

COMITÉ INTERNACIONAL DE COORDINACIÓN DE LAS INSTITUCIONES NACIONALES DE PROMOCIÓN Y PROTECCIÓN DE LOS DERECHOS HUMANOS

Ginebra, 21 a 23 de abril de 2008

Informe y recomendaciones del Subcomité de Acreditación

1. ANTECEDENTES

- 1.1. De conformidad con el Reglamento del Comité Internacional de Coordinación de las Instituciones Nacionales de Promoción y Protección de los Derechos Humanos (CIC), el Subcomité de Acreditación (el Subcomité) tiene el mandato de examinar y revisar las solicitudes de acreditación, las renovaciones de la acreditación y los exámenes especiales recibidos por la Unidad de Instituciones Nacionales de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH), en calidad de representante de la Secretaría del CIC, y de formular recomendaciones a sus miembros sobre la conformidad de las instituciones solicitantes con los Principios de París. El mandato del Subcomité consiste en evaluar el cumplimiento de los Principios de París en la teoría y en la práctica.
- 1.2. De conformidad con las Normas de Procedimiento del Subcomité, éste está integrado por representantes de cada región: las instituciones nacionales de derechos humanos (INDH) de Alemania para Europa (presidencia), Marruecos para África (en sustitución de Rwanda)¹, la República de Corea para Asia-Pacífico y el Canadá para las Américas. El Subcomité se reunió del 21 al 23 de abril de 2008. El ACNUDH participó como observador permanente y en calidad de secretaría del CIC.
- 1.3. Con arreglo al apartado c) del artículo 3 del Reglamento del CIC, el Subcomité examinó las solicitudes de renovación de la acreditación de: Argelia, Ecuador, Guatemala, Malasia, Mauricio, Níger, Uganda y Venezuela.
- 1.4. Con arreglo al apartado c) del artículo 3 del Reglamento del CIC, el Subcomité también examinó las solicitudes de acreditación de Croacia, Gran Bretaña, Maldivas, Timor Leste y Ucrania.
- 1.5. El Subcomité también examinó la renovación de la acreditación de Luxemburgo y Suecia y convino en aplazar el examen de esas solicitudes hasta la reunión de otoño de 2008.
- 1.6. De conformidad con los Principios de París y con las Normas de Procedimiento del Subcomité del CIC, las distintas clases de acreditación que éste utiliza son:
 - A: Conforme con los Principios de París;
 - B: Estatus de observador. No guarda plena conformidad con los Principios de París o la información presentada es insuficiente para tomar una determinación;
 - C: No conforme con los Principios de París.

¹ El Subcomité señala que para el examen de la Commission National Consultative de Promotion et Protection des Droits de l'Homme de Argelia, Marruecos no participó en las deliberaciones de la decisión. Ésta fue adoptada por el Subcomité con la participación de Rwanda.

1.7. Siguiendo la práctica establecida en la reunión del Subcomité de octubre de 2006, el Subcomité continuó formulando observaciones generales en relación con la acreditación. Estas observaciones generales versan sobre cuestiones de interpretación comunes o importantes y tienen por objeto servir de orientación a las INDH respecto de la aplicación de los Principios de París. La lista de observaciones generales no es exhaustiva y continuará modificándose a medida que el Subcomité vaya examinando otras solicitudes. La recopilación de todas las observaciones generales adoptadas por el CIC, clasificadas en función de los temas contenidos en los Principios de París, se adjunta como Anexo 1 del presente informe. La observación general elaborada por el Subcomité en su período de sesiones de abril de 2008 (adjunta como Anexo 2) todavía tiene que ser adoptada por el CIC. La observación general 1.5 revisada sobre "Cooperación con otras instituciones de derechos humanos" (adjunta como Anexo 3) todavía tiene que ser adoptada por el CIC.

Recomendación: El Subcomité recomienda la adopción de la observación general adjunta como Anexo 2.

Recomendación: El Subcomité recomienda la adopción de la observación general revisada adjunta como Anexo 3.

1.8. Las observaciones generales, en su función de herramientas interpretativas de los Principios de París, se pueden utilizar para lo siguiente:

- a) Instruir a las instituciones cuando elaboren sus propios procesos y mecanismos, a fin de garantizar la conformidad con los Principios de París;
- b) Convencer a los gobiernos nacionales para que aborden o resuelvan cuestiones relativas al cumplimiento de una institución de las normas formuladas en las observaciones generales;
- c) Orientar al Subcomité de Acreditación en su determinación de las nuevas solicitudes de acreditación, las solicitudes de renovación de la acreditación o los exámenes especiales:
 - i) En caso de que el cumplimiento sustancial por parte de una institución de las normas formuladas en las observaciones generales fuera deficiente, el Subcomité podría decidir que ésta no cumple los Principios de París.
 - ii) En caso de que el Subcomité observara que se han suscitado preocupaciones por el cumplimiento de una institución de cualquiera de las observaciones generales, podría tomar en consideración las medidas que hubiera adoptado la institución, de darse el caso, para tratar de resolver esas preocupaciones en las futuras aplicaciones. Si no se suministrara prueba al Subcomité de los esfuerzos previos realizados para abordar las observaciones generales, o no se le ofreciera una explicación razonable sobre los motivos para no haber realizado tales esfuerzos, el Subcomité podría interpretar dicha falta de progresos como un incumplimiento de los Principios de París.

1.9. El Subcomité señala que en todas las aplicaciones examinadas se podría hacer referencia a la observación general sobre "Interacción con el sistema internacional de derechos humanos" y alienta a todas las INDH a que interactúen de forma coherente con el sistema internacional de derechos humanos (a saber, los órganos creados en virtud de tratados de derechos humanos de las Naciones Unidas, los titulares de los mandatos de los procedimientos especiales y el Consejo de Derechos Humanos, incluido el examen periódico universal (EPU)), ofreciendo información independiente del gobierno, y posteriormente garanticen que se adoptan medidas de seguimiento para las recomendaciones que resulten de ese sistema (así como que confíen en los servicios del Representante del CIC en Ginebra cuando sea necesario).

- 1.10. El Subcomité indica que recibió las “Directrices dirigidas al Subcomité de Acreditación para la aplicación de las observaciones generales” (adjuntas como Anexo 4), aprobadas en lo que atañe a sus elementos fundamentales en el 20º período de sesiones del CIC de abril de 2008.
- 1.11. El Subcomité observa que cuando se plantean cuestiones específicas en su informe respecto de la acreditación, la renovación de la acreditación y el examen especial, se pide a las INDH que resuelvan esas cuestiones en las aplicaciones o los exámenes especiales posteriores.
- 1.12. De conformidad con el Reglamento del CIC, el Subcomité insta a todas las INDH acreditadas a que informen al CIC, en la primera ocasión que se presente, acerca de las circunstancias que dificultarían el cumplimiento de las normas y obligaciones de los Principios de París por parte de las INDH.
- 1.13. Cuando el Subcomité tiene que examinar cuestiones particulares en un plazo específico, el resultado del examen puede influir en la clase de acreditación.
- 1.14. Según se establece en el “Documento para decisión sobre el examen de los procedimientos de acreditación del CIC para las Instituciones Nacionales de Derechos Humanos de marzo de 2008” (adjunto como Anexo 5) adoptado por el CIC en su 20º período de sesiones de abril de 2008 (en adelante el “Documento para decisión”), los resultados del examen relativo a la acreditación se comunicarán, en primer lugar, a las INDH afectadas y se les concederá un plazo de 30 días para responder a las cuestiones planteadas por los miembros del Subcomité. Transcurridos esos 30 días, el informe se enviará a los miembros del CIC con derecho de voto.
- 1.15. Con arreglo a lo establecido en el Documento para decisión, las recomendaciones formuladas durante el período de sesiones de abril de 2008 del Subcomité se comunicarán a todos los miembros del CIC con derecho de voto, y se pedirá a dichos miembros que las adopten por correo electrónico en un plazo de 20 días. Todas las recomendaciones aprobadas son decisiones finales. Las decisiones que no se aprueben se remitirán a la consideración de la siguiente reunión del CIC.
- 1.16. Según consta en el Documento para decisión, en los casos en que el Subcomité examine una recomendación en virtud de la cual la institución solicitante podría perder la clase de acreditación, se informa a ésta de dicha intención y se le ofrece la oportunidad de remitir por escrito, en un plazo de un año desde dicha notificación, las pruebas documentales que se juzguen necesarias para establecer su continua conformidad con los Principios de París. Durante ese período la institución concernida conserva su clase “A”.
- 1.17. El Subcomité continuó manteniendo consultas con las INDH y los organismos de coordinación regionales pertinentes, siempre que fue necesario. Este procedimiento se ha aplicado en varios casos durante el período de sesiones actual. Con anterioridad al período de sesiones, se pedía a todas las INDH interesadas que indicaran el nombre de alguna persona de contacto y su número de teléfono en caso de que el Subcomité necesitara contactar con la institución. Además, se contaba con los oficiales de despacho del ACNUDH y, cuando procedía, con los oficiales sobre el terreno del ACNUDH para obtener más información, en caso necesario.

1.18. El Subcomité desea reconocer el alto grado de apoyo y la profesionalidad del personal de la Secretaría del CIC (Unidad de Instituciones Nacionales del ACNUDH), que han sido decisivos para llevar a cabo su labor.

2. ADOPCIÓN DE NUEVOS PROCEDIMIENTOS

2.1. En el marco de los esfuerzos que se están realizando para mejorar la transparencia, el Subcomité siguió desarrollando nuevos procedimientos.

2.2. El Subcomité convino en que, a partir de su próximo período de sesiones, los resúmenes preparados por la Secretaría se compartirán con cada INDH antes de examinar su aplicación de modo que ésta disponga de una semana para realizar comentarios sobre el resumen. Todos los comentarios que se reciban, junto con los resúmenes, se enviarán posteriormente a todos los miembros del Subcomité. Una vez que el CIC haya adoptado las recomendaciones del Subcomité, con arreglo a los procedimientos, dichos resúmenes y comentarios se colocarán en la página del Foro de las INDH (www.nhri.net). Debido a las limitaciones financieras, los resúmenes se preparan sólo en inglés.

2.3. El Subcomité también examina la información que recibe de la sociedad civil. Acordó compartirla con las INDH concernidas.

3. RECOMENDACIONES ESPECÍFICAS – SOLICITUDES DE RENOVACIÓN DE LA ACREDITACIÓN

3.1. Argelia: Commission Nationale Consultative de Promotion et Protection des Droits de l'Homme

Recomendación: El Subcomité informa a la Comisión de su intención de recomendar al CIC que sea transferida a la **clase B**, y que se le ofrezca la oportunidad de remitir por escrito, en un plazo de un año desde dicha notificación, las pruebas documentales que se juzguen necesarias para establecer su continua conformidad con los Principios de París. Durante ese período la Comisión conserva la clase "A".

El Subcomité señala lo siguiente:

- 1) La Comisión no ha proporcionado el informe del último año sino una recopilación de las actividades que abarcan el período de 2002 a 2004.
- 2) El Subcomité hace referencia a la observación general "Establecimiento de instituciones nacionales" para subrayar la importancia del establecimiento de las instituciones nacionales en un texto de carácter constitucional o jurídico.
- 3) El Presidente y los miembros de la Comisión se nombran y destituyen sin seguir un proceso claro y transparente. El Subcomité hace referencia a la observación general "Selección y nombramiento del órgano rector".
- 4) El Subcomité insta a la Comisión a que interactúe de forma efectiva con el sistema de derechos humanos de las Naciones Unidas, especialmente con los órganos creados en virtud de tratados, y a que realice un seguimiento de las recomendaciones en el plano nacional, en consonancia con la observación general "Interacción con el sistema internacional de derechos humanos".

El Subcomité proporcionará a la Comisión el resumen preparado por la Secretaría.

3.2. Ecuador: Defensoría del Pueblo

Recomendación: El Subcomité informa a la Defensoría de su intención de recomendar al CIC que sea transferida a la **clase B**, y que se le ofrezca la oportunidad de remitir por escrito, en un plazo de un año desde dicha notificación, las pruebas documentales que se juzguen necesarias para establecer su continua conformidad con los Principios de París. Durante ese período la Defensoría conserva la clase “A”.

