote human rights and address human rights education.
- 2) It refers to the General Observation on “Interaction with the International Human Rights System” to encourage the NHRI to engage with the regional and international human rights system and in particular the Human Rights Council, the Treaty Bodies and the ICC.

3.15. Togo: Commission Nationale des Droits de l'Homme

Recommendation: The Sub-Committee recommends that the Commission be accredited **status A**.

3.16. Sweden

The Sub-Committee notes that the Ombudsman of Sweden was scheduled for re-accreditation at its current session. The Sub-Committee acknowledges that the NHRI has withdrawn its application for re-accreditation on the basis of an ongoing effort to merge all existing specialized Ombuds institutions. However, withdrawing an application for re-accreditation does not stop the re-accreditation process agreed upon.

Recommendation: The Sub-Committee recommends that consideration of the application of the NHRI from Sweden **be deferred** to the next Sub-Committee session.

The Sub-Committee refers to the General Observation on “Deferral of re-accreditation”.

4. SPECIFIC RECOMMENDATIONS – NEW ACCREDITATION APPLICATIONS

4.1. Afghanistan: Independent Human Rights Commission

Recommendation: The Sub-Committee recommends that the Commission be accredited **status A**.

The Sub-Committee notes the following concerns:

- 1) It refers to the General Observation on “Adequate Funding”, in particular that funding from external sources, such as from donors or development partners, should not compose the core funding of the NHRI as it is the responsibility of the State to ensure the NHRI’s minimum budget which allows it to operate in the fulfilment of its mandate.
- 2) It refers to the Paris Principles on “Composition and guarantees of independence and pluralism”, in particular that a stable mandate for members of NHRIs be established with a specific duration.
- 3) It stresses the need for pending amendments to the AIHRC law to be in conformity with international standards and the Paris Principles and that they not be applied retroactively, to ensure the AIHRC’s independence and effectiveness are preserved.

The Sub-Committee will again consider these issues at its October 2008 session.

4.2. Georgia: Public Defender’s Office

Recommendation: The Sub-Committee recommends that the Public Defender’s Office be accredited **status A**.

The Sub-Committee refers to the General Observation on “Adequate funding”, in particular sub-paragraphs a) and b).

4.3. Slovakia: National Centre for Human Rights

Recommendation: The Sub-Committee recommends that the Centre be accredited **status B**.

The Sub-Committee notes that it has reviewed the application of the Centre and considers that its human rights mandate does not fully meet the requirements of the Paris Principles.

The Sub-Committee notes the following:

- 1) It refers to the General Observation on “Human rights mandate”, in particular a broad mandate to protect human rights;

- 2) It refers to the Paris Principle on “Competence and responsibilities”, in particular sub-paragraphs 3 a) which states inter alia as follows “To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights”; 3 b) “To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation”; and 3 c) “To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation”;
- 3) It refers to the Paris Principles on “Composition and guarantees of independence and pluralism”;
- 4) It refers to the Paris Principle on “Methods of operation”, in particular d) “Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened”;
- 5) It refers to the General Observation on “Adequate funding”, in particular financial systems should be such that the NHRI has complete financial autonomy.

5. SPECIFIC RECOMMENDATIONS – REVIEWS UNDER ARTICLE 3(g)

5.1. Nepal: National Human Rights Commission

Pursuant to section 3(g) of the ICC Rules, the Sub-Committee was requested by the Chair of the ICC to consider the accreditation status of the National Human Rights Commission of Nepal in April 2006. At its April and October 2006 and March 2007 sessions, the Sub-Committee recommended deferral pending receipt of information on:

- 1) Progress made on the appointment process and actual appointment of Commissioners to the Commission; and
- 2) Progress on the amendment of the Human Rights Act as required by the new Interim Constitution.

The Sub-Committee at its current session received the following information:

- 1) The names of new Commissioners were made public on 30 August 2007 and Commissioners have already undertaken official activities;
- 2) A draft bill amending the Human Rights Act has been prepared and is currently pending approval.

Recommendation: The Sub-Committee recommends that the Commission be accredited **status A**.