El Subcomité señala lo siguiente:

- 1) Hace referencia a la observación general “Cooperación con otras instituciones de derechos humanos” y subraya la necesidad de que las INDH cooperen con otras instituciones, como las ONG, que se hayan creado a los efectos de promover o proteger los derechos humanos.
- 2) También hace referencia a la observación general “Interacción con el sistema internacional de derechos humanos” y hace hincapié en que la Defensoría debe realizar generalmente aportaciones y participar en esos mecanismos de derechos humanos, así como en el seguimiento en el plano nacional de las recomendaciones dimanantes del sistema internacional de derechos humanos.

Actualmente se está examinando la Constitución del Ecuador. Este examen no afectará en ningún modo a la independencia y eficacia de la Defensoría del Pueblo del Ecuador.

El Subcomité proporcionará a la Defensoría del Pueblo del Ecuador el resumen preparado por la Secretaría.

3.3. Guatemala: Procuraduría de los Derechos Humanos de Guatemala

Recomendación: El Subcomité recomienda que se confiera a la Procuraduría la acreditación de **clase A**.

El Subcomité señala lo siguiente:

- 1) Hace referencia a la observación general “Interacción con el sistema internacional de derechos humanos”.
- 2) No debería exigirse al Procurador que obtenga una autorización previa de un juez para llevar a cabo investigaciones y debería poseer capacidad de acceso libre y sin preaviso a todas las instalaciones públicas.

La base legislativa no prevé la reelección del Procurador y, sin embargo, el actual Procurador ha sido elegido por segunda vez.

3.4. Malasia: Comisión Nacional de Derechos Humanos de Malasia (SUHAKAM)

Recomendación: El Subcomité informa a la Comisión de su intención de recomendar al CIC que sea transferida a la **clase B**, y que se le ofrezca la oportunidad de remitir por escrito, en un plazo de un año desde dicha notificación, las pruebas documentales que se juzguen necesarias para establecer su continua conformidad con los Principios de París. Durante ese período la Comisión conserva la clase “A”.

El Subcomité señala lo siguiente:

- 1) Es preciso reforzar la independencia de la Comisión mediante el empleo de un proceso de nombramiento y destitución en los documentos jurídicos fundacionales, más en conformidad con los Principios de París. El Subcomité hace referencia a la observación general “Selección y nombramiento del órgano rector”.
- 2) En lo que concierne a la cuestión del nombramiento, el Subcomité señala a la atención la corta duración del mandato de los miembros de la Comisión (dos años). Hace referencia a la observación general “Garantía de la seguridad en el cargo para los miembros de los órganos rectores”.
- 3) Asimismo hace referencia a la observación general “Garantía del pluralismo” para poner de relieve la importancia de asegurar la representación de diferentes segmentos de la sociedad y su participación en lo que atañe a proponer y recomendar candidatos destinados al órgano rector de la Comisión.
- 4) El Subcomité hace referencia a la observación general “Interacción con el sistema internacional de derechos humanos”.

El Subcomité proporcionará a la Comisión el resumen preparado por la Secretaría.

3.5. Mauricio: Comisión Nacional de Derechos Humanos

Recomendación: El Subcomité recomienda que se confiera a la Comisión la acreditación de **clase A**.

El Subcomité señala lo siguiente:

- 1) Hace referencia a la observación general “Selección y nombramiento del órgano rector”, en particular a la importancia de que en los documentos jurídicos fundacionales se prevea un proceso oficial de consulta para la selección y el nombramiento de sus miembros.
- 2) Asimismo hace referencia a la observación general “Garantía de la seguridad en el cargo para los miembros de los órganos rectores” para poner de relieve la necesidad de consolidar en los documentos jurídicos fundacionales criterios transparentes y objetivos para la destitución de los miembros de la Comisión.
- 3) También hace referencia a la observación general “Dotación de personal por adscripción” para subrayar la importancia de modificar la legislación de modo que se permita a la Comisión contratar a su propio personal.

El Subcomité volverá a examinar estas cuestiones en su período de sesiones de la primavera de 2010.

3.6. Níger: Commission Nationale des Droits de l’Homme et des Libertés Fondamentales (CNDHLF)

Recomendación: El Subcomité recomienda que se confiera a la Comisión la acreditación de **clase A**.

El Subcomité señala lo siguiente:

- 1) La necesidad de recursos financieros adicionales. Hace referencia a la observación general “Recursos suficientes”.
- 2) Asimismo hace referencia a la observación general “Alentar la ratificación de instrumentos internacionales de derechos humanos o la adhesión a los mismos”. Por lo tanto, el Subcomité

alienta la consolidación de esta función en la base legislativa de la Institución Nacional a fin de garantizar la protección efectiva de los derechos humanos.

- 3) También hace referencia a la observación general “Interacción con el sistema internacional de derechos humanos”.
- 4) Exhorta a la CNDHLF a que cumpla el Artículo 20 del Decreto N° 99-530/PCRN/MJDH de 21 de diciembre de 1999 y cree servicios regionales de la CNDHLF.

3.7. Uganda: Comisión de Derechos Humanos

Recomendación: El Subcomité recomienda que se confiera a la Comisión la acreditación de **clase A**.

El Subcomité señala lo siguiente:

- 1) Insta a la Comisión a que divulgue informes públicos sobre todo incidente delicado y crítico relacionado con los derechos humanos que ocurra en el país.

3.8. Venezuela: Defensoría del Pueblo

Recomendación: El Subcomité recomienda que se confiera a la Comisión la acreditación de **clase A**.

El Subcomité señala lo siguiente:

- 1) Exhorta a la Defensoría del Pueblo de Venezuela a que intensifique los esfuerzos dedicados a alentar la ratificación de los instrumentos internacionales de derechos humanos o la adhesión a los mismos, y hace referencia a la observación general “Alentar la ratificación de instrumentos internacionales de derechos humanos o la adhesión a los mismos”.
- 2) Asimismo alienta a la Defensoría a que refuerce su compromiso con la sociedad civil y hace referencia a la observación general “Cooperación con otras instituciones de derechos humanos”.
- 3) Alienta a la Defensoría a que continúe interactuando con el sistema internacional de derechos humanos y subraya la importancia de realizar un seguimiento en el plano nacional de las recomendaciones dimanantes del sistema internacional de derechos humanos.

3.9. Luxemburgo: Commission Consultative des Droits de l’Homme

El Subcomité convino en aplazar el examen de la renovación de la acreditación de la Comisión hasta el período de sesiones del Subcomité de otoño de 2008, en espera de que se apruebe la nueva ley sobre la institución nacional. El Subcomité hace referencia a la observación general “Aplazamiento de las solicitudes de renovación de la acreditación”.

3.10. Suecia: Instituciones del Ombudsman de Suecia

Como apoyo del esfuerzo que se está realizando para unificar las instituciones existentes de derechos humanos en Suecia, el Subcomité acordó, en su período de sesiones de octubre de 2007, aplazar el examen de la renovación de la acreditación de la institución nacional de derechos humanos de Suecia hasta el período de sesiones actual del Subcomité. La INDH de Suecia solicitó un nuevo aplazamiento. El Subcomité decidió aplazar la renovación de la acreditación hasta su período de sesiones de otoño de 2008. En virtud de la observación general

“Aplazamiento de las solicitudes de renovación de la acreditación”, si los documentos exigidos en apoyo de la renovación de la acreditación de la INDH de Suecia no se recibieran con anterioridad al período de sesiones de otoño de 2008 del Subcomité, la clase de la acreditación de la INDH de Suecia vencería.

4. RECOMENDACIONES ESPECÍFICAS – SOLICITUDES DE NUEVAS ACREDITACIONES

4.1. Croacia: Ombudsman de la República de Croacia

Recomendación: El Subcomité recomienda que se confiera al Ombudsman la acreditación de **clase A**.

El Subcomité señala lo siguiente:

- 1) Destaca la importancia de que el Ombudsman coopere con otras instituciones de defensa con miras a asegurar la coherencia y efectividad del sistema nacional de protección de los derechos humanos.
- 2) Hace referencia a la observación general “Mandato de los derechos humanos” e insta a que se amplíe el mandato del Ombudsman para que abarque la promoción de los derechos humanos.
- 3) Asimismo hace referencia a la observación general “Recursos suficientes”, en particular a la importancia de contar con fuentes de financiación suficientes y sostenibles para la ejecución del mandato de la organización.
- 4) El Subcomité alienta a la Comisión a que interactúe de forma eficaz con el sistema de derechos humanos de las Naciones Unidas, en consonancia con la observación general “Interacción con el sistema internacional de derechos humanos”.
- 5) También hace referencia a la observación general “Garantía del pluralismo”, en particular respecto de las minorías étnicas.
- 6) Alienta al Ombudsman a que fortalezca la accesibilidad de la institución mediante la apertura de oficinas regionales, de conformidad con el artículo 3 de su Reglamento.

4.2. Maldivas: Comisión de Derechos Humanos

Recomendación: El Subcomité recomienda que se confiera a la Comisión la acreditación de **clase B**.

El Subcomité observa que los documentos jurídicos fundacionales de la Comisión de Derechos Humanos de las Maldivas establecen que todos los miembros de la Comisión deben ser musulmanes. El Subcomité recomienda que se elimine ese requisito a fin de que se considere que la Comisión cumple los Principios de París.

El Subcomité observa que, en la práctica, la Comisión ha cumplido eficazmente, en términos generales, su mandato de promoción y protección de los derechos humanos.

El Subcomité también señala lo siguiente:

- 1) Hace referencia a la observación general “Mandato de los derechos humanos”, en particular con miras a ampliar el mandato de la Comisión para que abarque todos los derechos humanos y libertades fundamentales.
- 2) Asimismo hace referencia a la observación general “Selección y nombramiento del órgano rector” y “Garantía de la seguridad en el cargo para los miembros de los órganos rectores”, en

particular la necesidad de garantizar en los documentos jurídicos fundacionales que el procedimiento de destitución esté fundamentado y sea transparente.

- 3) El Subcomité alienta a la Comisión a que interactúe de forma eficaz con el sistema de derechos humanos de las Naciones Unidas, en consonancia con la observación general “Interacción con el sistema internacional de derechos humanos”.
- 4) La Comisión carece de suficiente espacio de oficinas, lo que limita sus posibilidades de contratar personal para cubrir la gran cantidad de vacantes existentes.

4.3. Timor Leste: Defensoría de los Derechos Humanos y la Justicia

Recomendación: El Subcomité recomienda que se confiera a la Defensoría la acreditación de **clase A**.

El Subcomité señala lo siguiente:

- 1) Hace referencia a la observación general “Recursos suficientes”, en particular para la asignación de fondos destinados a un alojamiento adecuado, y para garantizar que la organización logre mejorar su funcionamiento y el cumplimiento de su mandato de forma gradual y progresiva.
- 2) Asimismo hace referencia a la observación general “Las INDH en situación de golpe de Estado o de estado de excepción”, y en particular subraya la importancia de que la Defensoría continúe actuando con cautela e independencia en el ejercicio de su mandato.
- 3) El Subcomité alienta a la Comisión a que interactúe de forma eficaz con el sistema internacional de derechos humanos, en consonancia con la observación general “Interacción con el sistema internacional de derechos humanos”.
- 4) No debería exigirse a la Defensoría que dé un preaviso por escrito para acceder, inspeccionar y examinar cualesquiera instalaciones, documentos, equipos y bienes (según se prevé en el artículo 42 de la Ley 7/2004). La Defensoría debería tener acceso libre, sin aviso previo, a todas las instalaciones públicas.

4.4. Ucrania: Comisionado Parlamentario de Ucrania para los Derechos Humanos

Recomendación: El Subcomité recomienda que se confiera a la Comisión la acreditación de **clase B**.

El Subcomité señala lo siguiente:

- 1) La Comisión no presentó un informe anual reciente como parte de los requisitos de acreditación. El informe anual que ha facilitado la Comisión al Subcomité abarca el año 2004.
- 2) La Comisión no presentó una copia de su presupuesto como parte de los requisitos de acreditación. El Subcomité hace referencia a la observación general “Procesos de solicitud”, en particular el apartado c).
- 3) Asimismo hace referencia a la observación general “Interacción con el sistema internacional de derechos humanos”, y en particular pone de relieve la importancia de la colaboración con los órganos creados en virtud de tratados de forma plenamente independiente.
- 4) También hace referencia a la observación general “Selección y nombramiento del órgano rector” y la observación general “Garantía del pluralismo” para garantizar que las fuerzas sociales (de la sociedad civil) participen en el proceso.

4.5. Gran Bretaña: Comisión de Igualdad y Derechos Humanos

Recomendación: El Subcomité recomienda que el examen de la solicitud de acreditación de la Comisión se aplase hasta el período de sesiones del Subcomité de la primavera de 2009.

La Comisión de Igualdad y Derechos Humanos se creó en octubre de 2007 y lleva funcionando seis meses. En el período de sesiones actual no sería posible determinar la eficacia de la Comisión ni si cumple los Principios de París.

El Subcomité hace referencia a la observación general “Más de una institución nacional de derechos humanos en un Estado” elaborada por el Subcomité en su período de sesiones de abril de 2008.

El Subcomité facilitará a la Comisión de Igualdad y Derechos Humanos el resumen preparado por la Secretaría.

ANEXO 1

SUBCOMITÉ DE ACREDITACIÓN DEL CIC

OBSERVACIONES GENERALES

1. Competencias y atribuciones

1.1 Establecimiento de instituciones nacionales: Las INDH deben establecerse por medio de un texto constitucional o legal. La creación de un instrumento por el Ejecutivo no resulta adecuada para garantizar la permanencia y la independencia.

1.2 Mandato de los derechos humanos: Todas las INDH deben poseer mandatos con funciones específicas de protección y promoción de los derechos humanos, como las que figuran en los Principios de París.

1.3 Alentar la ratificación de instrumentos internacionales de derechos humanos o la adhesión a los mismos: El Subcomité interpreta que la función de alentar la ratificación de instrumentos internacionales de derechos humanos o la adhesión a los mismos, establecida en los Principios de París, es una función clave de las Instituciones Nacionales. Por tanto, alienta el afianzamiento de esta función en la base legislativa de las Instituciones Nacionales para garantizar la mejor protección de los derechos humanos en sus respectivos países.

1.4 Interacción con el sistema internacional de derechos humanos: El Subcomité desearía subrayar la importancia de que las INDH colaboren con el sistema internacional de derechos humanos, en particular con el Consejo de Derechos Humanos y sus mecanismos (titulares de los mandatos de los procedimientos especiales) y los órganos de las Naciones Unidas creados en virtud de tratados de derechos humanos. Ello generalmente significa que las INDH realizan aportaciones, participan en esos mecanismos de derechos humanos y realizan un seguimiento a nivel nacional de las recomendaciones resultantes del sistema internacional de derechos humanos. Además, las INDH también deberían colaborar activamente con el CIC y su Subcomité de Acreditación, con la Mesa así como con los órganos regionales de coordinación de las INDH.

1.5 Cooperación con otras instituciones de derechos humanos: Las INDH deben cooperar con los organismos oficiales y otras instituciones, como ONG, creadas a los efectos de promover o proteger los derechos humanos y deben demostrar que así lo hacen en las solicitudes que presenten al Subcomité del CIC.

2. Composición y garantías de independencia y pluralismo

2.1 Garantía del pluralismo: El Subcomité observa que existen diversas formas de garantizar el requisito del pluralismo establecido en los Principios de París. Sin embargo, hace hincapié en la importancia que revisten las Instituciones Nacionales para mantener relaciones armoniosas con la sociedad civil y señala que se prestará la debida atención a este aspecto en la evaluación de las solicitudes de acreditación.

El Subcomité indica que existen diferentes maneras de conseguir el pluralismo a través de la composición de la Institución Nacional, entre otras, observando el pluralismo en:

- a) los miembros del órgano rector, procurando que representen a diferentes sectores de la sociedad tal como se dispone en los Principios de París;
- b) los procedimientos de nombramiento del órgano rector de la Institución Nacional, por ejemplo, cuando diversos grupos sociales proponen o recomiendan a candidatos;
- c) los procedimientos que permiten la cooperación eficaz con diversos grupos sociales, por ejemplo, comités consultivos, contactos, consultas o foros públicos, o
- d) el personal, procurando que sea heterogéneo y que represente a los diferentes grupos sociales de la sociedad.

El Subcomité destaca, además, que el principio del pluralismo también consiste en garantizar la participación significativa de las mujeres en la Institución Nacional.

2.2 Selección y nombramiento del órgano rector: El Subcomité señala la importancia decisiva que reviste el proceso de selección y nombramiento del órgano rector para garantizar el pluralismo y la independencia de la Institución Nacional. En particular, hace hincapié en los siguientes factores:

- a) un proceso transparente;
- b) consulta amplia en todo el proceso de selección y nombramiento;
- c) amplia difusión de las vacantes;
- d) maximización del número de posibles candidatos procedentes de una amplia gama de grupos sociales;
- e) selección de miembros para que presten servicios con su propia capacidad individual y no en nombre de la organización a la que representen.

2.3 Representantes gubernamentales de Instituciones Nacionales: El Subcomité entiende que en los Principios de París se dispone que los representantes gubernamentales de los órganos rectores o consultivos de las Instituciones Nacionales no tienen capacidad de toma de decisiones o de voto.

2.4 Dotación de personal por adscripción: A fin de garantizar la independencia de la INDH, el Subcomité señala, como buena práctica, lo siguiente:

- a) Los cargos de nivel superior no deben cubrirse con personal adscrito;
- b) El número de adscritos no debe ser superior al 25 por ciento y nunca debería exceder el 50 por ciento de la mano de obra total de la INDH.

2.5 Inmunidad: Se recomienda encarecidamente que la legislación nacional incorpore disposiciones que protejan la responsabilidad jurídica por los actos realizados por la INDH en el ejercicio de sus funciones oficiales.

2.6 Recursos suficientes: El Estado deberá proporcionar recursos suficientes, que incluyan como mínimo:

- a) la asignación de fondos para un alojamiento adecuado, al menos de su sede;
- b) la concesión de unos salarios y beneficios para su personal que sean comparables a los salarios y condiciones de la administración pública;
- c) la remuneración de los Comisionados (si procede); y
- d) el establecimiento de sistemas de comunicaciones que incluyan teléfono e Internet.

Los recursos suficientes deberían garantizar, de modo razonable, que la organización logre mejorar su funcionamiento y el cumplimiento de su mandato de forma gradual y progresiva.

La financiación por fuentes externas, como la procedente de los asociados en el desarrollo, no debe constituir el modo básico de financiación de la INDH, puesto que es responsabilidad del Estado garantizar el presupuesto mínimo de actividad de la INDH que le permita funcionar para cumplir su mandato.

Las INDH deben gozar de plena autonomía financiera respecto de sus sistemas de financiación. Esto debe quedar reflejado en una partida presupuestaria separada sobre la que se tenga control y capacidad de gestión absolutos.

2.7 Personal de las INDH: Como principio, se debe facultar a las INDH para que designen a su propio personal.

2.8 Miembros de tiempo completo: Los miembros de las INDH deben ser miembros remunerados de tiempo completo para:

- a) asegurar la independencia de la INDH, de modo que no entre en conflictos de intereses existentes o perceptibles;
- b) asegurar un mandato sólido a los miembros;
- c) asegurar el cumplimiento actual y eficaz del mandato de la INDH.

2.9 Garantía de la seguridad en el cargo para los miembros de los órganos rectores

Las disposiciones relativas a la destitución de los miembros de los órganos rectores de conformidad con los Principios de París se deben incluir en las leyes vigentes para las INDH.

- a) La destitución o dimisión forzosa de cualquier miembro puede dar lugar a un examen especial de la clase de acreditación de la INDH;
- b) La destitución debe efectuarse de forma estrictamente conforme a los requisitos sustantivos y de procedimiento prescritos por la ley;
- c) La destitución no debe permitirse cuando se base únicamente en la discreción de las autoridades encargadas de los nombramientos.

3. Modalidades de funcionamiento

4. Principios complementarios relativos al estatuto de las comisiones dotadas de competencias cuasi jurisdiccionales

5. Cuestiones adicionales

5.1 Las INDH en situación de golpe de Estado o de estado de excepción: Como principio, el Subcomité confía en que, en situación de golpe de Estado o de estado de excepción, una INDH actúe con gran cautela e independencia en el ejercicio de su mandato.

5.2 Limitación de la facultad de las Instituciones Nacionales por motivos de seguridad nacional: El Subcomité señala que el alcance del mandato de muchas Instituciones Nacionales se encuentra restringido por motivos de seguridad nacional. Aunque esta tendencia no es esencialmente contraria a los Principios de París, hay que señalar que es preciso velar por que dicha restricción no se aplique sin razón o de manera arbitraria y se ejerza respetando la legalidad.

6. Cuestiones de procedimiento

6.1 Procesos de solicitud: Habida cuenta del creciente interés por crear Instituciones Nacionales y la introducción del proceso quinquenal de renovación de la acreditación, el volumen de solicitudes que el Subcomité tiene que estudiar ha crecido drásticamente. A fin de asegurar un proceso de acreditación efectivo y eficaz, el Subcomité concede importancia a los siguientes requisitos:

- a) se exigirá de forma estricta que se cumplan los plazos de presentación de las solicitudes;
- b) cuando no se cumpla el plazo de presentación de la solicitud de renovación de la acreditación, el Subcomité recomendará que se suspenda la acreditación de la Institución Nacional en cuestión hasta que se estudie esa solicitud en su siguiente reunión;
- c) el Subcomité realizará evaluaciones basándose en la documentación proporcionada; las solicitudes incompletas pueden afectar negativamente a la recomendación sobre la acreditación de la Institución Nacional;
- d) los solicitantes deben proporcionar la documentación en su forma oficial o publicada (por ejemplo, leyes o informes anuales publicados) y no documentos analíticos accesorios;
- e) los documentos deben remitirse tanto en formato impreso como electrónico;
- f) toda la documentación relacionada con la solicitud debe enviarse a la Secretaría del CIC en el ACNUDH: National Institutions Unit, OHCHR, CH-1211 Ginebra 10 (Suiza), y por correo electrónico a: nationalinstitutions@ohchr.org, y
- g) el solicitante se encargará de velar por que la Secretaría del CIC haya recibido la correspondencia y el material de la solicitud.

6.2 Aplazamiento de las solicitudes de renovación de la acreditación: El Subcomité aplicará la siguiente política sobre el aplazamiento de las solicitudes de renovación de la acreditación:

- a) en caso de que una institución desee un aplazamiento del examen de su solicitud de renovación de la acreditación, sólo se concederá dicho aplazamiento si se presentan por escrito los motivos que lo justifiquen y, a juicio del Presidente del CIC, éstos sean imperiosos y excepcionales;
- b) las solicitudes de renovación de la acreditación se pueden aplazar un máximo de un año, transcurrido el cual vence la condición de la INDH; y
- c) en caso de que las solicitudes de renovación de la acreditación de las INDH se reciban fuera de plazo o no se presenten, se suspenderá su categoría de acreditación. Esta suspensión puede ser válida por un máximo de un año, tiempo durante el cual la INDH puede presentar su solicitud de renovación de la acreditación. De no presentarse la solicitud durante ese plazo, la categoría de acreditación vencerá.

6.3 Las INDH bajo estudio: Con arreglo al apartado g) del artículo 3 del Reglamento del CIC, el Presidente del CIC o el Subcomité podrán iniciar el examen de la acreditación de una INDH si hay indicios de que puedan haber cambiado las circunstancias de esa INDH de algún modo que afecte a su cumplimiento de los Principios de París. Ese examen se origina por un cúmulo excepcional de circunstancias que se consideran de carácter temporal.

Como consecuencia, el proceso normal de renovación de la acreditación se aplazará hasta que se complete dicho examen.

En su estudio de las INDH bajo examen, el Subcomité aplicará el siguiente proceso:

- a) una INDH sólo podrá permanecer bajo examen un máximo de un año y medio, tiempo durante el cual podrá aportar informaciones al Subcomité que demuestren que, en los temas de examen, la INDH cumple plenamente los Principios de París;
- b) durante el período de examen, seguirán siendo efectivos todos los privilegios asociados a la categoría de acreditación que posea la INDH;
- c) si al finalizar el período de examen no se han resuelto las preocupaciones del Subcomité, la categoría de acreditación de la INDH vencerá.