The Sub-Committee notes the following:

- 1) It refers to the General Observation on “Adequate funding”, in particular sub-paragraphs b) and c) and that financial systems should be such that the NHRI has complete financial autonomy.
- 2) It refers to the General Observation on “Selection and appointment of the governing body”, in particular sub-paragraphs a), b) and d).
- 3) It encourages the NHRI to strengthen its interaction with civil society organisations.
- 4) It refers to the General Observation on “Interaction with the International Human Rights System”, in particular with regard to engagement with the United Nations Human Rights Treaty Bodies, the Human Rights Council and the ICC.

- 5) It has reviewed the draft bill and compared its provisions with the Interim Constitution, and will continue to monitor the developments and progress of the bill as to its consistency with the Interim Constitution and the Paris Principles.

The Sub-Committee will again consider issue number 1 at its October 2008 session.

5.2. Nigeria: National Human Rights Commission

Pursuant to section 3(g) of the ICC Rules, the Sub-Committee was requested by the Chair of the ICC in October 2006 to consider the accreditation status of the National Human Rights Commission of Nigeria subsequent to the sudden dismissal of Mr. B. Bello in his capacity as Executive Secretary and ex-officio Commissioner. Mr. Bello at the time was also the head of the coordinating mechanism of African NHRIs. In the October 2006 and March 2007 sessions, the Sub-Committee recommended deferral pending receipt of information on:

- 1) the general appointment and dismissal processes of the Commission for members;
- 2) the irregularities around the dismissal process and subsequent investigation; and
- 3) whether the Commission has continued to address relevant human rights matters with respect to the Government since the recall of the Executive Secretary.

The Sub-Committee received at its current session information from the Commission which did not fully and adequately address the issues of concern.

The Sub-Committee reiterates the March 2007 findings regarding irregularities in the dismissal of the Executive Secretary and ex-officio Commissioner.

The Sub-Committee notes that section 4(2) of the NHRC Act 1995 allows the President, Commander-in-Chief of the Armed Forces, to remove any member at any time at his own discretion, which provision is in breach of the Paris Principles in particular those related to the composition and guarantees of independence.

Recommendation: The Sub-Committee recommends that the Commission be accredited **status B**.

The Sub-Committee notes the following:

- 1) It encourages the NHRI to ensure its independence, including the safeguards in the appointment and dismissal procedures of Commissioners;
- 2) It refers to the General Observation on "Governmental representatives in National Institutions", in particular that government representatives within NHRIs do not have decision making powers;
- 3) It refers to the General Observation on "Guarantee of tenure for members of governing bodies", in particular sub-paragraph c).

5.3. Sri Lanka: Human Rights Commission

Pursuant to section 3(g) of the ICC Rules, the Sub-Committee was requested by the Chair of the ICC to consider the accreditation status of the Sri Lanka Human Rights Commission. In the March 2007 session, the Sub-Committee recommended deferral on the basis that:

- 1) "It is not clear whether the appointment of Commissioners has been in compliance with the Law of the Commission and therefore in compliance with the Paris Principles; and

- 2) "It is not clear whether the actual practice of the Commission remains balanced, objective and non-political, particularly with regard to the discontinuation of follow-up to 2000 cases of disappearances in July 2006".

The Sub-Committee at its current session notes the following:

- 1) The Paris Principles provide for the appointment of the governing body and other guarantees of independence. The 2006 appointment of the Governing Body was done without recommendation of the Constitutional Council prescribed in the Constitution.
- 2) The Commission did not take measures to ensure its independent character and political objectivity, as required by the Paris Principles.
- 3) The Commission has failed to issue annual reports on human rights as required by the Paris Principles.

Recommendation: The Sub-Committee recommends that the Commission be accredited **status B**.

In addition, the Sub-Committee notes that the state of emergency still prevails in Sri Lanka and thus refers to the General Observation on "NHRIs during situations of a coup d'état or a state of emergency": as a principle, the Sub-Committee expects that, in the situation of a coup d'état or a state of emergency, an NHRI will conduct itself with a heightened level of vigilance and independence in the exercise of its mandate.

The Sub-Committee also notes the importance for NHRIs to maintain consistent relationships with civil society. The appointment process has caused civil society in the country to question the constitutionality of it, which has affected the credibility of the Commission.