6.4 Suspensión de la acreditación: El Subcomité observa que el estado de suspensión implica que la categoría de acreditación de la Comisión se ha suspendido temporalmente hasta que se aporte al Subcomité informaciones que demuestren que, en los temas de examen, la Comisión cumple plenamente los Principios de París. Una INDH a la que se haya suspendido su acreditación de categoría A no tendrá derecho a disfrutar de los beneficios de una acreditación de categoría A, en particular el derecho de voto en el CIC y el derecho a participar en el Consejo de Derechos Humanos, hasta que se haya levantado la suspensión o se haya modificado la categoría de acreditación de la INDH.

6.5 Presentación de informaciones: Sólo se admitirán las informaciones que se presenten en papel o en formato electrónico. La Declaración de Conformidad con los Principios de París es el componente fundamental de la solicitud. Se deben presentar materiales originales que apoyen o fundamenten toda afirmación que se realice en esta declaración de modo que el Subcomité pueda validar y confirmar esas afirmaciones. No se admitirá ninguna afirmación si no va acompañada de material que la apoye.

Además, en los casos en que la solicitud se origine por una recomendación previa del Subcomité, está deberá abordar directamente los comentarios formulados y no se deberá presentar si no trata todas las preocupaciones expresadas.

Adoptado para el Comité Internacional de Coordinación de las Instituciones Nacionales de Promoción y Protección de los Derechos Humanos (CIC) en el 20 periodo de sesiones en Ginebra, 14-18 Abril 2008.

Ginebra, Abril 2008

ANEXO 2

Observación general elaborada por el Subcomité en su período de sesiones de abril de 2008

Más de una institución nacional de derechos humanos en un Estado

El Subcomité reconoce y fomenta la tendencia de fortalecimiento del sistema nacional de protección de los derechos humanos en los Estados mediante una sola institución nacional de derechos humanos consolidada y general.

En circunstancias muy excepcionales, en caso de que más de una institución nacional solicite la acreditación por el CIC, cabe observar que el apartado b) del artículo 3 del Reglamento del CIC prevé un solo derecho al uso de la palabra, un solo derecho de voto y sólo una institución podrá ser elegida como miembro del Comité.

En tales circunstancias, las condiciones que se han de dar previamente para que el Subcomité examine la solicitud son las siguientes:

- 1) Consentimiento por escrito del Gobierno del Estado (el cual a su vez debe ser miembro de las Naciones Unidas).
- 2) Acuerdo por escrito entre todas las instituciones nacionales de derechos humanos sobre los derechos y deberes como miembro del CIC, incluido el ejercicio de un solo derecho de voto y un solo derecho al uso de la palabra. Este acuerdo también incluirá disposiciones para la participación en el sistema internacional de derechos humanos, incluido el Consejo de Derechos Humanos y los órganos creados en virtud de tratados.

El Subcomité subraya que es obligatorio satisfacer los anteriores requisitos para que se examine la solicitud.

ANEXO 3

Observación general revisada por el Subcomité en su período de sesiones de abril de 2008

1.5 Cooperación con otras instituciones de derechos humanos: Las INDH deben cooperar estrechamente y compartir la información con las instituciones oficiales que también se hayan creado para la promoción y protección de los derechos humanos, por ejemplo en el plano estatal o respecto de cuestiones temáticas, así como con otras organizaciones, como las ONG que trabajan en el ámbito de los derechos humanos, y deben demostrar que así lo hacen en las solicitudes que presenten al Subcomité del CIC.

ANEXO 4

Directrices dirigidas al Subcomité de Acreditación para la aplicación de las observaciones generales

Algunas instituciones que tratan de conseguir la renovación de la acreditación como INDH de clase A, o que intentan que se les conceda esa acreditación por primera vez, operan en circunstancias sociales, políticas o económicas difíciles. Ése es el caso particular en los países que acaban de salir de un conflicto, o donde el marco internacional de derechos humanos no está generalmente aceptado. En esas circunstancias excepcionales, puede que a una institución no le resulte posible cumplir plenamente todos los Principios de París.

Por consiguiente, cuando se examinen las instituciones con miras a concederles o renovarles la acreditación, el Subcomité del CIC debería tomar en consideración las circunstancias en que opera la institución en cuestión y aplicar las observaciones generales con flexibilidad, combinando la necesidad de la inclusión con la necesidad de aplicar las normas.

Pueden darse casos de esas situaciones cuando una institución dependa en gran medida de donantes internacionales y no de su propio gobierno, o cuando el alcance geográfico de una institución abarque una parte de la nación en vez del conjunto de ésta. Puede que esa situación no cambie rápidamente, o que no cambie en absoluto, de modo que puede tener pertinencia tanto cuando una institución pretenda renovar la acreditación como cuando se vaya a acreditar inicialmente.

Para lograr la acreditación de clase A, la institución debe cumplir, en la mayor medida posible, todos los Principios de París. En su evaluación, el Subcomité del CIC debería tomar en consideración cada situación en su contexto local a fin de permitir que las instituciones que operen en circunstancias difíciles puedan lograr ser miembros de la clase A, puesto que de esta forma:

- la institución puede beneficiarse del compromiso y el apoyo internacionales, aprender de los demás y evolucionar;
- la institución consigue la condición y el apoyo de las Naciones Unidas;
- se contribuye a la diversidad del CIC;
- se contribuye a la función del CIC de respaldo a la creación de INDH.

ANNEX 5 (Solo disponible en ingles por ahora)

**DECISION PAPER
ON THE REVIEW OF ICC ACCREDITATION PROCEDURES FOR
NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRI)**

March 2008

**Submitted by the
ICC WORKING GROUP ON ACCREDITATION**

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Background

At the 17th session of its Annual Meeting, held on 12 April 2006, the International Coordinating Committee of National Human Rights Institutions for the Protection and Promotion of Human Rights (ICC) established a Working Group to examine the process used to accredit National Human Rights Institutions (NIs) as members of the International Group of National Human Rights Institutions and to develop a discussion paper for the ICC on the matter. The request was prompted primarily by three factors: (i) a sense that the current process could be clearer and more rigorous both with regard to the process itself and the basis on which recommendations were being made and decisions taken; (ii) the growing role of NIs in the international arena and the corresponding need to ensure that they were truly legitimate; and, (iii) the requirement to periodically review the accreditation accorded Institutions in the past.

Working Group Membership

The Working Group, whose members were also the members of the ICC Sub-Committee on Accreditation at the time (National Institutions from Canada, Denmark, Fiji and Nigeria and representatives from the OHCHR National Institutions Unit, and in October 2007, included NIs from Germany, Korea and Rwanda), developed a discussion paper examining three areas:

1. The composition of the Sub-Committee and its roles and responsibilities;
2. The accreditation process; and
3. The substance of criteria or minimum standards set for accreditation.

Discussion Paper

The discussion paper specifically addressed the accreditation process as it applied to both the initial application process and the process of re-accreditation. Other potential situations that may involve the Sub-Committee on Accreditation - considering re-applications for accreditation by institutions denied accreditation (existing Rule 3(f) of the ICC Rules of Procedure), reviewing accreditation upon notification of a change of situation (existing Rule 3(g) of the ICC Rules of Procedure) or reviewing accreditation as part of an “early warning” process - were not directly examined, although the comments made in the paper might apply generally to those circumstances as well.

Presentation to the ICC

The paper was presented at the 18th and 19th Sessions of the Annual Meeting of the ICC. In addition, members were asked to provide further comments in writing with the view towards developing a final paper for presentation and adoption at the next ICC meeting.

Challenges to Adverse Accreditation Recommendations

In addition, and in response to comments made at the 19th Session, the Working Group has examined the issues of: 1) including a mechanism to challenge adverse accreditation recommendations within the accreditation process; and, 2) the status that should be accorded Institutions during the period that their accreditation status is being reviewed or a recommendations on it is being challenged.

Decision Paper

The attached decision paper, which is to be presented to the ICC at the 20th Session of its Annual Meeting for adoption, sets out the consensus arrived at by the Working Group in full consideration of the comments made by members at the 18th and 19th Sessions, as well as written comments received subsequent to them. The Working Group recommends the proposals put forward in the paper be adopted. To facilitate this, the paper includes proposed wording whenever recommendations for amendments to the ICC Rules of Procedure and/or the Rules of Procedure for the Sub-Committee on Accreditation are made. To aid in decision-making, the Working Group attaches, as Annex I and Annex II respectively, copies of the above-mentioned Rules of Procedure with all proposed amendments highlighted.

Part I: A Principled Approach

According to rule 3(a) of the ICC Rules of Procedure, to be a member of the International Group of National Human Rights Institutions, a National Human Rights Institution must conform to the *Paris Principles*. The Rules of Procedure give the Sub-Committee on Accreditation the responsibility to make recommendations as to whether applicant institutions satisfy the criteria set out in the *Paris Principles*. In 2004, the ICC adopted Rules of Procedure for the Sub-Committee on Accreditation to clarify the composition, functions and procedures to be followed by the Sub-Committee in carrying out their mandate.

Guidelines for Accreditation Process

However, neither set of Rules specifies exactly how the Sub-Committee is to come to its recommendation. Nor do the Rules provide guidance on the basis for determining whether an applicant Institution conforms or not to the *Paris Principles*. In the absence of clear guidelines, the Sub-committee, with the support of the National Institutions Unit of the OHCHR, has been left to develop its own understanding of the *Paris Principles* and how to apply these guidelines in the accreditation process.

Evolving Role of NIs

The principle purpose of the ICC, as reflected in the Preamble to its Rules of Procedure, remains: “the creation and strengthening of National Human Rights Institutions which are in conformity with the *Paris Principles*”. The ICC has been very successful in achieving this objective and furthermore, an increasing number of Institutions have joined and benefited from interacting with the 16 voting members of the ICC. However, the environment in which National Human Rights Institutions function has evolved since the adoption of the *Paris Principles* in 1991 and the creation of the ICC. Membership in the Group is given growing importance by international and national actors.

NIs in UN Human Rights Fora

In particular, accreditation as a fully compliant member allows for the participation by that National Human Rights Institution in UN human rights related fora. Since the 1993 Vienna World Conference on Human Rights, National Institutions have increasingly played a meaningful role at the UN. In recent years, for example, National Institutions have played a key role in the development of the UN Convention on the Protection and Promotion of the Rights of Persons with Disabilities, and possess a prominent role as a national implementation and monitoring body. Similarly, National Institutions played a role in the development of the Optional Protocol to the Conventional Against Torture, and may play a role as “national preventative mechanisms” provided for in the Optional Protocol, providing that the NI satisfies the *Paris Principles*. Furthermore, the creation of the UN Human Rights Council allows for ICC-accredited NIs to play an active role in that forum.

Renewed Accreditation Process

In light of the changing role of National Institutions, and in order to remain true to its original purpose, it is paramount that the ICC reviews its accreditation process, with a view to strengthening the credibility and efficiency of the process, as well as that of its inherent fairness. With this in mind, the Working Group recommends that a new accreditation process be developed. To ensure that the process

is fair and impartial, and that it satisfies the principles of natural justice, the Working Group recommends that it be based on the following three guiding principles:

1. Transparency
2. Rigour
3. Independence

Transparency

Transparency requires, *inter alia*, that an applicant Institution fully understand both the standards it must meet and the documentation it must provide to support an application, know how these documents will be assessed, and, if denied full accreditation, be informed fully in writing of the reasons for this and be given the opportunity to demonstrate, by providing additional written documentary evidence, that the basis for a decision was incorrect. Transparency and fairness also require that an Institution in risk of losing its membership status have the opportunity to provide written evidence to demonstrate that it remains in compliance with the *Paris Principles*. Finally, transparency requires that the ICC and the Sub-Committee be able to demonstrate that, in coming to their recommendations and decisions, the same standards are applied to all applicant Institutions, and that those standards are applied consistently and in accordance with shared, accepted definitions and understandings.

Rigour

A more rigorous process would mean that only applicant Institutions which conform to both the letter and the spirit of the Paris Principles, and demonstrate this through their actions, will be accredited, and that the methodology used to arrive at this decision is defined, supported by sound policy decisions and applied consistently and precisely.

Independence

An independent process would be one in which there is a clear delineation of roles, responsibilities and accountability for both the ICC as a whole and Sub-Committee with regard to the accreditation process, decision-making authority and the ability to address broader policy issues. Neither members of the Sub-Committee nor members of the ICC should have a bias or a perceived bias in the outcome of any decision, nor should they, except based on the written documentation on hand, attempt to influence the decision one way or another.

The application of each of these principles will ensure that the process is fair and reasonable. As such, this “principled approach” has guided the development of this discussion paper and is supported by the various proposals therein.

Part II: The Composition of the Sub-Committee; Roles and Responsibilities

Issue 1: General roles and responsibilities: ownership of the accreditation process; decision-making authority; policy-making role.

The Working Group recommends that the accreditation process remain the responsibility of the ICC, generally, and of the Sub-Committee, in particular. The role of the ICC should be to determine policy and take the ultimate decision on accreditation; the role of the Sub-Committee should be to apply that policy and, on that basis, make a principled recommendation to the ICC on the decision to be taken.

In practice, this means that the Sub-Committee will, in any case that raises novel issues, refer the matter to the ICC for a policy decision. It will also mean that a decision to alter a Sub-Committee recommendation will have to be documented to set out the specific reasons for doing so in order to preserve transparency, rigor and independence, support fairness in the process and ensure a collective understanding of how to interpret the policy issues at play. Finally, the principles of transparency and rigour, and ultimately the fairness of the process, suggests that all decisions should be based on written documentary evidence.

Proposed Action

To ensure that the process, as described above, is transparent and rigorous, the Working Group recommends that the Sub-Committee Rules of Procedure be amended.

1. An additional sub-rule should be included under “4. Procedures” of the Sub-Committee Rules as follows:

4.4. When, in the view of the Sub-Committee, the accreditation of a particular applicant Institution cannot be determined fairly or reasonably without further examination of an issue for which no policy has been articulated, it shall refer that matter directly to the ICC for determination and guidance. An ultimate decision as to accreditation can only be taken once the ICC has provided that decision or guidance.

2. Existing Rule 6.2 of the Sub-Committee Rules should be amended as follows:

6.2. The ICC Chairperson will indicate in the report of the meeting decisions taken by ICC members with regards to applications for accreditation; in the event the ICC takes a decision contrary to the recommendation of the Sub-Committee, the ICC Chairperson will indicate the reasons for this in that report.

3. Existing Rule 3(d) [3(e) as it appears in Annex 1] of the ICC Rules of Procedure should be amended to read:

3(e). All questions of membership, including whether a National Institution complies with the Paris Principles, shall be decided by the ICC or any membership sub-committee it may establish on the basis of written documentary evidence submitted.

Issue 2: Make-up and terms of office of Sub-Committee members

There is agreement among the Working Group members and the members at large that the current process of selecting Sub-Committee members is appropriate, as is the decision to have balanced regional representation.

There is agreement among Group Members and the members at large that the term of office for Sub-Committee members should be lengthened. In keeping with the amendment to the terms of office of the Chair and Vice-Chair of the ICC, the Working Group proposes that they be lengthened to three years. The Working Group acknowledges that for particular regions it is the Chair of the regional network of NHRIs that assumes the representative position of that region on the Sub-Committee. To avoid differences in the rotational cycles of the Chairs of Networks, a regional representative should be chosen to sit on the Sub-Committee that is not the Chair of the Network. This is because where the term of office of the Chair of a particular regional network of NHRIs is shorter than the term of office of the member of the Sub-Committee, that is, three years, then it is in the best interests of the Sub-Committee that a NHRI from the region concerned, other than the regional network's Chair, represent that region on the Sub-Committee so they may commit to an uninterrupted term of three years on the Sub-Committee. The Working Group, with the support of other members, also recommends that the membership of the Sub-committee be staggered so that there would always be at least two members of the Sub-Committee holding office with experience at any one time.

Finally, the Working Group members believe that there is a consensus that the Chair of the Sub-Committee should rotate automatically between regions. The Sub-Committee notes, however, the possibility that a regional representative on the Sub-Committee might not feel it has the capacity to assume the obligations of chairing the Sub-Committee when the position comes to it on rotation. It was felt that in such an eventuality the Institution should not be disqualified from serving on the Sub-Committee. For this reason, the Sub-Committee recommends that the Chair pass to the next region on rotation in the event that the serving regional representative does not want the responsibility.

Proposed Action

4. With regard to the lengthened term of office, the Working Group recommends that Rule 2.2 of the Rules of Procedure for the Sub-Committee be amended as follows:

2.2. Members are appointed by Regional Groupings for a term of three (3) years renewable.

5. With regard to a fixed rotational Chair of the Sub-Committee, an amendment to the Committee Rules of Procedure is necessary. The Working Group proposes that rule 2.3 of the Rules of Procedure of the Sub-Committee be amended as follows:

2.3. The Chair of the Sub-Committee on Accreditation shall be selected, for a term of one (1) year, renewable a maximum of two (2) times, on a rotational basis from within the Sub-Committee so that each region assumes office in turn; in the event that a member of the Sub-Committee whose turn it is to be named Chair declines the office, the Chair shall pass to the region next in line.

Part III: The Accreditation Process

Issue 3: Documents supporting accreditation

The Working Group believes that the documentation currently supplied to support the accreditation process - the accreditation grid with supporting documents - is insufficient to allow the Sub-Committee to make a reasoned decision as to the compliance of the Institution with the *Paris Principles*. The Working Group recommends that:

- A clearer normative framework be put in place to determine compliance, as discussed later in this paper;
- The accreditation grid be revised to make it more focused and directive; and
- A directive guide be developed to explain more clearly to Institutions the application process and what documentation is required to support it.

Previously regional representatives were the conduit through which applications were transmitted. This has changed and applicant Institutions now submit their applications and documentation directly to the ICC Secretariat. Members of the Working Group recommend the current practice be retained, but that there be flexibility in the Rules of the Sub-Committee to encourage and allow regional support where this is desirable and possible.

Proposed Action

6. The Working Group believes that the Sub-Committee and the ICC Secretariat should be mandated to review and revise the accreditation grid to make it, and the required supporting documentary, more explicit. This should be done by October 2008.
7. The Working Group also believes that the Sub-Committee and the Secretariat should be mandated to develop a prototype directive guide for applicant Institutions to be submitted to the ICC for approval at its 20th Annual Meeting.
8. The Working Group believes that the Rules of Procedure for the Sub-Committee (existing rules 3.1 and 3.2) relating to the role of the regional representative in facilitating applicant Institutions should remain as they are. To the extent that regional representatives can assist and support applicant Institutions in their region through the process, this should be encouraged.
9. The Working Group notes that the current ICC Rules of Procedure are silent on the use of the accreditation grid and proposes that the last bullet of existing rule 3(c) be amended to read as follows:

3(c). ...a detailed statement showing how it complies with the Paris Principles as well as any respect in which it does not so comply and any proposals to ensure compliance. The ICC may determine the form in which this statement is to be provided.

Issue 4: Sub-Committee meeting schedules and related issues

The Sub-Committee traditionally meets at the same time of the ICC Annual Meetings. This provides a focus to the process, sets an identifiable target date by which Institutions are supposed to submit their applications and ensures that members, and the ICC Secretariat, are in the same place at the same time without requiring additional arrangements. It speeds up decision-making since the ICC is assembled.

Given the pressures imposed on the Sub-Committee by the introduction of the re-accreditation process, the Sub-Committee decided in October 2006 to review applications more often, as is provided for in existing rule 4.3 of the Sub-Committee Rules of Procedure. The Sub-Committee currently meets at ICC meetings as well as approximately mid-point between scheduled ICC meetings. With respect to the increased frequency of Sub-Committee meetings, the Working Group acknowledges the increased burden on the Secretariat and the travel expenses of the Sub-Committee members. However, the Working Group believes that their experiences should be considered a pilot and be subjected to a review after the initial re-accreditation processes is over to determine whether the practice should continue. In the interim, expenses may be defrayed by the use of teleconference technologies.

While only the ICC can make the final decision on the applications, the process of twice-yearly meetings is expected to help ensure that the Sub-Committee has the time to reflect on the applications submitted and come to more principled recommendations. The recommendations reached during Sub-Committee meetings held independently of the ICC Annual Meeting shall be communicated to the 16 voting members of the ICC for their consideration.

The Working Group notes the decision taken by members at the 18th Session of the Annual Meeting of the ICC, reiterated in the Sub-Committee's General Comments at its 19th Session, to require applications for accreditation to be submitted three (3) months in advance prior to the meeting of the Sub-Committee. It also notes the members' support for applying this requirement with rigour.

Proposed Action

10. The ICC should instruct the Sub-Committee to develop a paper on its experiences with holding meetings outside of the ICC meeting schedule for discussion and decision by the ICC as to whether the process should continue. The paper should consider the costs involved and the strains put on the Secretariat.
11. In order to codify members' desire for a lengthier lead-in time for applications and to put greater emphasis on the importance of meeting this deadline, the Working Group recommends that existing rule 3.4 of the Sub-Committee Rules of Procedure be changed to read as follows:

3.4. These applications and support documents shall be provided to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee so that they can be passed on to the ICC Chairperson no later than one (1) month prior to the meeting of the Sub-Committee. Subject to paragraph 3.5 of these Rules, an Institution undergoing re-accreditation that does not comply with this deadline will be suspended until such time as the required documentation is submitted and reviewed by the Sub-Committee.

12. In order to ensure greater flexibility as to the schedule that applies to Sub-Committee meetings, and to ensure that exceptions to the requirement to provide documentation promptly are not abused, the Working Group recommends that existing rule 3.5 of the Sub-Committee Rules of Procedure be amended as follows:

3.5. Applications and documents submitted after this delay will only be examined during the subsequent meeting of the Sub-Committee, unless the situation warrants otherwise, as determined by the ICC Chairperson. In the event that the delay involves an Institution seeking re-accreditation, a decision to not suspend the Institution can be taken only if written justifications for the delay have been provided and these are, in the view of the ICC Chairperson, compelling and exceptional.

Issue 5: Accreditation categories

The Working Group recommends: (i) revising the current categories of ICC membership by deleting the A(R) (accreditation with reserve) category; (ii) making the link between an A-status classification and membership in the Group of National Institutions more explicit; and, (iii) establishing an interim process to deal with NIs currently accredited as A(R) Institutions.

The Working Group notes that B-status Institutions are referred to as having Observer Status. The existing rule 3(f) [3(i) as it appears in Annex 1], however, suggests that any Institution with less than A-status can attend meetings as observers only with the consent of the ICC. The Working Group proposes that B-status institutions have automatic observer privileges and that C-status Institutions be allowed observer status with the consent of the ICC.

The Sub-Committee further notes that should this formulation be accepted, and if it is determined that B-status institutions are to face re-accreditation and review, then, they be treated, as regards the privilege of automatic observer status, as A-status Institutions who lose their privileges in defined circumstances addressed under Issue 9.

Some members believe that certain applicant Institutions might be so wide off the mark, i.e. their mandate maintains or supports religious, gender or ethnic intolerance, that they should not even be considered as potential ‘observers’. This could be accomplished within the existing ICC Rules, since existing Rule 3(f) [3(i) as it appears in Annex 1] provides that non-members can only participate at ICC meetings or workshops “with the consent of the ICC”.

Proposed Action

13. The Working Group recommends that rule 5 of the Rules of Procedure of the Sub-Committee be amended as follows:

5. In accordance with the *Paris Principles* and the ICC Rules of Procedure, the different classifications used by the Committee are:

A: Voting Member: In compliance with each of the Paris Principles;

B: Observer Status: Not in compliance with each of the Paris Principles or insufficient information provided to make a determination;

C: No Status: Non-compliant with the Paris Principles.

14. The Working Group also recommends that existing rule 3(a) of the ICC Rules of Procedure be amended to make the requirement of ‘full compliance’ more specific as follows:

3(a). Only National Institutions which comply fully with the Paris Principles shall be eligible to be voting members of the group of National Institutions.

15. The Working Group recommends that existing rule 3(f) [3(h) and 3(i) as it appears in Annex 1] of the ICC Rules of Procedure should be replaced with the following rules:

3(h). Any National Institution whose application for membership has been declined may reapply for membership at any time.

3(i). A National Human Rights Institution that is granted Observer Status has the right to participate as an observer in open meetings and workshops of the ICC; an Institution denied A or B status may, with the consent of the ICC, attend meetings or workshops of the group as an observer.

Issue 6: The re-accreditation process

Re-accreditation is understood as a mechanism to ensure that fully compliant Institutions continue to conform to the *Paris Principles* over time. Currently, only A-status Institutions face re-accreditation. However, it is recommended that B-status Institutions (given Observer Status) should also be subject to re-accreditation as such an exercise would serve to encourage such institutions to demonstrate the efforts undertaken towards achieving full compliance with the *Paris Principles*.