ANNEX 1
General Observations adopted by the ICC at its October 2006 session

1. **Application processes:** With the growing interest in establishing National Institutions, and the introduction of the five-yearly re-accreditation process, the volume of applications to be considered by the Sub-Committee has increased dramatically. In the interest of ensuring an efficient and effective accreditation process, the Sub-Committee emphasises the following requirements:
 - a) Deadlines for applications will be strictly enforced;
 - b) Where the deadline for a re-accreditation application is not met, the Sub-Committee will recommend that the accreditation status of the National Institution be suspended until the application is considered at the next meeting;
 - c) The Sub-Committee will make assessments on the basis of the documentation provided. Incomplete applications may affect the recommendation on the accreditation status of the National Institution;
 - d) Applicants should provide documentation in its official or published form (for example, published laws and published annual reports) and not secondary analytical documents;
 - e) Documents must be submitted in both hard copy and electronically;
 - f) All application related documentation should be sent to the ICC Secretariat at OHCHR at the following address: National Institutions Unit, OHCHR, CH-1211 Geneva 10, Switzerland and by email to: nationalinstitutions@ohchr.org; and
 - g) It is the responsibility of the applicant to ensure that correspondence and application materials have been received by the ICC Secretariat.

2. **Limitation of power of National Institutions due to national security:** The Sub-Committee notes that the scope of the mandate of many National Institutions is restricted for national security reasons. While this tendency is not inherently contrary to the Paris Principles, it is noted that consideration must be given to ensuring that such restriction is not unreasonably or arbitrarily applied and is exercised under due process.

3. **Ensuring pluralism:** The Sub-Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub-Committee emphasises the importance of National Institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications.

The Sub-Committee observes that there are different ways in which pluralism may be achieved through the composition of the National Institution, for example:

- a) Members of the governing body represent different segments of society as referred to in the Paris Principles;
- b) Pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates;
- c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
- d) Pluralism through diverse staff representing the different societal groups within the society.

The Sub-Committee further emphasises that the principle of pluralism includes ensuring the meaningful participation of women in the National Institution.

4. **Selection and appointment of the governing body:** The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the

pluralism and independence of the National Institution. In particular, the Sub-Committee emphasises the following factors:

- a) A transparent process
- b) Broad consultation throughout the selection and appointment process
- c) Advertising vacancies broadly
- d) Maximising the number of potential candidates from a wide range of societal groups
- e) Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.

5. Encouraging ratification or accession to international human rights instruments: The Sub-Committee interprets that the function of encouraging ratification or accession to international human rights instruments, set out in the Paris Principles, is a key function of a National Institution. The Sub-Committee therefore encourages the entrenchment of this function in the enabling legislation of the National Institution to ensure the best protection of human rights within that country.

6. Government representatives on National Institutions: The Sub-Committee understands that the Paris Principles require that Government representatives on governing or advisory bodies of National Institutions do not have decision making or voting capacity.

ANNEX 2

General Observations developed by the Sub-Committee at its March 2007 session

6.1 Deferral of re-accreditation applications: The Sub-Committee will apply the following policy on the deferral of re-accreditation applications:

- a) In the event that an institution seeks a deferral of consideration of its re-accreditation application, a decision to grant the deferral can be taken only if written justifications for the deferral have been provided and these are, in the view of the ICC Chairperson, compelling and exceptional;
- b) Re-accreditation applications may be deferred for a maximum of one year, after this time the status of the NHRI will lapse; and
- c) For NHRIs whose re-accreditation applications are received after the due date or who have failed to submit their applications, their accreditation status will be suspended. This suspension can be in place for up to one year during which time the NHRI may submit its application for re-accreditation. If the application is not submitted during this time, the accreditation status will lapse.

6.2 NHRIs under review: Pursuant to article 3(g) of the ICC Rules of Procedure, the ICC Chair or the Sub-Committee may initiate a review of an NHRI's accreditation if it appears that the circumstances of that NHRI may have changed in any way which affects its compliance with the Paris Principles. Such a review is triggered by an exceptional set of circumstances considered to be temporary in nature. As a consequence, the regular re-accreditation process will be deferred until the review is completed.