The Working Group notes that the process used for accreditation and re-accreditation needs to be made more rigorous by reviewing and possibly modifying the normative framework used for this purpose. If the modalities are made more rigorous at a later date, those institutions that have been accredited using existing, less rigorous mechanisms will be subject to review when they come up for re-accreditation again or, if necessary in the circumstances, by using the processes provided under existing rules 3(f) & (g) [3(h), (i) & (j) as they appear in Annex 1] of the ICC Rules of Procedure.

The Sub-Committee, in section 6.1 of its General Observations², delivered to the 19th Session of the Annual Meeting of the ICC, recommended a process for handling the deferral of re-accreditation. It recommended that deferrals only be allowed on receipt of a written request and then only if in the view of the ICC Chairperson the justifications provided are “compelling and exceptional”. It also set a time limit of one year for the deferral after which, if the application and required documentation are not submitted, the Institution would be suspended. Finally, it indicated that re-accreditation applicants that do not apply and submit their application in time or at all will be suspended for up to one year; if the

² Please see Issue 10 for a discussion on Sub-Committee General Observations.

application is not submitted within this time frame, the institution's accreditation status will lapse. The question of the status of members is discussed in Issue 9.

Finally, there is a consensus that the ICC Rules of Procedure must be amended to reflect the re-accreditation process.

Proposed Action

16. The Working Group recommends the ICC consider the possibility of enlarging the focus of the re-accreditation process to include B-status Institutions.
17. The Working Group recommends that no change be made to allow a review of accreditation and re-accreditation decisions where a new normative framework is put in place. An Institution denied membership may, under existing rule 3(f) [3(h) as it appears in Annex 1], reapply for membership at any time and can do so if it believes the application of new normative standards would result in a change in membership status. Institutions deemed members using existing processes that, in the opinion of the Chair of the ICC or of any Sub-Committee member, might not remain as members if the new standards were to apply, can have their status reviewed under the provisions of existing rule 3(g) [3(j) as it appears in Annex 1] of the ICC Rules of Procedure.
18. The ICC Rules of Procedure should be amended to codify policy decisions taken around the re-accreditation issue, such as: the requirement to undergo re-accreditation; the meaning of the requirement to consult; the time lines for a review; etc. With this in mind, the Working Group recommends the following amendments:

Add a new sub-paragraph (d) to existing Rule 3 as follows:

3(d). All members and Observer Status National Institutions are subject to re-accreditation on a cyclical basis. The ICC may determine the periodicity of re-accreditation, but this cannot be longer than five (5) years. The rules set out below with regard to 'membership' apply to Institutions applying for membership as well as to Institutions undergoing re-accreditation. In particular, reference to 'application for membership' means both the initial application and an application for re-accreditation.

Revise existing Rule 3(g) [3(j) as it appears in Annex 1] by adding the following sentence to the rule, as follows:

3(j). Any review of a member's membership must be finalized within eighteen (18) months.

Re-number the last two sentences as independent sub-paragraphs of the rule, as follows:

3(k). As noted above in 3(d) [proposed new sub-clause], member and observer National Institutions are subject to periodic re-accreditation.

3(l). On any such review or re-accreditation the Chairperson or Sub-Committee shall have all the powers and responsibilities as in an application under Rule 3.

Issue 7: Responsibility to consult applicant Institutions³

With respect to the responsibility to consult applicant Institutions as part of the accreditation and re-accreditation process, the Working Group notes a lack of clarity with regard to the obligation imposed by existing rule 3(e) [3(g) as it appears in Annex 1] of the ICC Rules of Procedure to consult an Institution in the event of an “adverse decision”. This lack of clarity relates to:

- What constitutes an ‘adverse decision’;
- Who was responsible for the consultation in such circumstances;
- What the purpose of the consultation was; and
- Whether the consultation had to be in person.

With regard to the general need for consultation and dialogue, the Working Group notes the principles put forward in Part 1 of this paper, which are necessary to ensure consistency and fairness. While there need not be any obligation for consultation and dialogue, there may be occasions when it is deemed necessary to obtain as clear an understanding of the applicant Institution’s mandate and actions as possible. Hence, the Working Group proposes that it has the general authority to undertake consultation as, when and how it deems necessary to ensure fairness of result within the context of a transparent, rigorous and independent process.

The Working Group recommends that all consultations must be supported by written documentation. Where a verbal consultation is undertaken, a record of that should be maintained, and, in the event that the verbal testimony informs the recommendation or decision that follows, the applicant Institution should have access to that record to ensure its accuracy.

With regard to the obligation to consult in the event of an adverse decision, after reviewing the comments made by members, the Working Group recommends that existing rule 3(e) [3(g) as it appears in Annex 1] of ICC Rules of Procedure be clarified:

- To make it explicit that an ‘adverse decision’ means a recommendation from the Sub-Committee to the ICC to remove a ‘fully compliant’ or ‘observer status’ (if there is consensus to include these institutions in the accreditation process) accreditation from an Institution following a re-accreditation review or as the result of a ‘changed circumstance’ or an ‘early warning’ process;
- To make it clear that the ‘consultation’ will be carried out by the Sub-Committee for purposes of explaining precisely why it will recommend the action and to inform the Institution about what documentation it must provide to forestall or reverse it;
- To specify that the form and nature of the consultation may be determined by the Sub-Committee, with the proviso that verbal consultations must be supported by written records of the conversation.

³ This issue should not be confused with the requirement to “inform applicant institutions of the decisions taken and their rationale” or to carry out further consultations with an institution that has been denied accreditation, both of which are clear.

The Working Group does not recommend any change to the approved process for re-accreditation since the operations of the ICC and the Sub-Committee are governed by their respective Rules of Procedure.

Proposed Action

19. To respond to the need for flexibility in allowing consultations at any time during the accreditation process and the obligation to consult when taking an ‘adverse decision’, the Working Group recommends that existing Rule 3(d) [3(e) as it appears in Annex 1] of the ICC Rules of Procedure should be amended to read:

3(e). All questions of membership, including whether a National Institution complies with the Paris Principles, shall be decided by the ICC or any membership sub-committee it may establish on the basis of written documentary evidence submitted. In coming to its decision, the ICC or Sub-Committee may adopt processes that facilitate dialog and exchange of information between it and the applicant Institution as deemed necessary to come to a fair and just decision. Notwithstanding this, any recommendation that would serve to remove accreditation status from an applicant Institution (hereafter referred to as an ‘adverse decision’) can only be taken after the applicant Institution is informed of this intention and is given the opportunity to provide in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity to the Paris Principles.

20. The Working Group also recommends that a new Rule 4.5 be added under Rule 4 of the Rules of Procedure of the Sub-Committee on Accreditation, with a consequential amendment to Rule 4.2, as follows:

4.2. Unless specifically authorized in exceptional circumstances by the Chairperson to satisfy the conditions imposed by sub-article 4.5 below, the meeting will be restricted to members of the Sub-Committee on Accreditation and the Office of the United Nations High Commissioner for Human Rights.

4.5. The Sub-Committee may, pursuant to Rule 3(d) [3(e) if the proposed amendments to the Rule are accepted] of the ICC Rules of Procedure, consult with the applicant Institution, as it deems necessary to come to a recommendation. The Sub-Committee shall, also pursuant to and for the purposes set out in Rule 3(d) [3(e) if the proposed amendments to the Rule are accepted], consult with the applicant Institution when an adverse decision is to be recommended. These consultations may be in the form deemed most appropriate by the Sub-Committee but must be supported by written documentation; in particular the substance of verbal consultations must be recorded and be available for review. Since the ICC makes the final decision on membership, an Institution undergoing a review retains its membership status during the consultation process.

Issue 8: The process of challenging adverse accreditation recommendations

The Working Group believes that the accreditation process should provide a mechanism that would give applicants the opportunity to formally challenge the recommendation decided upon by the Sub-Committee. In addition to reviewing the Sub-Committee recommendations before coming to a final determination, the ICC would, in the case of a challenge, be required to review all documentation originally provided by the applicant to the Sub-Committee as well as any new documentation submitted in support of the challenge. To preserve the integrity of the process, time limits would exist with regard to the launching of a challenge and the provision of additional documentation in support of one. Several sub-issues must be considered in applying this recommendation, as discussed below.

Sub-Issue 1: Form of Challenge (Oral or Documentary)

The Working Group argues that it is both natural and consistent with the principles of transparency and fairness to allow appellant Institutions the opportunity to provide verbal explanatory comments on documentation that they submit to the authority charged with reviewing an accreditation recommendation.

The submission of new documentation should not be allowed unless that documentation supports a contention that the Sub-Committee has misunderstood or misinterpreted some aspect of the applicant institution's submitted documentation. The reason for this lies with the requirement for applications to be thoroughly documented in advance of the Sub-Committee's review of the file. Furthermore, the Secretariat extends considerable effort to ensure that this is done, including by asking applicant institutions for additional information when this is considered necessary. The applicant institution is therefore already aware of problematic areas and is accorded the opportunity to provide all the documentation it has to support its application. To allow an institution to provide additional, new documentation at this stage would be to subvert the many efforts the ICC has taken to ensure that the current process functions in a fair and timely manner.

Therefore, to safeguard the documentary process the following should be adhered to:

1. All decisions must be made based on documentary evidence.
2. Any verbal evidence given must relate to the documentary evidence provided such that it cannot be in the form of 'new' evidence.
3. The ultimate decision must record, where necessary, the nature and substance of the verbal evidence that was considered pertinent in coming to the decision.

Sub-Issue 2: Resolving Issues Related to an Immediate Challenge

Currently, the Sub-Committee meets twice annually, once at the time of the regular scheduled Annual Meetings of the ICC in March or April, and once approximately six months after. Recommendations taken during these latter meetings can be challenged to the ICC at the next meeting. This would give the appellant institution the time to prepare its case and the ICC the time to review that case. This is not an advantage enjoyed by applicant institutions whose application is considered during the regular ICC meetings as they might have only a day at most to prepare and document a challenge; similarly, the ICC would have little or no time to review those documents before being asked to render a decision. Furthermore, it is inherently unfair to ask the ICC to review new documentation in the circumstances described above. The challenge mechanism, if it is to have real legitimacy, must allow for reasoned re-consideration. This would be impossible to ensure in the time lines involved in an immediate review.

To respond to this problem, the Working Group proposes that the Sub-Committee continues to meet twice yearly, but that the meeting held at the ICC regular meeting be scheduled after that meeting

concludes. This approach calls for the ICC to develop a mechanism to hear those challenges in a timely manner. Given that the volume of challenges is not likely to be large, the Working Group believes decision-making through teleconferencing is a reasonable option. This might be done even following the Sub-Committee meeting in October 2008.

Sub-Issue 3: Status of the Institution during the Process of Challenging an Adverse Accreditation Recommendation

The rights and privileges of the Institutions facing a challenge to an adverse accreditation recommendation should be parallel to that of the Institutions facing review, that is, the rights and privileges they enjoy at the time should remain until the challenge is finalised. This means:

- *New applicants*, including institutions reapplying after having their status lapse, would have no rights and privileges during the challenge period.
- *Re-applicants*, that is, institutions with a status less than ‘fully compliant’, would continue to enjoy the rights and privileges associated with their current status during the challenge period.
- *Re-accreditation* applicants would continue to enjoy the rights and privileges associated with their current status during the challenge period.

To be consistent with the General Observations⁴ of the Sub-Committee, there should be a strict time limit during which the appellant institution must satisfy the 16 voting members of the ICC that it complies with the *Paris Principles*. The Working Group suggests that an Institution have one (1) month in which to submit supportive documentation to the Chair of the ICC to support its challenge of the adverse accreditation recommendation.

Proposed Action

21. Proceed with the current process, but in the event that an Institution formally challenged a Sub-Committee recommendation, the ICC would be compelled to review the documentation supporting the applicant’s membership request, and the applicant’s written challenge, in coming to its final decision. The Working Group recommends that the following sub-clause be inserted in to Rule 3 of the ICC Rules of Procedure:

3(f). Should a Sub-Committee be charged with coming to a membership decision, that decision shall be considered a recommendation, with the final decision being taken by the ICC. Any applicant can challenge a recommendation made by the Sub-Committee by submitting a written challenge to the ICC Chairperson within one (1) month of the Sub-Committee recommendation. Within twenty (20) days of this submission, the 16 ICC voting Members will approve or reject the recommendation of the Sub-Committee. All approved recommendations are final decisions. Unapproved decisions are referred for consideration at the next ICC meeting. The decision of the ICC on membership, which will be based on that review, is final.

⁴ Please see Issue 10 for a discussion on Sub-Committee General Observations.

Issue 9: The status of Institutions under review or suspension and related issues

The Working Group agrees that it is important that the Rules of Procedure specifically deal with the issue of de-certification and the status of members during review or suspension. The following possibilities regarding the status of an Institution during re-accreditation or review are set out in the Sub-Committee's General Observations⁵ delivered at the 19th Session of the Annual Meeting of the ICC:

Deferral of consideration of status:

- Applies to Institutions that submit an acceptable written request and justification for a deferral of re-accreditation;
- Can be up to one year;
- It is inferred that Institutions that have deferred re-accreditation status retain all rights and privileges.

Suspension of status:

- Applies to Institutions due for re-accreditation that file late applications or that do not submit their applications;
- Suspended institutions lose all rights and privileges until such time as they demonstrate full compliance with the *Paris Principles* to the Sub-Committee or their membership status is changed.

Lapse of status:

- Applies to suspended or 'deferred application' institutions that do not provide their submission for re-accreditation within the year allowed;
- Applies to institutions under review that do not convince the Sub-Committee that they are fully compliant with the *Paris Principles* within the year and a half allowed for a review;
- It is inferred that an Institution with lapsed membership loses all rights and privileges.

Review of status:

- Applies to Institutions that are exempted from re-accreditation process and given eighteen months to satisfy the Sub-Committee that they remain compliant with the *Paris Principles* despite noted 'changed circumstances';
- Institutions under review retain all rights and privileges during the review.

The Working Group believes that the situation of an Institution that does not submit a re-accreditation application or is delayed in doing so without justification raises different issues than the situation of an Institution under review: in the former, an Institution does not comply with a published and well-known membership requirement; in the latter, circumstances, usually beyond the control of the Institution, indicate a possible change in situation that needs examination. While there is no reason to conclude that an Institution under review is non-compliant (the very purpose of the review is to make that assessment) a presumption of non-compliance can be made if an Institution does not submit its re-accreditation application and supporting documents. This process is fair in that:

⁵ Please see Issue 10 for a discussion on Sub-Committee General Observations.

- It serves a recognised and legitimate purpose;
- Institutions are aware of what is required and are given ample time to comply;
- It allows for deferrals when this is necessary;
- The consequence of not meeting the requirements of timely application are known;
- The consequence of not meeting the requirement is not capricious given the presumption of non-compliance that can be drawn.

Proposed Action

22. The Working Group recommends that the ICC Rules of Procedure explicitly provide for de-certification of members and the conditions under which this can be done, as well as set out the impact on the privileges that the member will enjoy in the circumstances, by amending existing rule 3(a) and adding a new rule 3(b) as follows:

3(a). Only National Institutions that comply fully with the Paris Principles shall be eligible to be voting members of the group of National Institutions; Institutions that are only partially compliant are eligible to attain 'observer status'. In the event that membership lapses or is revoked or suspended, all rights and privileges conferred on that Institution through membership are immediately suspended. In the event that an Institution is under review, it shall retain the status it has been granted until such time as the body determining membership comes to a decision as to its compliance with the Paris Principles or its membership lapses.

3(b). Membership may be suspended if a National Institution fails to submit its application for re-accreditation or fails to do so within the prescribed time without justification; members remain in suspense until the body determining membership comes to a decision on their compliance with the Paris Principles.

Membership may lapse if a National Institution fails to submit an application for re-accreditation within one year of being suspended for failure to reapply, or if a voting member under review fails to provide sufficient documentation, within eighteen (18) months of being placed under review, to satisfy the body determining membership that it remains in conformity with the Paris Principles.

Membership may be revoked if the body determining membership determines a National Institution no longer meets the membership requirements relating to compliance with the Paris Principles.

Suspended members remain suspended until the body determining their compliance with the Paris Principles comes to a determination of their membership status or until their membership lapses.

Members whose status has lapsed or been revoked may regain membership only by re-applying for membership as provided for in these Rules.

Issue 10: Sub-Committee General Observations

The Working Group on Accreditation has strived to craft the accreditation process in a consistent, transparent and coherent way. To this end, the Sub-Committee on Accreditation has made strides to enunciate its interpretation of NHRI compliance with the Paris Principles in the form of 'General Observations'. The General Observations of the Sub-Committee were first developed at its meeting in October 2006 in an effort to meet the abovementioned exigencies of the Working Group on

Accreditation. At this time, the ICC plenary adopted the list of General Observations at its 18th Session. Following its practice, the Sub-Committee continued to make General Observations in relation to its accreditation at its sittings in March and October 2007. However, these lists of General Observations have yet to be formally adopted by the ICC.

Purpose

The Sub-Committee on Accreditation is mandated to assess whether an applicant institution is in conformity with the Paris Principles⁶. Therefore identifying concerns that it has about the non-compliance of NHRIs with the Paris Principles has always been, and continues to be, considered an exercise internal to the Sub-Committee's working methods. The General Observations are a formulation of the common or important interpretative issues and are intended to be focused guidelines for NHRIs regarding: (i) the implementation of the Paris Principles, to ensure full compliance; or (ii) the ICC accreditation application process.

Force & Effect

A parallel may be drawn between the practice of the Sub-Committee on Accreditation to produce General Observations, and that of United Nations Treaty Body Committees to produce Concluding Observations. To this end, the General Observations are submitted to the NHRI concerned and made public through their inclusion in the Report and Recommendations of the Sub-Committee. Further, the recommendations present an opportunity for the concerned NHRI to affect change in their national human rights system by utilizing the Sub-Committee's General Observations to create momentum for improved State compliance of the Paris Principles. The NHRI may, on the basis of the General Observations, bring attention to areas of concern, suggest further steps to be taken, and demand improvements in the State's treatment of the NHRI before the accreditation status of the NHRI is next reviewed. Public awareness of a State's failure to fulfil its duties at an international forum can be useful in encouraging and motivating States to make changes at the domestic level.

Proposed Action

Given the use of Concluding Observations by Human Rights Council Treaty Bodies, and given the existence of General Observations in the ICC as adopted in October 2006, the Working Group recommends that the ICC continue to develop and utilise General Observations and that the Sub-Committee Rules of Procedure be amended.

23. Additional sub-rules should be included under "6. Report and Recommendations":

6.4 General Observations are to be developed by the SCA and approved by the ICC.

6.5 The General Observations, as interpretive tools of the Paris Principles, may be used to:

- (a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
- (b) Persuade domestic governments to address or remedy issues relating to an institution's

⁶ Art. 1 Rules of Procedure for the Sub-Committee on Accreditation

compliance with the standards articulated in the General Observations;

- (c) Guide the Sub-Committee on Accreditation in its determination of new accreditation applications, reaccreditation applications or special reviews:
- (i) If an institution falls substantially short of the standards articulated in the General Observations, it would be open for the Sub-Committee to find that it was not Paris Principle compliant.
 - (ii) If the Sub-Committee has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the Sub-Committee is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts had been made, it would be open to the Sub-Committee to interpret such lack of progress as non-compliance with the Paris Principles.

Part IV: A Normative Framework (Criteria for Accreditation)

To ensure greater transparency and rigour in the accreditation process, specific indicators of conformity should be identified for each criteria set out in the *Paris Principles* that the Sub-Committee is to examine. These indicators should be relatively easy to apply and must be accepted by ICC members. Conformity, and therefore accreditation, should be largely determined according to whether or not the Institution's application and supporting documentation demonstrates that these indicators are being met. All obligatory criteria set forth in the *Principles* should be examined through these indicators, which could also provide guidance on broader policy issues such as the definition of "independence", "national", "plurality" and other concepts at the heart of the accreditation process.

Additional principles relating to institutions with quasi-judicial authorities should not be examined for purposes of determining compliance with the *Paris Principles*. Nonetheless, data on the additional principles could be gathered in the application process for comparative and information purposes.

The determination process may have to look beyond technical compliance to examine whether the Institution's actions demonstrate compliance with some or all of the *Principles*, to the extent that this can be done in an appropriate, reasonable, consistent and fair manner.

The Members note that it may be difficult to define indicators that are acceptable to every Institution and therefore that vigilance is necessary to ensure that the process does not result in a 'lowest common denominator' approach. In fact, all members agree that the result sought is quite the opposite: a process that, while fair, is demanding, one geared to ensuring that only truly legitimate and credible National Institutions are accepted as full members.

Proposed Action

24. The Working Group recommends that the ICC strike a new Working Group, including a member from the ICC Secretariat and from each of the regional groups represented, to prepare a draft normative framework that could be used to assist in determining whether an applicant Institution, or an Institution seeking re-accreditation, is in conformity with the Paris Principles; the Working Group should have included in its mandate the obligation to review what documentation should be required to support an application for accreditation or re-accreditation. The terms of reference for that Working Group should require that the draft framework be prepared by March 2008 and be forwarded to ICC members for comment so that the final decision on the framework can be taken by the ICC at its 20th Annual Meeting in 2008.

APPENDIX

ANNEX I

THE INTERNATIONAL CO-ORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

RULES OF PROCEDURE

PREAMBLE:

The International Co-ordinating Committee is a representative body of National Human Rights Institutions established for the purpose of creating and strengthening National Human Rights Institutions which are in conformity with the Paris Principles⁷. It performs this role through encouraging international co-ordination of joint activities and co-operation among these National Human Rights Institutions, organising International Conferences, liaison with the United Nations and other international organisations and, where requested, assisting governments to establish a National Institution.

It works to create and strengthen National Institutions and to ensure they conform to the Paris Principles.

1. Name

The name of the committee is the International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (the ICC).

2. Functions

The functions of the ICC are:

- (a) To co-ordinate, at an international level, the activities of National Human Rights Institutions established in conformity with the Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles).
- (b) To support the creation and strengthening of National Human Rights Institutions (National Institutions) in conformity with the Paris Principles.
- (c) To ensure regular contacts with the Office of the United Nations High Commissioner for Human Rights and the other international organisations concerned with the promotion and protection of human rights.
- (d) To plan and organise with the host institution International Conferences for National Institutions in co-operation with the Office of the United Nations High Commissioner for Human Rights.

⁷ Commission on Human Rights resolution 1992/54 of 3 March 1992, annex (*Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22)*, chap II, sect. A); General Assembly resolution 48/134 of 20 December 1993, annex.

- (e) To encourage and assist as requested the organisation of Regional Workshops of National Institutions.
- (f) To encourage co-operation amongst National Institutions.
- (g) To follow up on and, where appropriate, implement recommendations of International Conferences of National Institutions and other relevant United Nations resolutions.
- (h) To liaise with such other organisations as may be engaged in the promotion and protection of human rights.
- (i) To undertake such other functions as are referred to it by International Conferences of National Institutions and consider matters referred to it by regional meetings.

3. Membership of the Group of National Institutions

- (a) Only National Institutions which comply fully with the Paris Principles shall be eligible to be voting members of the group of National Institutions; Institutions that are only partially compliant are eligible to attain ‘observer status’. In the event that membership lapses or is revoked or suspended, all rights and privileges conferred on that Institution through membership are immediately suspended. In the event that an Institution is under review, it shall retain the status it has been granted until such time as the body determining membership comes to a decision as to its compliance with the Paris Principles or its membership lapses.
- (b) Membership may be suspended if a National Institution fails to submit its application for re-accreditation or fails to do so within the prescribed time without justification; members remain in suspense until the body determining membership comes to a decision as to its compliance with the Paris Principles or its membership lapses.

Membership may lapse if a National Institution fails to submit an application for re-accreditation within one year of being suspended for failure to reapply, or if a voting member under review fails to provide sufficient documentation, within eighteen (18) months of being placed under review, to satisfy the body determining membership that it remains in conformity with the Paris Principles.

Membership may be revoked if the body determining membership determines that a National Institution no longer meets the membership requirements relating to compliance with the Paris Principles.

Suspended members remain suspended until the body determining their compliance with the Paris Principles comes to a determination of their membership status or until their membership lapses.

Members whose status has lapsed or been revoked may regain membership only by re-applying for membership as provided for in these Rules.