In its consideration of NHRIs under review, the Sub-Committee will apply the following process:

- a) An NHRI can be under review a maximum of one and a half years only, during which time it may bring information to the Sub-Committee to demonstrate that, in the areas under review, the NHRI is fully compliant with the Paris Principles;
- b) During the period of review, all privileges associated with the existing accreditation status of the NHRI will remain in place;
- c) If at the end of the period of review, the concerns of the Sub-Committee have not been satisfied, then the accreditation status of the NHRI will lapse.

6.3 Suspension of Accreditation: The Sub-Committee notes that the status of suspension means that the accreditation status of the Commission is temporarily suspended until information is brought before the Sub-Committee to demonstrate that, in the areas under review, the Commission is fully compliant with the Paris Principles. An NHRI with a suspended A status is not entitled to the benefits of an A status accreditation, including voting in the ICC and participation rights before the Human Rights Council, until the suspension is lifted or the accreditation status of the NHRI is changed.

6.4 Adequate Funding: Provision of adequate funding by the state should, as a minimum include:

- a) the allocation of funds for adequate accommodation, at least its head office;
- b) salaries and benefits awarded to its staff comparable to public service salaries and conditions;
- c) remuneration of Commissioners (where appropriate); and
- d) the establishment of communications systems including telephone and internet.

Adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the organization's operations and the fulfilment of their mandate.

Funding from external sources, such as from development partners, should not compose the core funding of the NHRI as it is the responsibility of the state to ensure the NHRI's minimum activity budget in order to allow it to operate towards fulfilling its mandate.

Financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control.

6.5 Immunity: It is strongly recommended that provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI.

6.6 Cooperation with other human rights institutions: NHRIs should cooperate with statutory institutions and other institutions, such as NGOs, established for the purpose of promoting or protecting human rights and should demonstrate that this occurs in their applications to the ICC Sub-Committee.

6.7 Human rights mandate: All NHRIs should be mandated with specific functions to both protect and promote human rights, such as those listed in the Paris Principles.

6.8 Establishment of national institutions: An NHRI must be established in a constitutional or legal text. Creation by an instrument of the Executive is not adequate to ensure permanency and independence.

6.9 Submission of information: Submissions will only be accepted if they are in paper or electronic format. The Statement of Compliance with the Paris Principles is the core component of the application. Original materials should be submitted to support or substantiate assertions made in this Statement so that the assertions can be validated and confirmed by the Sub-Committee. No assertion will be accepted without material to support it.

Further, where an application follows a previous recommendation of the Sub-Committee, the application should directly address the comments made and should not be submitted unless all concerns can be addressed.

6.10 Staff of an NHRI: As a principle, NHRIs should be empowered to appoint their own staff.

6.11 NHRIs during the situation of a coup d'état or a state of emergency: As a principle, the Sub-Committee expects that, in the situation of a coup d'état or a state of emergency, an NHRI will conduct itself with a heightened level of vigilance and independence in the exercise of their mandate.

ANNEX 3

General Observations developed by the Sub-Committee at its October 2007 session

6. GENERAL OBSERVATIONS

6.1. Interaction with the International Human Rights System:

The Sub-Committee would like to highlight the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NHRIs making an input to, participating in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NHRIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NHRIs.

6.2. Full-time Members:

Members of the NHRIs should include full-time remunerated members to:

- a) Ensure the independence of the NHRI free from actual or perceived conflict of interests;
- b) Ensure a stable mandate for the members;
- c) Ensure the ongoing and effective fulfilment of the mandate of the NHRI.

6.3. Staffing by secondment:

In order to guarantee the independence of the NHRI, the Sub-Committee notes, as a matter of good practice, the following:

- a) Senior level posts should not be filled with secondees;
- b) The number of seconded should not exceed 25% and never be more than 50% of the total workforce of the NHRI.

6.4. Guarantee of tenure for members of governing bodies

Provisions for the dismissal of members of governing bodies in conformity with the Paris Principles should be included in the enabling laws for NHRIs.

- a) The dismissal or forced resignation of any member may result in a special review of the accreditation status of the NHRI;
- b) Dismissal should be made in strict conformity with all the substantive and procedural requirements as prescribed by law;
- c) Dismissal should not be allowed based on solely the discretion of appointing authorities.