Only one National Institution per state shall be eligible to be a voting member. Where more than one institution in a state qualifies for membership the state shall have one speaking right, one voting right, and if elected one committee member. The choice of an

institution to represent the National Institutions of a particular state shall be for the relevant institutions to determine.

- (c) Any National Institution seeking membership shall apply to the Chairperson of the ICC. That National Institution shall supply, in support of its application:
- a copy of the legislation or other instrument by which it is established and empowered
 - an outline of its organisational structure including staff complement and annual budget
 - a copy of its most recent annual report or equivalent document
 - a detailed statement showing how it complies with the Paris Principles as well as any respects in which it does not so comply and any proposals to ensure compliance. The ICC may determine the form in which this statement is to be provided.
- (d) All members and observer-status National Institutions are subject to re-accreditation on a cyclical basis. The ICC may determine the periodicity of re-accreditation, but this cannot be longer than five (5) years. The rules set out below with regard to ‘membership’ apply to Institutions applying for membership as well as Institutions undergoing re-accreditation. In particular reference to ‘application for membership’ means both the initial application and the application for re-accreditation.
- (e) All questions of membership, including whether a National Institution complies with the Paris Principles, shall be decided by the ICC or any membership sub-committee it may establish, on the basis of written documentary evidence submitted. In coming to its decision, the ICC or sub-committee may adopt processes that facilitate dialog and exchange of information between it and the applicant Institution as deemed necessary to come to a fair and just decision. Notwithstanding this, any recommendation that would serve to remove accredited status from an applicant Institution (hereafter referred to as an ‘adverse decision’) can only be taken after the applicant Institution is informed of this intention and is given the opportunity to provide in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity to the Paris Principles.
- (f) Should a Sub-Committee be charged with coming to a membership decision, that decision shall be considered a recommendation, with the final decision being taken by the ICC. Any applicant can challenge a recommendation made by the Sub-Committee by submitting a written challenge to the ICC Chairperson within one (1) month of the Sub-Committee recommendation. Within twenty (20) days of this submission, the 16 ICC voting Members will approve or reject the recommendation of the Sub-Committee. All approved recommendations are final decisions. Unapproved decisions are referred for consideration at the next ICC meeting. The decision of the ICC on membership, which will be based on that review, is final.
- (g) Should the application for membership of any National Institution be declined by reason of its failure to comply with the Paris Principles, the ICC or its delegate may consult further with that institution concerning compliance.

- (h) Any National Institution whose application for membership has been declined may reapply for membership at any time.
- (i) A National Institution that is granted observer status has the right to participate as an observer in open meetings and workshops of the ICC; an Institution denied A or B status may, with the consent of the ICC, attend meetings or workshops of the group as observer.
- (j) Where the circumstances of any member of the group of National Institutions change in any way which may affect its compliance with the Paris Principles, that member shall notify the Chairperson of those changes and the Chairperson shall place the matter before the accreditation sub-committee for review of that member's membership.

Where, in the opinion of the Chairperson of the ICC or of any member of the accreditation sub-committee, it appears that the circumstances of any member of the group of National Institutions may have changed in a way which affects its compliance with the Paris Principles, the Chairperson or the sub-committee may initiate a review of that member's membership.

Any review of a member's membership must be finalized within eighteen (18) months.

- (k) As noted above in 3(d), [proposed new sub-clause] member and observer National Institutions are subject to periodic re-accreditation.
- (l) On any such review or re-accreditation the Chairperson or sub-committee shall have all the powers and responsibilities as in an application under Rule 3.

4. Regional Groupings of Members

- (a) For the purpose of ensuring a fair balance of regional representation on the ICC the following regional groups are established:
 - Africa
 - Europe
 - The Americas
 - Asia-Pacific
- (b) The members within any regional group may establish such sub-regional groupings as they wish.
- (c) The members of regional groups may establish their own procedures concerning meetings and activities.
- (d) Regional groups are to elect four members to represent them on the ICC on a regional or a sub-regional basis as they choose.

5. Membership of the ICC

- (a) Membership is the prerogative of a National Institution not of any individual and is restricted to institutions approved to be members pursuant to clause 3 of these Rules. There shall be 16 members of the ICC comprising four representatives from each of the regional groups.
- (b) Regional group representatives are eligible for re-election.
- (c) Regional group representatives on the ICC shall be elected from within each regional group for a term of three years.

6. Chairperson and Deputy-Chairperson of the International Co-ordinating Committee

- (a) At its first meeting following adoption of these rules the members of the ICC present shall elect one of their number to be the Chairperson and another to be the Deputy Chairperson.
- (b) The roles of Chairperson and Deputy Chairperson attach to the National Institution whose representative is elected.
- (c) The Chairperson and Deputy-Chairperson shall serve for a term of three years and may be re-elected at the conclusion of the term.

7. Liaison with Other Human Rights Institutions and NGOs

- (a) The ICC may liaise with other human rights institutions including the International Ombudsman Institute and non-governmental organisations.
- (b) The ICC may decide to grant such organisations observer status at any meetings or workshops of the group of National Institutions.

8. Meetings

- (a) A meeting of the ICC shall be held in conjunction with the annual meeting of the Human Rights Council.
- (b) A meeting of the ICC shall be held in conjunction with the bi-annual International Conference for National Human Rights Institutions.

Otherwise, the ICC shall meet at such times and places as it shall decide.

9. Conduct of Business

English, French, and Spanish shall be the working languages of the ICC.

A majority of the Members of the ICC shall constitute a quorum.

An agenda for each meeting shall be drawn up by the Chairperson in consultation with the Members. Agenda items may be added at the meeting if approved by a majority of the Members present.

Members of the ICC shall be represented by duly authorized representatives of the institutional members concerned who may be accompanied at meetings by such advisers from the institution as they may require.

Each member shall have one vote. Where possible decisions of the ICC shall be reached by consensus. When consensus is not possible, decisions shall be by a majority of members present and voting. In the event of an equality of votes, the proposal being voted on shall be regarded as being defeated.

Representatives of National Institutions established in accordance with the Paris Principles, other than ICC members, are welcome to attend meetings.

The Chairperson, after consultation with ICC members, may invite National Institutions who are not members of the ICC and any other person or institution to participate in the work of the ICC as an observer without the right to vote.

10. Further Procedure

Should any question concerning the procedure of the ICC arise which is not provided for by these rules the ICC may adopt such procedure as it thinks fit.

11. Amendment of Rules of Procedure

These Rules of Procedure may be amended only by an International Conference of National Human Rights Institutions.

ADOPTED 15 APRIL 2000

AND AS AMENDED 13 APRIL 2002

ANNEX II

Rules of Procedure for the ICC Sub-Committee on Accreditation*

1. Mandate

In accordance with the Rules of Procedure of the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), the Sub-Committee on Accreditation has the mandate to review and analyse accreditation applications forwarded by the ICC Chairperson and to make recommendations to ICC members on the compliance of applicants with the Paris Principles.

2. Composition of the Sub-Committee

2.1. For the purpose of ensuring a fair balance of regional representation on the Sub-Committee on Accreditation, it shall be composed of one (1) ICC accredited national institution for each of the four (4) regional groupings as established by the ICC Rules of Procedure, namely Africa, Americas, Asia-Pacific, and Europe.

2.2. Members are appointed by Regional Groupings for a term of three (3) years renewable.

2.3. The Chair of the Sub-Committee on Accreditation shall be selected, for a term of one (1) year, renewable a maximum of two (2) times, on a rotational basis from within the Sub-Committee so that each region assumes office in turn; in the event that a member of the Sub-Committee whose turn it is to be named Chair declines the office, the Chair shall pass to the region next in line or to another NI in that region.

2.4 The Office of the United Nations High Commissioner for Human Rights shall be a permanent observer to the Committee and in its capacity as Secretariat of the ICC, support the Committee's work, serve as a focal point on all communications and maintain records as appropriate on behalf of the ICC Chairperson.

3. Functions

3.1. Each Regional Grouping Representative to the Sub-Committee on Accreditation shall facilitate the application process for national institutions in the region.

3.2. The Regional Grouping Representative shall supply national institutions from their region with all relevant information pertaining to the accreditation process, including a description of the process, requirements and timelines.

3.3. In accordance with the ICC Rules of Procedure (art. 3), any national institution seeking membership or seeking re-accreditation shall apply to the ICC Chairperson, supplying all required supporting documents through the ICC Secretariat.

3.4. These applications and support documents shall be provided to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee so that they can be passed on to the ICC Chairperson no later than one (1) month prior to that meeting. Subject to paragraph 3.5 of these Rules, an Institution undergoing re-accreditation that does not comply with this deadline will be suspended

until such time as the required documentation is submitted and reviewed by the Sub-Committee.

3.5. Applications and documents submitted after this delay will only be examined during the subsequent meeting of the Sub-committee, unless the situation warrants otherwise, as determined by the ICC Chairperson. In the event that the delay involves an Institution seeking re-accreditation, a decision to not suspend the Institution can be taken only if written justifications for the delay have been provided and these are, in the view of the ICC Chairperson, compelling and exceptional.

3.6. The ICC Chairperson will ensure that copies of the applications and supporting documentation are provided to each member of the Sub-Committee on Accreditation.

3.7. The ICC Chairperson, with support from the Office of the United Nations High Commissioner for Human Rights, will also provide a summary of particular issues for consideration by the Sub-Committee.

4. Procedures

4.1. The Sub-Committee on Accreditation will meet after the annual meeting of the ICC in order to review new applications, additional information submitted on applications presented previously, and prepare recommendations.

4.2. Unless specifically authorized in exceptional circumstances by the Chairperson to satisfy the conditions imposed by sub-article 4.5 below, the meeting will be restricted to members of the Sub-Committee on Accreditation and the Office of the United Nations High Commissioner for Human Rights.

4.3. Additional meetings of the Committee may be convened by the Chair with the agreement of the ICC Chairperson and Accreditation Sub-Committee members.

4.4 When, in the view of the Sub-Committee, the accreditation of a particular applicant Institution cannot be determined fairly or reasonably without further examination of an issue for which no policy has been articulated, it shall refer that matter directly to the ICC for determination and guidance. An ultimate decision as to accreditation can only be taken once the ICC provides that decision or guidance.

4.5 The Sub-Committee may, pursuant to Rule 3(d) [3(e) if the proposed amendments to the Rule are accepted] of the ICC Rules of Procedure, consult with the applicant Institution, as it deems necessary, to come to a recommendation. The Sub-Committee shall, also pursuant to and for the purposes set out in Rule 3(d) [3(e) if the proposed amendments to the Rule are accepted], consult with the applicant Institution when an adverse decision is to be recommended. These consultations may be in the form deemed most appropriate by the Sub-Committee but must be supported by written documentation; in particular the substance of verbal consultations must be recorded and be available for review. Since the ICC makes the final decision on membership, an Institution undergoing a review retains its membership status during the consultation process.

5. Accreditation Classifications

In accordance with the Paris Principles and the ICC Rules of Procedures, the different classifications for accreditation used by the Committee are:

- A: Voting Member: In compliance with each of the Paris Principles;
- B: Observer Status - Not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination;
- C: No Status - Non-compliant with the Paris Principles.

6. Report and Recommendations

6.1 The Chair of the Sub-Committee on Accreditation will present a report with recommendations and rationale to members of the ICC for their decision.

6.2. The ICC Chairperson will indicate in the report of the meeting decisions taken by ICC members with regards to applications for accreditation; in the event the ICC takes a decision contrary to the recommendation of the Sub-committee, the ICC Chairperson will indicate the reasons for this in that report.

6.3. The Chairperson of the ICC will inform applicant institutions of the decisions taken and their rationale by ICC members.

6.4 General Observations are to be developed by the SCA and approved by the ICC.

6.5 The General Observations, as interpretive tools of the Paris Principles, may be used to:

- (a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
- (b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;
- (c) Guide the Sub-Committee on Accreditation in its determination of new accreditation applications, reaccreditation applications or special reviews:
 - (i) If an institution falls substantially short of the standards articulated in the General Observations, it would be open for the Sub-Committee to find that it was not Paris Principle compliant.
 - (ii) If the Sub-Committee has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the Sub-Committee is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts had been made, it would be open to the Sub-Committee to interpret such lack of progress as non-compliance with the Paris Principles.

* Adopted by the members of the International Coordinating Committee at its 15th session, held on 14 September 2004, Seoul, Republic of Korea.